

COMMISSION OF INQUIRY OF THE PUBLIC INVESTMENT

CORPORATION

HELD AT

TSHWANE, PRETORIA

10

24 APRIL 2019

DAY 32

20

PROCEEDINGS HELD ON 24 APRIL 2019

CHAIRPERSON: Good morning, everybody.

ADV JANNIE LUBBE SC: Good, Commissioner and members.

CHAIRPERSON: The room appears empty.

ADV JANNIE LUBBE SC: Yes. Mr Commissioner, we are ready to proceed. The evidence will be led by my colleague, Advocate Monnahela and the witness and she will be testifying on a wide range of topics. It will probably take the day. It is the reinstated secretary of the PIC, Bongani Mathebula.

CHAIRPERSON: Yes, I see a face that we have not seen for a while. Mr Monnahela. Your full names, please, Ma'am.

MS BONGANI MATHEBULA: My full names Bongani Louisa Mathebula.

CHAIRPERSON: I did not take the second name?

MS BONGANI MATHEBULA: Louisa.

CHAIRPERSON: Louisa?

MS BONGANI MATHEBULA: Mathebula.

CHAIRPERSON: Yes. Do you have any objections to take the prescribed oath?

MS BONGANI MATHEBULA: No, I do not.

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

MS BONGANI MATHEBULA: So help me God.

BONGANI LOUISA MATHEBULA: (d.s.s.)

CHAIRPERSON: Thank you very much. You may be seated.

MS BONGANI MATHEBULA: Thank you.

ADV ISAAC MONNAHELA: Thank you, Mr Commissioner. Ms Mathebula, you have made a statement which you will present as part of your evidence before this Commission. May I ask you to start reading your statement from paragraph 1?

MR EMANUEL LEDIGA: Just a question. Just a quick one. Ms Mathebula, it is going to be a long journey today. It is a long statement. So, please feel free to drink water. You know, it is going to be a long, long journey and we – I am sure we will traverse it well, all right?

Thank you. Some coffee if you, you know, you feel to have some coffee, all right? Ja, somewhere there. Ja, all right. Thanks. Thank you.

MS BONGANI MATHEBULA: Thank you, Advocate. Where do I start?

ADV ISAAC MONNAHELA: Paragraph 1.

MS BONGANI MATHEBULA: Okay. All right.

“I am an adult female, currently employed by the Public Investment Corporation SOC Limited as company secretary.

Save where the context indicates to the contrary or where it is otherwise stated, the facts contained in the statement are within my personal knowledge and to the best of my belief, both true and correct.

I confirm that I made this statement voluntarily without any coercion to assist the work of the Commission of Inquiry.

I was requested by the evidence team to address

specific matters, which I will do in the subsequent paragraphs.

As a governance professional and an officer of the court, not only is it necessary for me, as requested by the evidence team, to assist this Commission, but I have a legal obligation to assist this Commission of Inquiry, by addressing some of the key issues envisaged in the Commission's terms of reference..."

CHAIRPERSON: As a government...

MS BONGANI MATHEBULA: Professional.

CHAIRPERSON: Professional.

MS BONGANI MATHEBULA: Ja.

CHAIRPERSON: What is that? Can you just elaborate on it?

MS BONGANI MATHEBULA: I am a company secretary. I am also affiliated with the Chartered Secretary of Southern Africa.

"My education background and affiliation with professional bodies:

I hold a BProc Degree from the University of Limpopo, the then University of the North.

In 2008 I obtained an LLM Degree from the University of South Africa with specialisation in Commercial Law.

I also possess a Certificate in Advanced Corporate And Secretary Law, also from the University of South Africa.

I am an admitted attorney and conveyancer and was admitted as such in the year 2000 and I then became

a member of the Law Society of South Africa, now the Legal Practice Counsel.

I am also a member of the Chartered Secretary Southern Africa.

In 2017 I wrote and passed Level 5 Regulatory Examination for Representative in terms of the FAIS Act.

My work experience:

Before joining the PIC, I worked for the following organisations:

- Mankwe Magabane Attorneys as a candidate attorney, where I served my articles of clerkship...[intervenes] ...”

CHAIRPERSON: Is that in Pretoria?

MS BONGANI MATHEBULA: In Limpopo. In Polokwane.

“- Mankwe Incorporated as a director after my admission as a practicing attorney and conveyancer.

- The University of Limpopo as a legal advisor.

- Rose Agency, Limpopo as Legal Service and Company Secretary. This is where I developed a keen interest in corporate governance, as I was single handily responsible for establishing the company’s Secretariat Business Unit, with the coming to light of the Companies Act 71 of 2008, which made it...[intervenes]...”

CHAIRPERSON: Just as a matter of interest. As a legal advisor at the

University Limpopo, what did your work entail?

MS BONGANI MATHEBULA: My work entailed... I was actually working very closely with the Vice-Chancellor and the Executive Management. So, it entailed advising the university in matters of legal advisory, labour matters and... Ja, so it was basically legal services, but I was working very closely with the Vice-Chancellor, then Professor *Magalo*. Ja.

“I was still on the Rose Agency, Limpopo as Legal Service and Company Secretary. This is where I developed a keen interest in corporate governance, as I was single handily responsible for establishing the Company Secretary Business Unit with the coming to light of the Companies Act 71 of 2008, which made it compulsory for state owned entities to appoint a company secretary.

- Also Limpopo Economic Development Agency, as group company secretary; and

- I then joined South African Express Airways, SAX as the company secretary. Whilst I was at SA Express, I was part of a team in the Department of Public Enterprises, which was tasked to review the protocol on corporate governance in the public sector, during 2015.

My role at the PIC:

I proudly joined the PIC in August 2015 in the position of Company Secretary.

At the time of my appointed, CEO was Dr Daniel Matjila and the chairman of the board was Mr Mcebisi Jonas...[intervenes]...”

ADV ISAAC MONNAHELA: If I may intervene there? How did you join the PIC? Was the position advertised or what happened?

MS BONGANI MATHEBULA: As I understand it, the position was advertised but the way I was – I was actually approached by a consultant, an HR consultant, from Deloitte. They requested for my CV. Then I submitted my CV.

ADV ISAAC MONNAHELA: You may proceed.

MS BONGANI MATHEBULA: Thank you.

“My role at...[intervenes]...”

CHAIRPERSON: No. Were you interviewed?

MS BONGANI MATHEBULA: Yes, I was interviewed. I went through the recruitment process, Commissioner.

“My role as company secretary is to:

- Oversee and provide a company secretariat service to the board, in line with the Provisions of Section 86 of the Companies Act, amongst others, which are to ensure compliance with the provisions of the Companies Act and the company, MOI.
- To also ensure induction of new board members into developing a mechanism for providing continuous development of the board.
- To safeguard the organisation’s integrity, as well as promoting ethical behaviour.

In 2016, I championed, together with my team, the establishment of a code of ethics with a task which comprised representatives from all the divisions in the PIC.

The board approved code of ethics policy. It was approved by the board on the 27th May 2016. After the approval of the policy, this is something that was really a highlight for us as a team.

After the approval of the policy, the policy was then workshopped(?) at board level. One of the key things that happened was that, at the implementation of the policy, was that all board members was requested to sign an oath and pledge to abide by the policy, which they did.

I am also...[intervenes]...”

MR EMANNUEL LEDIGA: A question. Ja. Sorry, sorry. Just a question here. What is the difference between a board secretary and a company secretary? You know, Wilna(?) does something else. You so something else. What are the differences there?

MS BONGANI MATHEBULA: So, the – I am not going to dwell much on the actual difference. So, Wilna does the administrative part of it, being the board secretary. I am the company secretary, appointed in line with the Companies Act. So, Wilna reports to me.

MR EMANNUEL LEDIGA: Okay. Oh, all right. Okay, thank you.

MS GILL MARCUS: Sorry. Just while you are on your point of 11.3 and you indicate that the board members were required to sign a

pledge to abide by the policy. I am assuming that this was not only the board that had to sign the policy. Management would have to. It went through the organisation. Is that correct?

MS BONGANI MATHEBULA: Certainly, Ms Commissioner.

MS GILL MARCUS: Okay. And then, can I take you back to 11.1? And the question of compliance with the provisions of the Companies Act and the company MOI, but we had heard before this Committee that the MOI, in fact, has been breached by non – by not having a CIO, a COO. What steps did you take, if any, in relation to the board in – with regard to compliance with the MOI?

MS BONGANI MATHEBULA: Okay. So, the issue of the MOI non-compliance in terms of the executive structure was done in 2015, just prior my appointment. So, but immediately after my appointment, I actually queries whether the MOI was amended to ensure that it was in line with the current structure at the time.

And I was told that submissions were made, which I actually also saw to the minister then, but for some reasons, those recommendations were never signed by the minister, but I also deal, Madam Commissioner, with the other items to try and amend the MOI, later in my subsequent paragraphs.

MS GILL MARCUS: The question is two-fold. Amending the MOI to cover the breaches, is one thing. The question of the breaches themselves and how appropriate they were, was there any discussion about why the CIO, COO positions were done away with, and was there any discussions in the board, as to acceptance or otherwise of that?

It is not just whether the MOI was amended to make it

compliant. It is whether, in fact, those things ought to have been done away in the first place, and whether the board discussed that.

MS BONGANI MATHEBULA: Okay. Ja, I believe there was. As I said, that was prior my appointment to the company. I believe there were those discussions and I think we can ascertain, you know what...[intervenes]

MS GILL MARCUS: No, I do not want to go back in that. I want to ask in relation to when you and the company secretary, because the breach continued and therefore, if there was neither an amendment to the MOI or there were proposals to amend to make that acceptable, or the fact that it was simply allowed to continue by the board, is what I am looking at.

There was no discussion during the period that you were there about this, if you like, non-compliance and the fact that it was either approved or not approved or disagreed with by the board.

MS BONGANI MATHEBULA: There were no discussions, Madam.

MS GILL MARCUS: Thank you.

MS BONGANI MATHEBULA: Ja. I am also now at paragraph 11.4.

Paragraph 11.4:

“I am also responsible for governance administration, which entails:

- Developing an annual board plan and other strategic issues of governance administration, which includes, but is not limited, to keeping, producing, disseminating minutes of board and committee meetings.

- Also, this include, providing company secretariat to support Exco and its sub-committees.

At the time of my appointment, I was also responsible for the functioning of processing and implementation of the appointment of PIC representatives to board to investee companies, in line with the governance policy...”

MS GILL MARCUS: On this matter, you do deal with that much later in your statement. Is there anything you want to bring to the attention here or would you deal with it later when you deal with it towards the end of your statement?

MS BONGANI MATHEBULA: If it pleases the Commission, I would like to deal with it later on in my subsequent paragraph. Thank you.

“On 17 April 2018, I was suspended by the PIC on the allegation that I caused distribution and or copying of confidential information to unauthorised persons.

The allegations against me is that I leaked draft board minutes, which related to allegations of impropriety against the former CEO, Dr Daniel Matjila’s facilitation of payment by a PIC investee director to a third party.

I will in my subsequent paragraphs deal with how that particular aspect of the minutes were substantially deleted, thereby sanitised from the original draft of the minutes.

I will also deal with the full particulars of my charge

sheet later, in detail.

My disciplinary hearing commenced on the 11th September 2018 and was concluded on the 18th February 2019.'

I will also deal with what transpired before, during and after the disciplinary hearing in the subsequent paragraphs.

Introduction:

The evidence team requested me to assist the work of this Commission of Inquiry with specific matters, relating to the following:

- How the board dealt with the anonymous allegations;
- The process followed and actions taken on the AYO and Sagarmatha transactions;
- The prevailing MOI;
- How employee functions are coincidentally changed at the PIC; and
- The lack of transparency when implementing such;
- The Delegation Of Authority Review Process;
- Approval of incentives.

The manner in which the board dealt with the whistle-blower allegations:

The whistle-blower allegations that were sent via email on the 5th September 2017:

On or about the 5th September 2017, an anonymous email from one James Nogu was sent to various people within the PIC, with the title: PIC CEO Funds Girlfriend.

I have no idea who James Nogu is, since I had made no irregular disclosures to any person or any of the information mentioned in that email.

I am not responsible for the leaks that informed the email. I refer to the author of the email as the whistle-blower because it is clear from the detailed content of the email, that this person is likely an employee of the PIC, making disclosure or allegations of serious wrongdoing, albeit it in a highly unorthodox and scathing matter....”

MR EMANUEL LEDIGA: A question. Ja, just a question there. Some people have speculated that this person could be inside the PIC, but a director of the PIC. Not an employee. Sort of a director level person. Board level person.

MS BONGANI MATHEBULA: Ja, thank you, Commissioner. I think, for me, the way I have made an assessment, that is my own personal assessment. I believe it is an employee, if you look at the content of the two emails, in terms of what the allegations were about. It could be board members, but I believe they worked with employees, if it was board members. Ja.

MR EMANUEL LEDIGA: And besides, belabouring the point. Could it be from the investment side, the IT side? You know.

MS BONGANI MATHEBULA: I do not want to come to that speculation, Chair. But I think it is an employee. If you look at the nature of it, it covers investments. It covers the financial, relating to salaries. It covers victimisation. So, it is a whole range of aspects. So, it could have been anyone. Ja.

MR EMANNUEL LEDIGA:

MS BONGANI MATHEBULA: Okay.

“I must also explain why I think the allegations were from a person who is likely a PIC employee.

The allegations make reference to an internal process of the funding application and CSI application by MST and the payment request of R300 000,00 by the CEO to an investee company director.

They also spoke about victimisation of employees by the CFO, Ms Matshepo More and the disparities in salary increased. This, in my view, could only have been directly known by PIC officials.

The email of the 5th September 2017 was brought to my attention by Ms Lindiwe Toyi, a board member, through an email.

She requested me to ask IT to check whether the email she received was not a scam. I then forwarded the email to the then Executive Head of IT, Ms Vuyokazi Menye and requested her to address the concerns raised by Ms Toyi.

It was at this stage that I learnt from Ms Menye that

she had already been instructed by the CFO, Ms Matshepo More and the Executive Head of HR, Mr Christopher Polwane to block the email, as it had been sent to all PIC employees.

On the 6th September 2017, Dr Xolani Mkhwanazi, the Deputy Chairman of the board, requested me to meet with him in my office, where he drafted the letter to Dr Matjila regarding the allegations of corruption by the PIC CEO.

In the letter, Dr Matjila was requested to respond to serious allegations contained in the email.

The matter was initially scheduled to be discussed at the Director's Affairs Committee meeting which was scheduled to be held on the 14th September 2017.

However, it was later agreed that given the seriousness of the allegations, the matter be referred to a full board sitting for speedy resolution.

The meeting was meant to be chaired by Dr Xolani Mkhwanazi as chairman. Mr Sfiso Buthelezi, at the time, was out of the country.

It should be noted that the cancellation of the DAC attracted a lot of negative media attention. The issue of change the DAC meeting into a board meeting was also questioned by Dr Matjila and some board members, who wanted an explanation why the DAC meeting was changed to a board meeting.

The chairman gave an explanation that due to the seriousness of the allegation and to ensure that the matter is resolved speedily, it was deemed prudent to deal with the matter as a full board.

The query of why the DAC was changed to a full board was not warranted, as the DAC matters are delegated to it by a board and discussions of any matters delegated to a committee by a board, may be discussed by a board, if it deems prudent. This was explained by the chairman.

The whistle-blower allegations were then tabled in that board meeting on the 15th September 2017.

As the company secretary, I was in the *in camera* meeting and was responsible for taking the minutes at that meeting.

At the start of the meeting, I was instructed to switch off the tape recording. The board was adamant that it did not want the *in camera* meeting to have a voice recording.

I then decided to take note of all the discussions, in order to enable me to prepare the minutes, which would be presented to the board for approval.

It must be noted that all meetings that relates to the allegations against the CEO and the CFO were not recorded at the behest of the board.

The board proceeded with the meeting, although it

was highlighted from the onset that a letter requesting a cancellation of the meeting was received from FEDUSA.

Such a letter was never made available at the meeting, as part of the official record...”

ADV ISAAC MONNAHELA: If I may intervene. Did the board explain to you why you were asked not record the meetings, concerning the matters involving Dr Matjila?

MS BONGANI MATHEBULA: Yes, the board felt that the discussions were highly confidential and they then requested that I must switch off the recording. In fact, I was the only one left. All the management were recused from the meeting at that stage.

ADV ISAAC MONNAHELA: In that paragraph that you have just read, you referred to FEDUSA. Who is FEDUSA?

MS BONGANI MATHEBULA: I am not so sure what FEDUSA is, but I believe it is a union. The federation – it is a union. Some sort of a union, which... I do not know. It is a union.

ADV ISAAC MONNAHELA: Okay.

MS BONGANI MATHEBULA: That is all I know.

ADV ISAAC MONNAHELA: Does FEDUSA have any authority to request that the meetings of the board be cancelled?

MS BONGANI MATHEBULA: No, they do not.

ADV ISAAC MONNAHELA: You may proceed at paragraph 24.

CHAIRPERSON: No. Can I just ask. Are you prepared to tell us who in the meeting directed you to switch off the recording? If you do not want to mention the name. Was it a non-executive members or an

executive member?

MS BONGANI MATHEBULA: It was a non-executive member, but at the end of the day, the entire board agreed that there should not be any recordings. So, it was... Ja.

ADV ISAAC MONNAHELA: If I may ask. Is there any policy that grants the board a discretion to ask you not to record the meetings?

MS BONGANI MATHEBULA: There is no such a policy. In fact, we do have an SOP, which is a Standard Operating Procedure which requires us as the company secretary to record all meetings of the board and committee meetings.

ADV ISAAC MONNAHELA: So, what you are saying is that, the board asked you to do what you were not supposed to do?

MS BONGANI MATHEBULA: Yes.

CHAIRPERSON: Of course, you could record by handwriting.

MS BONGANI MATHEBULA: Of course, I could report by handwriting, which is what I did. Yes, Commissioner. Ja.

ADV ISAAC MONNAHELA: You may proceed at paragraph 24.

MS BONGANI MATHEBULA: When asked...[intervenes].

MR EMANNUEL LEDIGA: Can I just – just a question. Just to come back on James Nogu. Do you think that email came because there was some build up of, you know, angst about the PIC, things at the PIC? Or, it just came out of the blue and just somebody just wrote the email?

MS BONGANI MATHEBULA: I think I am going to speak out of ignorance here, Mr Commissioner and I do not think there was a build up of some sorts. Maybe it is out of my own ignorance. I think it was – it came out of the blue. I think if you look – if you read at it, it actually

says that people who are now fed up in how the PIC was run.

So, it was something which was brewing at the PIC. I believe, you know. So, it is not something that just was... I think it was something that those employees, whoever they are, they felt that, you know what, maybe it was the right time now to voice their concerns. Ja.

CHAIRPERSON: It could have caused a reason as a result of dissatisfaction relating to bonuses not being paid or not being sufficient and so on. And people thinking that the executive people are getting their bonuses, whatever the size was.

MS BONGANI MATHEBULA: Ja, it... Mr Commissioner, yes. It could have been. Now that I am thinking about it. It was during that time that the salary increases were just implemented. So, it could be also that those who were voicing those concerns, were those employees who were affected in terms of those salary increments. Ja.

Paragraph 24:

“When asked, I stated to the board that my view was that the matter was a whistle-blower allegations and ought to be treated as such.

However, this proposal was rejected by the majority of the board. There was a clear divergence of use in the board in dealing with the whistle-blower allegations.

This I say due to the following:

- One view suggested that the board be prudent and err on the side of question and thus for the matter to be dealt with by an independent person.

This view was informed by the fact that the CEO and the CFO were both implicated in the allegations and that as executive members of the board, potential associated conflict of interest arose for the board as well.

According to this view, an independent objective fact finding process needed to be embarked upon. The matter was in the public interest, as it had already been reported in the media that there were plans by the board to remove Dr Matjila.

- Another view was that the board should seek a legal opinion, whether an external investigation was warranted in order to ensure that the board is properly advised on how to deal with the matter.

The majority of the board did not agree with this proposal and the matter was then abandoned.

When requested to advise the board, the Head of Internal Audit, Mr Nemagovhani took the board through the process, ordinarily followed in instances where allegations are levelled against any PIC official.

Mr Nemagovhani indicated that the internal audit lack of forensic expertise to deal with the investigation internally and his discomfort to investigate the CEO whom he reported to.

- Another issue raised by the Internal Audit

was, that the CEO will be required to sign off for any procurement process, pertaining to the matter and it would not be ideal for the CEO to sign off on procurement, whilst the investigations pertains to him. Internal Audit recommended that the board appoints a company with forensic investigation expertise which the board agreed to.

The board then took a resolution to appoint an external forensic investigator to investigate the allegations.

Internal Audit would work in consultation with Ms Sandra Beswick, a member of the Audit and Risk Committee, since the chairperson of the Risk and Audit Committee, Ms Tantaswa Fubu was also implicated in the allegations of the email, circulated on the 13th September 2017.

I will deal with this...[intervenes]...”

CHAIRPERSON: I am trying to keep up. I am trying to read with you, but you are too fast for me. Are you able to slow down a little?

MS BONGANI MATHEBULA: I will slow down, Mr Commissioner. Apologies.

“Internal Audit recommended that the board appoints the company with forensic investigation expertise, which the board agreed to.

The board then took a resolution to appoint an external forensic investigator to investigate the

allegations.

Internal Audit would work in consultation with Ms Sandra Beswick, a member of the Audit and Risk Committee, since the chairperson of the Risk and Audit Committee, Ms Tantaswa Fubu was also implicated in the allegations of the email, which circulated on the 13th September 2017.

I will deal with the email allegations in the paragraphs to follow.

Still at the 15th September 2017 meeting, the board then called the CEO and CFO back into the meeting and communicated the resolution of the board to appoint an external forensic investigator who will investigate the allegations.

The CEO and CFO protested against the decision of the board. They argued that the allegations against them were nothing but malicious.

They had difficulty why the board will resolve to conduct an investigation on allegations which were direct attacks on them and were not received through the normal PIC whistle-blowing channels.

They also told the board that they had prepared responses to all the allegations. So, why was the board not considering their responses and deciding to conduct an investigation?

The CEO then started to complain about the leaks and

the suspected hacking of PIC IT Systems and said the board needed to look into those issues, rather than those malicious allegations.

It was after the presentation by Dr Matjila and Ms More that the board then changed its original resolution to conduct an independent investigation into the allegations.

I was requested to recall the head of Internal Audit, who was advised by the board that the original resolution to conduct a forensic investigation had been rescinded.

He was further advised that the board excepted the explanations given by the CEO and CFO. Internal Audit was now required to embark on a review and verification process of the documents which were submitted by management and the board specifically emphasised that the review process should not be an independent forensic investigation exercise, as they had initially resolved.

Internal Audit was specifically requested to test the validity accuracy completeness of the documents submitted by management, which actually basically entailed an internal review of whether applicable policies procedures were complied with in approving funding to MST.

Internal Audit was to be provided with a scope of

work, which was delegated to be signed off by Ms Beswick. As I have already indicated, the chairperson of the Audit and Risk Committee was conflicted in the matter.

Internal Audit was therefore required to report to the board at a subsequent scheduled meeting of the board which was scheduled to be held on the 29th September.

I was also asked...[intervenes]...”

MR EMANNUEL LEDIGA: Let us check something here. It was quite difficult, you know, in the sense that the board is here and the CEO and the CFO say: Before you take it to outside parties, we have some answers we can give to you.

You know, and I know you do disagree with how the board did this, but I mean, if you are accused and the board says: Look, we want to give you a chance to state your case and if we are not happy with what you say, then we can take this to outside bodies and all that.

So, I guess it was quite a difficult situation. But what do you think about that?

MS BONGANI LOUISA MATHEBULA: Mr Commissioner, my view is that I believe that at that stage even when the board took the resolution to appoint an external person the board hadn't made – didn't reach any view on the matter and I say it was correct approach because then the board is not clouded – it was must merely allegations, no executive was said to have done anything wrong at that stage and I think one of the critical aspects is the fact that the

executives themselves are part of a board, they also board members so it would have been crucial to get an external person to have a view first before which is I think is was one of the advice that was also given by one of the board members to say that the board has not taken a view, no one is going to be suspended at this stage, we just want to somebody to test, you know, independently the allegations. So I think that is the view that I also felt would have been correct.

ADVOCATE ISAAC MONNAHELA: I'm just trying to find out because I'm thinking if there's a problem internally wouldn't it work better to give the people a chance internally first and then see whether you are happy, if not, then really take it to outside parties. I'm not sure I'm getting you there.

MS BONGANI LOUISA MATHEBULA: So Commissioner, if you look at the totality of the allegations there were allegations that dealt with how the process was followed in approving the funding, that part management had responded to and I believe the board was given those responses, they had looked at those responses.

There were other allegations the nature of which – and correctly internal audit had already advised the board that these kind of allegations, we don't have the capacity internally to look at. So it was quite prudent for the board to have, you know, sought independent, you know, investigation on those allegations. So remember management already had been given an opportunity to submit their responses which they did, so there were two allegations, if you think about it.

ADVOCATE ISAAC MONNAHELA: Yes, yes, so there were parts which could be done internally maybe and there were parts which couldn't be

done internally, is that what you're saying? No?

MS BONGANI LOUISA MATHEBULA: What I'm saying is that the management were given the opportunity to respond for the parts in terms of documentation and everything which they submitted and the other allegations which related to – which needed a forensic investigator were to be then be investigated externally. I still believe that by the virtue of the fact that internal audit had already advised the board, internal audit reported to the CEO, signed his balance score card, it wouldn't have been prudent for the board to expect internal audit to be investigating his own boss. The executives also are members of the board so it would have been quite, for me, the correct approach to get an external person to verify. Whether it's to verify the documentation that were submitted or to even embark on a full-scale forensic audit of the allegation.

ADVOCATE ISAAC MONNAHELA: Alight, thanks, I get it, ja.

MS BONGANI LOUISA MATHEBULA: Okay, I'm on paragraph 28, Mr Commissioner. I

“I was tasked to prepare the scope of work in consultation with Ms Beswick which was eventually signed off. It is important for this Commissioner to know that the allegation regarding the possible relationship between the CEO and Ms Louw was explicitly excluded from the scope of work. Also to be excluded was whether the CEO instructed a director of an investing company to pay the debts of Ms Louw's struggling business.

MS GILL MARCUS: Just on that question, were these matters

discussed in the board itself, those two points that were excluded?

MS BONGANI LOUISA MATHEBULA: At that stage, Madame Commissioner ...[intervenes]

MS GILL MARCUS: There had been no discussion on it at all?

MS BONGANI LOUISA MATHEBULA: There were no discussions ...[intervenes]

MS GILL MARCUS: they were just excluded from the investigation without the board discussing them at all?

MS BONGANI LOUISA MATHEBULA: Correct, Ma'am, ja.

ADVOCATE ISAAC MONNAHELA: Can I ask you for purposes of the record when you have an annexure to just mention it?

MS BONGANI LOUISA MATHEBULA: I will do so, Commissioner, thank you. And the scope of work, Mr Commissioner, is actually annexure BM5 in the index. I'm on paragraph 29.

“The sudden about turn of the board after thoroughly debating the matter and coming to a conclusion to forensically investigate the matter seemed questionable to me especially since the about turn came at the instance of individuals against whom allegations had been made and in the face of internal audit' stated lack of forensic capacity to properly pursue the investigation. The board adopted a holistic approach and internal audit was further tasked to conduct the same review and verification process with specific reference to other email with a new set of allegations which was circulated on the 13 September 2017, that is annexure BM6. All implicated parties were to submit their responses to internal

audit by the 22 September 2017 according to the board resolution. The internal audit report on the allegations dated the 13 September was to be submitted to the board by the 22 October 2017. It is perhaps important for this Commission to know that there was a dissenting view by a board Ms Sibusisiwe Zulu on record who did not agree with the board's resolution on the matter. Ms Zulu's reason for her dissenting view were due to the following:

The process being following by the board in conducting the investigation was flawed and stood to be challenged. The head of internal audit had expressed his reservations that the matter is not the type of the investigation that is conducted internally. He had recommended that this be conducted by an external independent forensic investigator. Despite this advise and discomfort by internal audit the board still insisted for internal audit to conduct the review process. It was incorrect for the board..."

I'm still continuing in terms of the dissenting views.

"She also raised the issue that it was incorrect for the board not to investigate the matter properly and completely on the basis that it does not consider it as a whistle blowing report. The report, according to her, was a whistle blowing and required proper investigation by the board in order for the board to make an informed decision. The participation of executive directors in some of the board deliberations and/or obtaining their views prior to the board making its final

decisions on the matter was an irregular process which stood to be challenged and the board contradicted itself and could not have concluded that it is satisfied that the CEO provided detailed documentary evidence and was satisfied that the process followed was in accordance with all policies, procedures and delegation of authority of the PIC whilst at the same time referring the matter to internal audit for review. Ms Zulu also questioned the board that the allegations were broad and the board needed to be seen to be acting on the allegations. After the meeting of the 15 September 2017 the board issued a media statement indicating that it has accepted the representations made by the CEO. This caused to questions why the board went ahead with internal audit review if it had already accepted representations by the executive directors. This appears to me to be just one of number of examples where the board fell in line with the CEO's insistence on exoneration when the board's oversight duties clearly demanded more professional scepticism. It could be said to be contradictory as one cannot come to such a conclusion in the absence of verifiable evidence."

I'm going to now deal with the whistle blower.

MR EMMANUEL LEDIGA: Ja, let's check something here. Just to get a view from you, we heard from one board member some time back that this was the time of state capture and that the board had to support the CEO because, you know, they were worried that the state capture people wanted to fire the CEO. Do you have any views about that?

Can you recall the events during that time?

MS BONGANI LOUISA MATHEBULA: Mr Commissioner, what I recall at the time was that there were a lot of media articles about possible state capture of the PIC and all sort of things, you know? Negative publicity for the PIC. I don't have any personal knowledge of any issue of state capture, maybe that was just beyond, you know, my pay grade, but I don't recall any sort of official discussion on state capture. If that was done it would have been done maybe unofficially outside, you know, official discussions, ja.

MR EMMANUEL LEDIGA: To follow up, when I asked some time back that there was – it appears that there was a meeting where Minister Gordhan told the board or some people that they must be aware of state capture but I cannot recall whether it was a board meeting or something else. Can you recall that, I mean you were in board meetings.

MS BONGANI LOUISA MATHEBULA: Yes, Mr Commissioner, there was – that was in 20... It was the AGM, it was Annual General Meeting of 2015 or '16, I need to check my records correctly, it was not in 2017 when that happens. Minister Gordhan as the shareholder representative at the time, he did, you know, make that kind of pronouncements when he was opening in his opening remarks and the fact that we need - the PIC needed to be mindful of state capture but, as I said, it was not in 2017 when this whole issues were happening, so I can't link the 2015/'16 discussion with Minister Gordhan at the time to what was happening at this period in 2017.

MR EMMANUEL LEDIGA: So broadly, according to you, you are saying

you are not aware and this is beyond your pay grade really about these issues.

MS BONGANI LOUISA MATHEBULA: Really in 2017, Mr Commissioner.

MR EMMANUEL LEDIGA: Okay, alright, okay.

MS GILL MARCUS: But perhaps just a point of clarify there, Minister Gordhan's statement was a public statement, it wasn't in a closed meeting.

MS BONGANI LOUISA MATHEBULA: It was in the Annual General Meeting of the PIC.

MS GILL MARCUS: It was an open meeting.

MS BONGANI LOUISA MATHEBULA: Yes, opening remarks, yes. So I'm going to deal – can I continue? Okay. In paragraph 34:

“The wide-ranging allegations from Leihlola Leihlola contained in the email of 13 September 2017 implicated the CEO, the CFO, former Chairperson of the audit and risk, executive head of HR. The allegations raised concerns about ...[intervenes]

MS GILL MARCUS: Can you just remind us who the former Chairperson of ARC that is being referred to here.

MS BONGANI LOUISA MATHEBULA: It's Ms Tantaswa Fubu.

“The allegations raised concerns about remuneration and bonus incentives, corrupt deals, investments, victimisation and ill-treatment of the staff members, nepotism and buying off. The allegations also called for a lifestyle audit of the CEO, CFO and some members of exco. A plea was also made for the board to have a protected meeting with staff members in

the absence of the CEO, CFO and executive head of HR. Internal audit was also mandated by the board during the meeting held on the 15 September 2017 to conduct the same review process with specific reference to allegations from Leihlola Leihlola contained in the email dated the 13 September 2017. As the company secretary again, it was unclear to me how the board intended for those type of allegations to merely go through a verification process by internal audit. This, in my view, required an investigation and for employees to be given room to disclose all their concerns and grievances relating to incentives, victimisation, etcetera. This view is supported by what I've seen through this Commission that for the first time employees have been able to come out and state their concerns in relation to employee matters and allegations of victimisation. It appears to me that the board was clearly not keen to make this remedy available to employees to enable them to air their views and complaints about the conduct of implicated executives. In fact, this was confirmed by the resolution of the board on the 6 October 2017 where the board resolved to terminate the internal audit process which was verifying the allegations. The board's view at the time was that these allegations were baseless and malicious."

MS GILL MARCUS: Sorry, can I just for purposes of clarity try to just understand the sequencing. So in the first instance the board agrees for an external investigation, it rescinds that and asks the internal

audit to a verification process.

MS BONGANI LOUISA MATHEBULA: Yes.

MS GILL MARCUS: And then rescinds that verification process on the grounds that this is simply malicious?

MS BONGANI LOUISA MATHEBULA: Yes.

MS GILL MARCUS: So there were three steps of changing the mind by the board.

MS BONGANI LOUISA MATHEBULA: Yes.

MS GILL MARCUS: Whether that was unanimous or not is – it was the majority decision so that was what carried – was it – these were not unanimous decisions or were they, in the boards?

MS BONGANI LOUISA MATHEBULA: Of course there were dissenting views and different opinions but at the end of the day the majority of the board took the resolutions.

MS GILL MARCUS: So that in that, just to be clear, there were three distinct activities by the board that changes its mind.

MS BONGANI LOUISA MATHEBULA: Yes but this, remember, it's not happening in one meeting. It's talking ...[intervenes]

MS GILL MARCUS: No, no, I'm saying three distinct times, ja.

MS BONGANI LOUISA MATHEBULA: Yes. Yes, certainly, Madame Commissioner.

MS GILL MARCUS: Thank you.

MS BONGANI LOUISA MATHEBULA: Yes.

ADVOCATE ISAAC MONNAHELA: If I may ask you, who was the Chairperson of the board in September and October 2017?

MS BONGANI LOUISA MATHEBULA: It was Mr Sfiso Buthelezi, he was

also the Deputy Minister of Finance at the time.

ADVOCATE ISAAC MONNAHELA : Okay, can I ask you again, did the board or the majority of the board give any reason why they were terminating the internal audit process?

MS BONGANI LOUISA MATHEBULA: Yes one of the reason they gave was that they wanted to restore stability and I deal with it as well later on in my subsequent paragraphs but also the fact that those allegations were malicious and baseless.

ADVOCATE ISAAC MONNAHELA : You may continue at paragraph 37.

MS BONGANI LOUISA MATHEBULA: Okay, thank you.

“During the same board meeting of 15 September 2017 the issue of information leaks was delegated to the Information Communication, Technology Governance Committee, that is the ICTGC. This committee however did not take charge of the matter. Instead the same executive management that were to some extent implicated in the Nogu and Leihlola allegations was tasked to deal with the information as a matter of urgency. This had the effect of involving the management in a manner where they were clearly conflicted.”

ADVOCATE ISAAC MONNAHELA : If I may intervene, who delegated the issue to the Information Communication, Technology Governance Committee?

MS BONGANI LOUISA MATHEBULA: The board on the 15 September.

ADVOCATE ISAAC MONNAHELA : Then when the executive management took over was the board informed of this?

MS BONGANI LOUISA MATHEBULA: I will believe the board was later

informed because on the 29 September the CEO reported back to the board on the fact that they had now appointed an IT company to look into information leaks.

ADVOCATE ISAAC MONNAHELA: Okay, you may continue.

MR EMMANUEL LEDIGA: Okay, let's just check your view broadly about these issues. Do you think that if the board had taken the route of an external investigation, all these issues about the firings of the Menye's and the Mayisela and you also could have been avoided if it was a different process to the one which prevailed?

MS BONGANI LOUISA MATHEBULA: I honestly believe it would have been so much different, it would have been handled differently because first of all management wouldn't have been part of the process and all the conflicted parties including some, you know, members of management, the HR manager – the HR executive as well was implicated. The HR executive was also one of the people who was, you know, steering all these disciplinary hearings, so I truly, truly really believe that if it had been taken out of the PIC process it would have been handled much better.

MR EMMANUEL LEDIGA: So it could have been a different PIC by now if James Nogu email could – I mean, this Commission probably wouldn't be here, is that what you're saying?

MS BONGANI LOUISA MATHEBULA: Look, Commissioner, for me, I'm talking about the specific allegations. Look, there are issues at the PIC which I believe the Commission is handling at the moment which I don't believe is linked to this particular issue. I mean, without – the fact that the hearings would have been handled differently, I don't think

there were – they were certain issues at the PIC which were happening in terms of victimisation, salaries and all those other things which I believe that the fact that the Commission of Inquiry, we are currently sitting here now, it also shows that, you know, there were certain things that also needed to be dealt. Whether the investigations would have dealt with those issues I don't know but on the aspect of the hearings I believe that things would have been handled differently. Ja.

MR EMMANUEL LEDIGA: Thank you.

ADVOCATE ISAAC MONNAHELA : Ms Mathebula, can I just take you back to paragraph 33 of your statement? You mentioned there that the board after the meeting of the 15 September the board should have made a statement indicating that it had accepted the representations made by the CEO, right? And then in paragraph 36 right at the end you say:

“The board's view at the time was that these allegations were baseless and malicious.”

What was the basis of that now because after they had accepted the explanations or representations the board was okay with the continuation by the IA in verifications, am I correct?

MS BONGANI LOUISA MATHEBULA: Mr Commissioner, so yes, you are correct partly, there are two sets of allegations. The first allegations of the 5 September which the board dealt with in that meeting on the 15 September where the board after that meeting they had resolved for internal audit to conduct the verification process. That was when the board issues the media statement on the 15 September.

ADVOCATE ISAAC MONNAHELA : That's in relation to the James

Nogu.

MS BONGANI LOUISA MATHEBULA: To the James Nogu allegations. The other part in paragraph 36 relates to the other allegations of the 13 September, the allegations by Leihlola Leihlola. Ja. I'm on paragraph 38, Mr Commissioner.

“After the James Nogu email the CEO starting investigating the source of the leak of information. Ms Menye and Mr Nemagovhani were also instructed to have a criminal case opened in relation to the leak. I became aware of this instruction because they came to my office to request that I furnish them with a purportedly classified document with respect to the MST transaction. I could unfortunately not assist them as the originally submitted submission from the investment team was not classified in the first place.

MS GILL MARCUS: Sorry, I don't understand that and it just might be lack of appreciation of the process because if it was not a classified document surely they would have had access to it anyway. They didn't need you to provide it, it would have been something that they could have obtained from you or anybody else because it was not a classified document. So did they get the document or not?

MS BONGANI LOUISA MATHEBULA: Madame Commissioner, no, they never got the document.

MS GILL MARCUS: Why not if it wasn't – was it something that was then refused to them by somebody? You couldn't – if I understand your sentence there is that you could not help them because it was no in your documentation as classified.

MS BONGANI LOUISA MATHEBULA: Yes, Madame Commissioner.

MS GILL MARCUS: But it was available elsewhere in the organisation.

MS BONGANI LOUISA MATHEBULA: It was not available elsewhere in the organisation. Maybe just to also to put context, Madame Commissioner. So what happened is that the CEO had then instructed – I later learnt that the CEO had instructed Ms Menye and Mr Nemagovhani to go and open a case at the South African Police Services. When they got there the police requested that they cannot open a case if they don't have a classified document pertaining to the matter hence they came to my office and that – that document they never found, it was never there, the PIC so hence they couldn't open that case. I don't understand the SAPS process but it looked that's what the SAPS wanted from the PIC for them to open that.

MS GILL MARCUS: But there are two elements here then to understand that.

MS BONGANI LOUISA MATHEBULA: H'm.

MS GILL MARCUS: In order to open up the case of documentation misuse the SAPS has to say you have a taken a document that was classified.

MS BONGANI LOUISA MATHEBULA: Yes.

MS GILL MARCUS: Alright because the document was not classified they could not open the case.

MS BONGANI LOUISA MATHEBULA: Certainly.

MS GILL MARCUS: But what you're also saying is there was no such document.

MS BONGANI LOUISA MATHEBULA: Correct, Madame Commissioner.

MS GILL MARCUS: Okay.

MS BONGANI LOUISA MATHEBULA: Okay, may I continue? Okay.

Paragraph 39:

“I also listened with surprise and dismay to the testimony of Ms Menye before this Commission stating that the CEO took it upon himself to find the identity of the whistle blower and in the process instructed entrusted external service providers to spy on certain executives including myself. Aside from breach of IT protocols which Ms Menye has highlighted in testimony to this Commission it seems irregular that the CEO will so closely direct an investigation into matters in which he was implicated.”

MS GILL MARCUS: Just coming back to the question of – and we’ve had this evidence before but if you could just indicate when it is instructed – external service providers to spy on certain executives, does that mean there were recording devices, how was the spying to take place or how did it take place?

MS BONGANI LOUISA MATHEBULA: I believe in my mind that, Commissioner, it would have been recording people, you know, looking at the emails of the people. I think I’m also talking on the basis of what I’ve heard before this Commission of Inquiry that the emails - for instance, my emails were also spied upon which, you know, was something which was not the right thing to do without me giving permission for such to happen.

MS GILL MARCUS: Adv Lubbe, can we just look at this subsequent to this and have just a bit of a discussion because this is quite – to me

quite a breach. If there is something within the PIC that say given the nature do they have right to look at staff emails or whether this was actually listening devices or email communication, what authorisation to an entrusted external service provider would have been required to enable them to do that.

ADV JANNIE LUBBE SC: It is noted.

MR EMMANUEL LEDIGA: Can I add? I think if I recall Ms Menye didn't mention recordings, she spoke about the emails and that I think the hard drives or something they were taken or something, you know, there was something about the emails that they were being accessed without you people knowing about it. Are you saying there could have been recordings also which is a completely different matter to record phone calls and all that?

MS BONGANI LOUISA MATHEBULA: Well, my view is that if they were spying on emails maybe they could have been. I'm not saying there was, I'm saying maybe there could have been even, you know, listening devices but what is before this Commission certainly is the fact that emails were spied upon.

MR EMMANUEL LEDIGA: Yes, okay, alright.

CHAIRPERSON: That first part of that paragraph, it seems to me that you are saying this is what Ms Menye testified to in this Commission, am I correct or not?

MS BONGANI LOUISA MATHEBULA: Yes. Paragraph 40, Commissioner.

MS GILL MARCUS: No, sorry, just on that. Was this the first time you were aware that you were among those being spied upon?

MS BONGANI LOUISA MATHEBULA: To be honest, Madame Commissioner, I had heard the rumours that I was also being spied upon.

MS GILL MARCUS: Sorry, just say that again?

MS BONGANI LOUISA MATHEBULA: I had heard the rumours that I was being spied upon.

MS GILL MARCUS: You'd heard rumours but this was the first time you saw the evidence?

MS BONGANI LOUISA MATHEBULA: But this was the first time. Yes, this was the first time. Paragraph 40:

“That such a profound conflict of interest will arise I submit should have been obvious to the board and Dr Matjila and ought to have been mitigated against. The rescinding original board resolution in my opinion was an oversight as it had the unintended consequence of targeting of individuals that were randomly identified as possible leakers of information.

ADVOCATE ISAAC MONNAHELA: If I may intervene, you say in the first sentence of that paragraph:

“That such a profound conflict of interest will arise I submit should have been obvious to the board and Dr Matjila and ought to have been mitigated against.”

Was the board aware that Dr Matjila was investigating the source of the leak of the information?

MS BONGANI LOUISA MATHEBULA: Of course the board would have been aware because the board delegated to its committee and the committee then delegated management to do those investigations.

ADVOCATE ISAAC MONNAHELA: Okay. You, earlier in your statement, you said Ms Fugu couldn't deal with a certain issue because she was also implicated. Did the board express any concern about Dr Matjila being conflicted in the investigation of the source of the leaks of the information?

MS BONGANI LOUISA MATHEBULA: Surprisingly the board didn't pronounce any discomfort for Dr Matjila who was conflicted. However, the board then could see that the Chair of audit of risk was implicated was conflicted hence she was not going to participate in any of those investigations, so that for me also is another issue.

ADVOCATE ISAAC MONNAHELA: You may continue at paragraph 41.

MS BONGANI LOUISA MATHEBULA: Okay. The CEO reported to the board during the meeting held on the 29 September that BCX and Telkom were appointed to investigate information leaks and to assist with IT security. It was clear that the board had permitted the CEO to take charge of the investigation into the source of leaking of information. This was done without having regard to the evident conflict of interest by the CEO and other implicated executives especially the executive head of HR who was later tasked with running with disciplinary matters linked with the leakage of information .

ADVOCATE ISAAC MONNAHELA: Mr Commissioner, it's eleven o'clock, is a convenient time to take the adjournment?

INQUIRY ADJOURNS

COURT RESUMES:

CHAIRPERSON: Ms Mathebula, you're still under oath.

MS BONGANI LOUISA MATHEBULA Yes, Commissioner.

CHAIRPERSON: You may continue.

ADVOCATE ISAAC MONNAHELA: Yes, you may start at paragraph 42 on page 14.

MS BONGANI LOUISA MATHEBULA: Okay, thank you.

MR EMMANUEL LEDIGA: Ms Mathebula, before you proceed, just another question before we leave this area.

MS BONGANI LOUISA MATHEBULA: Okay.

MR EMMANUEL LEDIGA: Just in terms of the two paths – you know, we sort of agreed that there was the internal path and the external path which was supposed to be taken and the board decided to take the internal route. Do you think when the board took that decision was it just a mistake? Sort of with hindsight was it just an issue of mistakes or there was just – the board was like confident that its taking the right decision? I don't know whether I'm clear but I mean do you think it was an honest decision, honest mistake with hindsight in some ways or something different?

CHAIRPERSON: If you are able to answer that question.

MS BONGANI LOUISA MATHEBULA: Mr Commissioner, I can answer but this is my own personal views. I do not believe that it was an honest mistake, the board was questioned on several occasions on, you know, the appropriate route to take in that respect. First of all, the board disregarded the fact that it was a whistle blowing report, they didn't want to heard that.

Second of all, the board was also questioned to say let's just stick legal advice or legal opinion on this matter, it would have been much more appropriate and having been at the board as a company

secretary I've seen instances where the board took resolutions to go for legal opinions and I believe that that would have taken out any sort of subjective, you know, instances(?) which I observed as a company secretary so my honest view, I do not believe it was an honest mistake, I think there were influences. Where those influences were coming from, I cannot tell.

MR EMMANUEL LEDIGA: And so you think that the board – the best the board could have done is to get a legal, you know, advice on what to do and then follow from there?

MS BONGANI LOUISA MATHEBULA: Precisely, Commissioner, the PIC does have a mechanism where the board can seek advice and the PIC pays for those and it has happened quite a number of times. Where the board is not sure or certain on the route to take I believe getting an external opinion will be better approach.

MR EMMANUEL LEDIGA: Ja, thank you very much.

MS BONGANI LOUISA MATHEBULA: Can I start? Okay. I'm on paragraph 42:

“The internal audit report, that is annexure BM7, regarding the allegations on the loan provided by the PIC to mobilise Satellite Technologies was presented by Mr Nemagovhani during a board meeting held on the 29 September 2017. It should be noted that there was no pack prepared for this meeting and the matter to be discussed by the board was for me not a run-of-the-mill. I was in attendance at that meeting taking minutes so it was prudent for me to capture the true proceedings of the discussions at the meeting. I also did not

want to second-guess the discussions of the board and confine the minutes to only the resolutions taken at that meeting. During the presentation of the internal audit report it was evident that the internal audit did not conduct an evaluation and audit of the conduct of Dr Matjila in requesting Mr Lawrence Mulaudzi to make a payment of 300 000 to settle the debt of Ms Pretty Louw's company. This was due to the fact that this aspect was specifically excluded by the board in the internal audit scope of work to test the validity, accuracy and completeness of the document submitted by management. I had difficulty with the board's approach that although the CEO had prepared a response to the allegations which the board accepted. Those responses did not deal with the issue of him requesting 300 000 to be given to Ms Louw. Dr Matjila's submissions to the board only reflected the internal process for loan in approving the MST loan and CSI allocation. It therefore meant that the CEO had not fully responded to all the matters or confirmed the accuracy of some of the allegations and the board still accepted this, his responses, and declared the allegations baseless without independently testing the same. This was one of the issues that had attracted price coverage and public criticism at the time. This was because Mr Mulaudzi is businessman who had received significant funding from the PIC in the past and whom one could reasonably say was dependent on future funding. Mr Nemagovhani was excused from the meeting and requested to

interview both the CEO and Mr Mulaudzi on this limited aspect of the James Nogu allegations. Mr Nemagovhani reported back to the board on this discussions held with the CEO and telephonic discussions with Mr Mulaudzi. He reported that Mr Mulaudzi had confirmed that Ms Louw and her business partner were introduced to him by the CEO who initially requested him to assist the ladies with business opportunities which he could not do. Later, according to the version of Mr Mulaudzi, as reported by internal audit in the meeting the CEO requested him to assist the ladies settle their business debt which Mr Mulaudzi did by paying an amount of 300 000 in two equal instalments to the collecting attorneys.”

MS GILL MARCUS: Sorry, can I just interrupt you there for a second? Again it’s a point of clarify. From your testimony here it would look as if there were then two distinct approaches to Mr Mulaudzi. The first was to see whether he could help them with their business activities and the second one was about a payment transaction of asking him to pay the – and assist the 300 000. Two distinct times.

MS BONGANI LOUISA MATHEBULA: Correct, Madame Commissioner.

MS GILL MARCUS: Thank you.

MS BONGANI LOUISA MATHEBULA: Paragraph 47.

ADV JANNIE LUBBE SC: Sorry, Mr Commissioner, just for the record – and I think it’s relevant to the question asked, that was exactly the evidence of Mr Mulaudzi.

MS GILL MARCUS: Yes but it wasn’t the evidence about how they first met Ms Louw.

ADV JANNIE LUBBE SC: That is correct.

MS BONGANI LOUISA MATHEBULA: Paragraph 47.

“When this feedback was given to the board and the Chairman asked the directors if this could not be regarded as impropriety. Some directors jumped in the defence of Dr Matjila. They went as far as ...[intervenes]

MS GILL MARCUS: Sorry, who was the Chairman at that point in time?

MS BONGANI LOUISA MATHEBULA: It was Mr Sfiso Buthelezi.

MS GILL MARCUS: Buthelezi.

MS BONGANI LOUISA MATHEBULA: Ja.

“They went as far as saying they were proud of what he had done. It showed that he was a thoughtful and selfless CEO who was willing to rescue a struggling entrepreneur. One director even referred to him as a Good Samaritan. There was an immediate heated debate and pushback to this response. The deputy chairman at the time, Dr Mkwanazi, questioned his colleagues from defending the indefensible. He expressed shock that there were some directors who were willing to justify the actions of the CEO. Ms Zulu then stated that if this was the board’s response to the matter she challenged the board to make a public pronouncement to this effect to see how the reasonable public will receive such a stance. It was that point that the Chairman pleaded with the board members to be honest with themselves and not be seen to be promoting what could be seen as unethical behaviour. The board then accepted the Chairman’s advice then resolving that the social

and ethics committee should formulate a policy which should have been meant to avoid situations where the CEO or any of the management staff can be compromised and to ensure that if the CEO wants to make such initiatives he can do so whilst accompanied by other PIC officials and that such meetings should be done in a formal and recorded manner. Even at that point the majority of the board still held a view that the CEO had done nothing wrong and he just needed to be questioned about how he handles such matters in the future so that there is no perception that he uses his influence to assist the parties. Such a policy was never developed according to my knowledge. My understanding of the way the board deliberated on the impropriety was that the majority of the board did not regard it warranting for formulation to be taken against the CEO but accepted the CEO's actions, risk, engendering the perception that he had used his position of influence to improperly benefit another person. Again a media statement was issued ...[intervenes]

MR EMMANUEL LEDIGA: Paragraph 47 and I don't know whether you can answer this, if you can't please tell me. The question is who defended the CEO? You said some people jumped into the defence of the CEO. Can you recall the names the people and all if you can answer that?

MS BONGANI LOUISA MATHEBULA: Okay. Mr Commissioner, can I not mention names? I can give the names to the evidence leader.

ADVOCATE ISAAC MONNAHELA: That's fine, that's fine.

MS BONGANI LOUISA MATHEBULA: Sorry, I'm on paragraph 50.

“Again a media statement was issued after the board meeting of the 15 September 2017.”

That is annexure 8.

“This media statement made no mention that the CEO's conduct engendered risk and was irregular and out of line in any way. This fact would however have been apparent from a perusal of the minutes of the meeting that I will deal with in subsequent paragraphs.”

All media-related statements and newspaper articles are also attached, Commissioner under BM8A.

“Allegations not thoroughly investigated. The sudden decision to stop any further investigation. On the 6 October 2017 in annexure 9 the board held an urgent special board meeting. This was immediately after the board strategic session which was held in Magaliesberg between the 5 and 6 October 2017. Again I was in attendance and I was the one taking the minutes at that meeting. Again I was also told not to record the discussions. The board took a resolution not to pursue any further investigations of the allegations of the 13 September 2017 at that meeting. Given the nature and seriousness this struck me as a failure by the board to discharge its fiduciary responsibilities in the interest of the PIC.”

MS GILL MARCUS: Sorry, can I just ask you. When the board took that resolution were any reasons given?

MS BONGANI LOUISA MATHEBULA: Yes.

MS GILL MARCUS: Reasons to say we're not going to pursue any further investigations. What were the reasons given?

MS BONGANI LOUISA MATHEBULA: Madame Commissioner, the reasons given by the board was that the allegations of the 13 September 2017 were malicious and baseless but also the board was saying that they wanted to restore stability into the PIC. So those ...[intervenes]

MS GILL MARCUS: Same reasoning as you had given before.

MS BONGANI LOUISA MATHEBULA: Yes.

MS GILL MARCUS: But they still did not have any information, they had not got a result of any investigation.

MS BONGANI LOUISA MATHEBULA: Precisely.

“...especially since public scrutiny on the PIC, especially the CEO was heightening. Logic would have detected that the board allow internal audit process the board had itself commissioned on the 15 September 2017 to be completed and not to close this – and to close this matter properly. Surprisingly the reason given...”

Again these are the reasons.

“...to stop all further investigations was to restore stability at the PIC and to focus on the implementation of the mandate of the PIC. What is contrary is that the victimisation by management against those who were falling out of line with the CEO was continuing. I need to mention that it was during the board meeting of the 15 September, Commissioner, 2017, and

all subsequent meeting dealing with the allegations against the CEO where there were serious tensions in the board, the board was clearly divided on this matter. Simply put it became very clear that there were directors who were prepared to defend the CEO and immediately exonerate him without allowing any due process. There were other directors in the minority who rejected this approach. These directors held a strong view that this matter, if not properly dealt with posed a serious reputational risk on the board and the PIC as a whole. Although it was only Ms Zulu who insisted that her dissenting view to what she regarded as a flawed process by the board be recorded. There were strong differences of opinion during the debate on the matter. However, the majority of the board supported Dr Matjila and even releasing media statements endorsing him publicly.”

ADVOCATE ISAAC MONNAHELA: If I may intervene there. In the last sentence of paragraph 52 you say:

“What is contrary is that the victimisation by management against those who were falling out of line with the CEO was continuing.”

Who were those people in management who were victimising employees?

MS BONGANI LOUISA MATHEBULA: I believe to my understanding it was the CEO, it was the executive head of HR. The CFO – the head of HR reports to the CFO and I do not believe that the HR head was acting out of line without taking instructions or consultation with the

CFO.

ADVOCATE ISAAC MONNAHELA: Okay, when you say they victimised employees, what you mean, how did they victimise them?

MS BONGANI LOUISA MATHEBULA: I'm going to talk – thank you, I'm going to talk for myself. At the time the board took a resolution of 6 October, it was the time when all the forensic investigations have started. Although I did not realise at the time the gravity and the nature and the determination to try and find who the leakers of information were, it was during that time when Naledi had been appointed and I had already underwent interviews with Naledi and then I then realised now that it was the time when the CEO had just started this, you know, witch hunt to try and find who the leakers of information were. So I myself was the one who was at that time now being victimised.

ADVOCATE ISAAC MONNAHELA: Okay, you may proceed.

MS BONGANI LOUISA MATHEBULA: I'm going to talk ...[intervenes]

MR EMMANUEL LEDIGA: Just to understand something. So in terms of the board functioning, you know, or functioning well, it looks like we have a pre-Nogu board and a post-Nogu kind of board. Was the board functioning well before the Nogu mails, the emails, if you can recall? Was it not divided, was it functioning very well? We know post-Nogu there were problems.

MS BONGANI LOUISA MATHEBULA: Mr Commissioner, the board was functioning quite well. Even after the Nogu emails I must in terms of strategy – I mean, strategy sessions were held, statutory matters were attended to by the board. There was a time when there was a vacuum

after the departure of the then Minister Gordhan and his deputy minister at the time, Mr Mcebisi Jonas, before the appointment of the new deputy minister who then later became the Chairman. There was a time when, you know, we were still waiting for the Chairman to be appointed, I think it was about three months at that time. But the board was functioning quite well in terms of approving, strategic document, corporate plans were submitted, things that were supposed to be attended to were attended to. So I don't want to say the board was not functioning. It was only when the issues of the allegations were discussed at the board where there was serious divisions and disagreements in the board.

MR EMMANUEL LEDIGA: Ja. Thank you.

MS BONGANI LOUISA MATHEBULA: Okay, can I continue? Thank you. Paragraph 54.

“The meeting between the erstwhile Minister Gigaba and the board. On the 26 September 2017, annexure 10, Minister Gigaba met with the board to address several concerns in light of the persistent negative media publicity that was confronting the PIC. The minister specifically requested for the meeting to be recorded. What prompted the minister's meeting was an article termed “Dan Matjila, they are looking for the keys to the big safe” which was dated the 24 September 2017. Of concern about the article was that the board had taken a decision prior to the article that any communication with the media should be sanctioned by the board. However, the CEO had taken it upon himself to be interviewed about matters

which would assist with the board outside the board. The transcript of the meeting with the Minister, Mr Commissioner, is also annexed, it's also attached. The transcript will set the full context of what transpired during the meeting. I was also by the way in attendance at the meeting and I was also then requested to also take the minutes.”

Okay, that's annexure 11.

“Minister Gigaba, a shareholder representative, was concerned that he was being dragged into PIC matters which he had no knowledge of and he was being painted as interfering into the governance affairs of the PIC which he denied. The minister said he had received - in this opening the minister said that he had received a Whatsapp text on the 13 September 2017 from a Cape Town businessman and he read the text out into the record. The text read, I quote:

“Hi Malusi, can you call me urgently. My editors have picked up a story on the removal of Dan Matjila as PIC CEO at a special board meeting on Friday. I am not sure if you are aware, this will be catastrophic and will set us back. Please intervene to stop this since it is not good for you and the project. I have also sent Sfiso a text. I am available to chat any time.”

ADVOCATE ISAAC MONNAHELA: If I may intervene, do you have any idea who this Cape Town businessman could be?

MS BONGANI LOUISA MATHEBULA: I do not have any idea but I believe a name was mentioned and I think it was Mr Iqbal Survé. And

the minister's response was:

"I am not on the PIC board, chief, I cannot intervene on this as this is a matter the board has not formally reported to me. My deputy has not told me they have suspended the CEO. I am sure you would understand, I have to respect governance."

And then the businessman responded:

"Of course, I'm just trying to help so that it does not embarrass you, the DM and the government. It will also undo all the good publicity you have been getting. I leave it in your hands."

MS GILL MARCUS: Thanks, can I just perhaps go back to the original text and perhaps Adv Lubbe, it would be possible to ask former Minister Gigaba about this and whether who it was from so that we can authenticate the source of this call if it's possible?

ADV JANNIE LUBBE SC: It will be followed.

MS GILL MARCUS: I think the second question from me was that if Minister Gigaba is saying the PIC's been dragged into matters, it's clearly being dragged into matters from this by the businessman not by the PIC or the media, the businessman is dragging the person in and therefore the question for me would be again to former Minister Gigaba, how did he then deal – apart from the text here, you know, how would somebody be that familiar to be able to do that.

I think the third question that I would have which relates to this is to understand "it's not good for you and the project", what project? Do we have any idea what project he was referring to?

And the fourth question is, is that if it is an issue for the PIC

and I'm assuming that Sfiso refers to Deputy Minister Buthelezi who would have been the Chairperson of the PIC at the time. It is quite extraordinary that a businessman can contact minister and a deputy minister and a chair asking them to look into this matter. So I do think there needs to be follow-up perhaps by you, Adv Lubbe, unless you are able, Ms Mathebula, to indicate what your understanding of the project was and whether there was any elaboration of that in the meeting and whether any board member actually asked him, you know, with any discussion in the board what project are you referring to that is being put at risk given that this was read into the text and I'm assuming then you have it as a voice recording as well, so this is the actual text because he did ask you to record that meeting, is that correct?

MS BONGANI LOUISA MATHEBULA: Madame Commissioner, yes, it was recorded, we also have it on recordings. The matter was never discussed further at that meeting so I do not know what project he was referring to.

MS GILL MARCUS: Just for clarity, although this was put into the meeting with the board, the board did not ask him to elaborate on any level.

MS BONGANI LOUISA MATHEBULA: Correct, Ma'am.

ADVOCATE ISAAC MONNAHELA: Mr Commissioner, if I may refer the members of the commission to annexure BM11, page 2 of annexure BM11, from line number 19, the minister said:

“I do not know how is it not good for me and I do not know how.”

What project was he talking to, was he referring to?

MS GILL MARCUS: The minister is indicating that he did not know what he was referring to.

ADVOCATE ISAAC MONNAHELA: That is what is recorded.

MS GILL MARCUS: Thank you.

MS BONGANI LOUISA MATHEBULA: Paragraph 56.

“The Minister was angry that he was being dragged into PIC internal matters. He requested to be provided with answers on specific matters.”

CHAIRPERSON: Sorry, did you put that last quote on record?

MS BONGANI LOUISA MATHEBULA: I did but I can read it again for the record.

CHAIRPERSON: I don't think you did, I'm not sure.

MS BONGANI LOUISA MATHEBULA: Okay, let me read it for the record.

“Of course, I'm just trying to help so that it does not embarrass you, the DM and the government. It will also undo all the good publicity you have been getting. I leave it in your hands.”

CHAIRPERSON: And the DM is Deputy Minister.

MS BONGANI LOUISA MATHEBULA: Is the Deputy Minister.

“The Minister was angry that he was being dragged into PIC internal matters. He requested to be provided with answers on specific matters. Those were allegations against the Minister that he and the then Chairman, Mr Buthelezi and the two newly appointed board members, at the time Dr Mkhwanazi and Ms Mokoka were part of a group of individuals deployed to capture

the PIC and facilitate the removal of the then CEO.”

I must say, Commissioner, that the article that I read out that says they are out to get the big safe also mentioned the aspect of the state capture. This was one of the articles which also mentioned the issue of the state capture.

“The minister also wanted responses on how the board had handled the allegations against the CEO, how the board has dealt with the allegations about the hacking of the PIC IT system, how the board would deal with the misquoting of the statement made by the CEO in his interview with the Sunday Times, eNCA and any other newspaper, allegations of interference by the minister in the governance of the PIC and he requested to be provided with regular reports on these matters. Following the meeting with the board Minister Gigaba wrote a letter on the 9 October 2017, that is annexure 12, to the board as a follow-up and requested the board to attend to several issues following his meeting with the board on the 26 September. Two of the ...[intervenes]

MS GILL MARCUS: Sorry, can I just ask a question in relation to that? So can I just have the file. I just want to refer to something in that file. As you can see, these two files are the annexures, sorry it's a little bit unwieldy but I just want to come to the reference that you have there on 12 which is, if I remember correctly. This is the letter to the Chair and how the board – the interesting question for me or the important question for me would be how the board has responded to a request of this nature and I will just put it into – not the whole letter but just an

aspect of that.

“For transparency purposes in the public interest to ensure that the PIC’s depoliticized and to put all stakeholders at ease about PIC investments have decided and now request you to do the following:

Disclose all PIC transactions listed, unlisted and concluded in the past three years, the amounts on each transaction concluded, the transaction advisers, the amounts paid by PIC, disclose all the BEE consortiums in those transactions, specification stated each individual legal entity and participate in the consortium, furnish me with a list of transactions you have concluded with parties that are prominent influential persons and disclose details of individuals of companies who have been funded by the PIC or participated in a PIC transaction more than once in the past three years.”

How did the board respond to such an extensive request because I would have thought that that – it might be available but it would be pretty voluminous to be doing that. Was there discussion by the board about this request? Was it tabled at the board?

MS BONGANI LOUISA MATHEBULA: Yes, Madame Commissioner, there was a discussion about the letter of the Minister at the board meeting that was on the 16 October 2017 to discuss how the board will respond to such a wide, you know, ranging request from the Minister and I will also deal with that, it’s on paragraph – from paragraph 60. Okay, paragraph 58:

“Two of the board members, Ms Dudu Hlatshwayo and Dr

Claudia Manning, subsequent to receipt of the Minister's letter approached a Director and Chairman at ENS in their personal capacity to seek legal advice. The Board Charter and Directors Code of Conduct explicitly stated that NEDs are entitled to seek professional advice which includes legal advice at the company's expense subject to the board protocols and applicable policies."

MS GILL MARCUS: So why would they have had to do that in their personal capacities given that it was within their mandate as board members?

MS BONGANI LOUISA MATHEBULA: To be honest when there was – we never got an answer to that issue. It was something which was highly debated in the meeting of the 16 October as well but, you know, at the end of the day the directors just, you know, said they were entitled to seek their own advice in their personal capacity on matters which were, you know, belonged to public investment corporation and on issues that happened when they were board members in that capacity.

Paragraph 61:

"On the 16th October 2017, (I have annexed the minutes of that meeting under BM13) the board met to discuss the minister's letter and decided to solicit a legal opinion, whether the minister was entitled to issue directives to the PIC..."

One of the issues, precisely, Madam Commissioner, was the fact that issues that the minister wanted were wide ranging and the board

wanted to understand how they can deal with those things.

“ENS was appointed to provide the opinion for the PIC. These are the same lawyers who were initiators during my disciplinary hearing...”

This, again, Madam Commissioner, were the same lawyers whom Ms Hlatshwayo and Ms Manning went to seek legal advice in their personal capacity. I must say, there was a debate in the board, regarding whether there were no conflict of interest, should the board employ ENS.

And the majority of the views, although there was a minority which felt that the PIC cannot appoint the same lawyers whom, you know, the two ladies had gone to seek legal advice in their personal capacity, the majority of the board’s view was that, because they approached a different director, the PIC is entitled to appoint another different director of the same law firm.

So, hence, the board ultimately concluded to appoint ENS.

Paragraph 61:

“The legal opinion was verbally presented to the board on the 19th October 2017. (I have also attached those minutes of the meetings.). The written legal opinion was later emailed to me. The legal opinion confirmed that the minister was entitled to issue directives to the PIC which is conferred by Section 6(4) if it is in the public interest in line with the PIC Act 23 of 2004...”

MS GILL MARCUS: Sorry. Can I just take you back a second to the

question of the board appointing a legal team and the two directors. In that meeting did the board approve or condone or take any view on the fact that Ms Hlatshwayo and Dr Manning had been to or seek legal advice in their personal capacity?

Because that would have been for me a time to say: You have done that. That is fine. It is within the keeping of the rule that apply. Or was there any difference of view there?

What was the view of the board on the two individuals having sought legal advice, if any?

MS BONGANI MATHEBULA: The board did not think they are going in their personal capacity was so much an issue. The biggest issue was the fact that PIC would now appoint the same lawyers. Yes. Ja.

ADV ISAAC MONNAHELA: Okay. Can I take you back to paragraph 55 of your statement, where you deal with the report by the minister. That he had received a Whatsapp text on 13th September from a Cape Town businessman.

It is clear from that text, that the businessman was aware that the board will be sitting on Friday. My question to you is. Are the dates of the meetings of the board made public?

MS BONGANI MATHEBULA: The dates of the meeting of the board are not made public.

ADV ISAAC MONNAHELA: The agenda for the meetings, are they made public?

MS BONGANI MATHEBULA: No, they are not.

ADV ISAAC MONNAHELA: The reason I am asking you this is that at ... And if I may take the Commission back to Annexure BM11. Page 3

of paragraph... I mean, page 3 of Annexure BM11.

MS GILL MARCUS: Could you just read it out?

ADV ISAAC MONNAHELA: The minister is recorded to have said the following from line 12:

“How is it supposed to embarrass me? 1. I did not know there was a special board meeting on Friday, the 15th. 2. I did not know what the agenda of that meeting was...”

So, is it possible...? The minister who is the shareholder representative was not aware that the board will be sitting on the 15th. He was not aware of what the agenda would be.

Is it possible that someone within the PIC gave the information relating to the meeting and the agenda to the Cape Town businessman?

MS BONGANI MATHEBULA: Yes, it is possible that someone internally could have communicated the meeting and the agenda to the businessman.

CHAIRPERSON: Well, it must be so. It is not that it is possible. It must be so that, that happened.

MS BONGANI MATHEBULA: Yes, Mr Commissioner.

ADV ISAAC MONNAHELA: Yes, you may continue.

MS GILL MARCUS: Sorry. Can we just go to the dates a second? Because you are referring to Friday the 15th and if we go to the paragraph that we were on, it says the 16th. The minutes of the 16th. Was the 16th or the 15th the Friday?

ADV ISAAC MONNAHELA: It was...[intervenes]

MS GILL MARCUS: Or is it a different month? I just want to see what

relates to what.

ADV ISAAC MONNAHELA: In Annexure BM11 at page 3, the minister refers to Friday the 15th and the text was sent on the 13th December. That is two days before the meeting.

MS GILL MARCUS: Okay, ja. So, we are in September there. Thank you.

ADV ISAAC MONNAHELA: You may proceed at paragraph 62.

MS BONGANI MATHEBULA: Okay.

Paragraph 62:

“So, on the 12th October 2017, the following draft minutes were emailed by myself to the board. That was the board meeting held on the 28th July; The board meeting held on the 4th August; The special board meeting held on the 15th; The special board meeting held on the 29th September; The special board meeting held on the 6th October..”

I must indicate, Mr Commissioner, the reason was that we circulated the minutes, so that the members can make comments, but also, because there was an elapse of time before we could also have a normal scheduled meeting where the board can then approve. So, I wanted the board to also have sights of those minutes as well.

“So, the only board member who indicated a comfort with the minutes, save for a few grammatical errors, which he promised to provide was Ms Lindiwe Toyi. (I have also annexed her email in BM16, where she confirmed her comfort with the minutes.)...”

MS GILL MARCUS: Did any of the other directors comment on any aspects of the minutes, prior to the board meeting?

MS BONGANI MATHEBULA: I did not receive any comments, save from Ms Toyi.

MS GILL MARCUS: And in the normal procedure if you sent out minutes and directors do not respond, you take it that they agree with the minutes?

MS BONGANI MATHEBULA: Of course, Madam Commissioner. Because also one of the key issues that we also was trying to introduce was the aspect of taking long to correct minutes in meetings. Therefore, when you circulate them via email, it is much quicker to correct them, prior to the meeting itself.

“On the 17th November 2017, there was a board meeting. This was now a normal board meeting. The minutes of the 15th September, 29th September, 6th October, 16th October, 19th October were tabled for adoption by the board.

The minutes were never considered but subsequently submitted to the board meeting of the 24th November 2017.

Instead, the board requested that the minutes be revised and be confined to matters under discussion and the end point resolution only.

I held a different view in that all minutes of the board should be a true reflection of the discussions of the meeting. This will be noted from the transcript

discussions of the meeting of the board on the 24th November 2017, which I have also attached as BM18. How does one prove that the board discharged its fiduciary duties, if minutes just captures resolutions only? Section 73(8) of the Companies Act states that: *“Any minutes of a meeting or a resolution signed by the chair of the meeting or by the chair of the next meeting, is evidence of the proceedings”*.

My own emphasis of that meeting...”

MS GILL MARCUS: Again, just as a point of clarity. So, between sort of mid-September and mid-November, being the last meeting, being the 24th November, there were seven board meetings?

MS BONGANI MATHEBULA: Yes, and those were just special board meetings.

MS GILL MARCUS: All special board meetings?

MS BONGANI MATHEBULA: All special board meetings from then and then the normal ordinary meeting was the 17th November, where I submitted the first draft and that is when I was instructed to only stick to resolutions and then I was instructed to submit the minutes again on the 24th November.

Paragraph 66:

“The Companies Act does not make any distinction between minutes of a normal meeting or an *in camera* meeting. Minutes are minutes and ought to capture a true reflection of the proceedings.

The alterations of the minutes of the 29th September

2017:

This happened during the meeting of the 24th November 2017 and is annexed as Annexure BM19.

On the 24th November 2017, the minutes as originally drafted...[intervenes]...”

MR EMANNUEL LEDIGA: Just a question before you go forward. I just want to check something which is something completely different, but seeing you are the company secretary, you might know. In some countries, I think the US and some states there, they actually do not keep board meetings.

They destroy them after that, and because mainly for law suits and you know other things. Is that how, you know, like how different are we here versus those countries? Or do you know about that?

MS BONGANI MATHEBULA: Mr Commissioner, I am not clearly conversed with that the US is doing, but I can talk for South Africa. So, in South Africa issues of the board proceedings are governed by the Companies Act and the Companies Act is very clear.

In fact, in terms of record keeping and in terms of the Companies Act, minutes of a company – because remember a company is a legal person and as a legal person, it outlives all of us and the reason to have minutes to be kept is for historic purposes as well.

So, you need, in terms of the Companies Act, you need to actually keep minutes for life, but there is a provision that now has not adduced, that it has to be kept for seven years.

But you know, for purposes exactly of law suits and other

things, because remember, minutes belong to the company and if somebody was to sue a company, even if I am no longer there, they need to be able to verify the activities of the company, whether the company secretary who took the minutes at the time is still there.

Whether the directors who took resolutions are still there. So, in terms of the South African Law, it is actually the reason why you will keep minutes, because minutes belong to a company which is a legal person. So, the Companies Act is very clear to say that you need to keep those records as a historic record.

MR EMANUEL LEDIGA: All right, great stuff. Thank you.

ADV ISAAC MONNAHELA: With your permission, Commissioner. If I may take the witness back to Annexure BM11? At page 4 of that annexure. From line 4.

The minister is recorded to have said the following. That is former Minister Gigaba:

“After which I received the call from a general secretary of a certain union, who accused me of leading a plot to unseat the CEO, in order to loot the PIC. Of course, the story came out in the newspapers the following day. Now related to that is then the allegation that I attend appointing Brian Molefe as the CEO of PIC. Again, something I am not even aware of...”

You know, what is your opinion this thing the minister receiving messages or calls from people who are outsiders, asking him about the running of the PIC?

MS BONGANI MATHEBULA: Commissioner, that was completely uncalled for. It is exactly what had transpired during the meeting when there was a report that FEDUSA was trying to cancel the board meeting.

And for that to be happening in an institution such as the PIC, where unions seems to be interfering in the processes of the PIC, it is definitely that something that should never ever happen for an asset manager such as the PIC.

MS GILL MARCUS: But your reflection on that and obviously from what you have said, there is no indication who the general secretary of that union was or which the union was.

But is the assumption or can you find out, whether that is part of the same core by FEDUSA to cancel the meeting, and whether they, in fact, were the people who sent that message to the minister?

MS BONGANI MATHEBULA: Having now heard that, I think it would have been the same and I think we can find – we can ascertain that, Madam Commissioner. Ja.

ADV ISAAC MONNAHELA: Yes, Mr Commissioner. We will follow it up. You may proceed with your statement.

CHAIRPERSON: Can I just ask something? Do you have any difficulty or did you have any difficulty with it being said to you, you should reflect resolutions only in the minutes?

MS BONGANI MATHEBULA: Yes, I did, Commissioner. So, if you look at... What annexure is that? Under Annexure BM18... So, if you go through Annexure BM18, Chair... It is just that I realised that there are no page numbers on that annexure.

I am just looking at the point where I advised the board that I cannot confine the minutes to the resolution, in that annexure. Okay, so let me just maybe read the pages, one by one, because the pages – apologies, Commissioner – they are not numbered.

So, it is the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh... So, if you look at page 12, which is not numbered, it starts with the sentence that says: So, I think we must simply say, accept the report...

If you go down where I say – where it says Bongani. I say:

“But Chair, can I just differ a little bit? Because for me, what is important is that we must also demonstrate that the board in getting to a particular resolution at a committee meeting or *in camera* meeting...:

And then I was disrupted. And then I said:

“You need to demonstrate that the board applied its mind and when you do not have any documentation, it is important to demonstrate that the board...”

For me, it would be very reckless for me and I am using that word to say the board discussed and then resolutions.

“I think I need to also protect the board in a sense that I need to demonstrate that the board in getting to a particular resolution, it applied its mind...”

So, that is what I said to the board.

ADV ISAAC MONNAHELA: Mr Commissioner, if I may make a correction. It should be page 23, because this document is double-

sided. You may proceed.

CHAIRPERSON: But of course, you do not mean by that, that you should record that so and so said this and then so and so then said this.

MS BONGANI MATHEBULA: Of course, Chair. I have also highlighted in my statement, that you need to be – you need to have a balance of you know capturing the material issues, but definitely, if someone was to pierce the corporate veil at some stage, you need to really – because how do you?

For board members who are not employees of any institution, how do you demonstrate if they, you know, qualitatively, if they are taking resolutions which are in the interest in the company?

We need to really ascertain how they arrived at a particular decision. Ja. But of course, you do not need to, you know, transcribed the discussions. Hence, to have recordings which are transcribed, but we also then take minutes.

But in this instance, I must say, there was no recording in the first place on the 29th September. Firstly, there was no recording that I could rely if I had to backup.

Secondly, there were no documentation that was submitted, because the internal audit report was brought to a meeting and was only given to the board members. I did not have a copy of it.

So, hence, I said that this was not the run of the mill meeting, where you get a pack. Like, for instance, in a transaction where they are proving an investment, the investment professionals will give you a pack and they will have their own recommendations.

It is much easier to do the minutes in that sense, but this was not a normal meeting, where I could even have a pre-meeting minute prepared for it. So, I went into the meeting blindly without knowing what was going to happen at that meeting.

Paragraph 67:

“On the 24th November 2017, minutes as originally drafted were again submitted for adoption by the board. The board made changes to the minutes. A considerable number of deletions were made to the minutes of the 29th September 2017. It is Annexure BM20.

During that meeting, as the board felt that this minutes portray a negative picture. I remember this clearly as when some board members were given instructions on how portions of the minutes should be deleted.

There was one board member who felt that discussions held during the meeting be retained. I had advised the board on this aspect on comprehensive capturing of minutes and balancing between brevity and full context, which inform how certain decisions were arrived at.

The board decided that the minutes of the 15th September, 29th September and 16th October be adopted via Round Robin Resolution.

This was unorthodox, as normally the board will

normally correct the minutes. If there are substantial corrections, the board will still adopt the minutes but request that the final minutes be circulated for the board to note that all the corrections have been taken into account before the chairman signs the final minutes.

The Round Robin Resolution was prepared on the 28th November 2017. That is Annexure BM21. And circulated to the board for approval.

The minutes were eventually approved via Round Robin and the Round Robin only confirmed in a meeting of the 2nd February 2018...”

I must say, Commissioner this was long after the discussions of the meetings in September, that this minutes were adopted by the board.

“It was out of the ordinary to correct the minutes by deleting the critical discussions held during the meeting.

In approving draft minutes of previous meetings, the board ordinarily embarks on correcting the minutes and not deleting content, which clearly and correctly reflects the true nature of the discussions in the meeting.

Without this context and content, it is impossible to evaluate whether discussions taken by the board, rationally flowed from the material discussion on

which these discussions were based.

This deprives any interested party legally entitled to have access to the minutes and the right to access the propriety and legality of such decisions, given the law of Perpetuity governing a legal personal.

Also in terms of establishing governance practice and as noted in the book by Rob Robson *et al* on Effective Minute Taking, which highlights that minutes needs to strike a balance between being brief and comprehensively reflecting the true and accurate record of what transpired and matters that inform the decision taken by the board.

One of the effects of this editing of the minutes down to the resolutions taken was, that criticism by the board of the CEO's involvement in securing funding for Ms Pretty Louw's company was effectively exercised from the record, thereby, sanitizing the minutes.

At no point, the board highlight that the minutes did not capture the true nature of the discussions held. The board was rather concerned that the minutes reflected a negative picture.

My own assessment is that I felt out of favour with the CEO, as I was the one who responsible for drafting the minutes, which painted a negative picture about him....”

ADV ISAAC MONNAHELA: Okay, if I may intervene. So, from what you are saying – what you are saying is that the board was concerned about whether what you were asked to delete was discussed at the meeting?

MS BONGANI MATHEBULA: Correct.

ADV ISAAC MONNAHELA: They only wanted you to delete those parts of the minutes because they presented a negative picture and nothing else?

MS BONGANI MATHEBULA: Correct.

ADV ISAAC MONNAHELA: You may proceed.

CHAIRPERSON: But the resolution remains the same. It was reflected correctly in the minutes. Is that correct?

MS BONGANI MATHEBULA: Yes, correct, Chairman.

CHAIRPERSON: Or the conclusion of discussions on that aspect, were correctly reflected and remained reflected.

MS BONGANI MATHEBULA: The finally signed, through you, Commissioner. The finally signed minutes, in terms of what was deleted, the resolution was correctly reflected. It is safe to say that of course, those discussions were excised completely from those minutes.

CHAIRPERSON: But there was no change as it were, other than the deletion? There was no deleting this and putting something that was not there?

MS BONGANI MATHEBULA: Not according to my knowledge.

ADV ISAAC MONNAHELA: Okay, can I ask you this question? Before the minutes of that meeting, had you ever been asked by the board to delete things from the minutes?

MS BONGANI MATHEBULA: No.

ADV ISAAC MONNAHELA: You may proceed at paragraph 76.

MS BONGANI MATHEBULA: Okay.

“Report back by Naledi Advisory Services:

Mr Frans Lekubo had presented a preliminary report on the progress of the investigation to the board at the meeting held on the 17th November 2017.

He reported that he had established during his investigation that a case was opened with the SAPS to pursue a corruption case against Dr Matjila and highlighted that he contacted SAPS to understand SAPS processes.

Since the SAPS’ investigation was into the alleged unlawful conduct of an individuals, I am not sure on what basis the PIC appointed investigator was used to interact with the SAPS and whose interest this investigator was acting.

The board agreed that a joint meeting between the Audit and Risk Committee and the ICTGC be scheduled urgently to deal with this matter.

The joint meeting took place on the 17th November 2017. I have no knowledge of the contents and or discussions held in those meetings.

This joint board committee meetings were held without secretariat. I do not know who took minutes during those meetings and whether official record of

the meetings are kept or what resolutions, if any, were taken.

Whether proper governance protocol of ensuring that the minutes are ultimately preserved as official company record were followed is unknown.

This kind of practice does not reflect good governance practice. The Companies Act is very clear, in particular on how minutes which are legal records of the company are to be kept, as I have already eluded above...”

ADV ISAAC MONNAHELA: Okay, if I may ask? Were you made aware of that meeting that you referred to in paragraph 76?

MS BONGANI MATHEBULA: Yes, of course, I was made aware of the meeting, because it was the board, during the meeting of the 17th which took a resolution to have that joint committee meeting, but what transpired in that joint committee meeting is unknown to me, because I was not required to be in that meeting.

ADV ISAAC MONNAHELA: Were you given any reason why you were not required to be in the meeting?

MS BONGANI MATHEBULA: No, nothing. No reasons.

MS GILL MARCUS: Sorry. Just on that same. While you may not have been, was the secretariat asked in any way to provide secretarial services to that meeting?

MS BONGANI MATHEBULA: Not at all, Chair. In fact, I wanted to also to address that, Madam Commissioner. That even if the board was discussing something which affected me personally, secretariat would

still have been available to assist the committee in taking minutes.

ADV ISAAC MONNAHELA: But if the board was to discuss something affecting you, would they not have been obliged – or not obliged – should not they have told you that you are the subject of the meeting. So, you cannot attend the meeting to record them, the minutes of the meeting.

MS BONGANI MATHEBULA: So, normally the board or the committees will tell me if there is something that is being discussed that affects me and then they will ask me to be excused from that meeting.

CHAIRPERSON: Just for the record. You mentioned ICTGC. For the record. It is Information Communication Technology and Governance Committee. Correct?

MS BONGANI MATHEBULA: Correct.

ADV ISAAC MONNAHELA: You may proceed at paragraph 77.

MS BONGANI MATHEBULA: Okay.

Paragraph 77:

“AYO Transaction:

The sequence of events relating to this transaction and how governance processes were flouted with expediency to approve the transaction has been fully disclosed to this Commission and I will confine my statement to what had occurred before the PMC Listed meeting on the 20th December 2017.

I also believed that my suspension was as a result of the leakage of the minutes and supporting documentation regarding this transaction during the

beginning of 2018, which I denied to have been part of.

On the 15th December 2017, Ms Mercia Monyela, Committee Secretary, received a telephonic request to seek approval via Round Robin from the Portfolio Management Committee Listed Investment.

For the listed investment team to proceed to the due diligence phase, that is PMC1, for possible participation by PIC and AYO's private share placement, ahead of its planned listing on the JSE on the 21st December 2017.

During the time of the telephonic request, Ms Monyela and I who attended a Social and Economic Infrastructure and Environmental Sustainability SEISS FIB. It is a sub-committee of the IC.

Ms Monyela was told in an email from Mr Victor Seanie that she should leave the SEISS FIB meeting to urgently attend to the AYO transaction.

This suggested that Ms Monyela was taken minutes for SEISS FIB at the time. She will leave the meeting to urgently attend to the AYO transaction.

Ms Monyela prepared the request for Round Robin whilst in attendance at the SEISS FIB meeting and actioned this request 09:52 a.m. on the 15th December 2017. Annexure BM22 is that Round Robin request. This she did because of course she was told

that the closing date for the private placement was on the 15th.

None of the members of the PMC responded to her email. During the course of the day on the 15th December 2017, Ms Monyela and Ms Wilna Louw, the Board Secretary, were summoned to the CEO's office, after he requested an urgent meeting to discuss our reluctance to proceed to PMC2 which is now to request for a PMC meeting to approve the meeting, before the approval for PMC1 which had been circulated earlier.

At the time, I was out of the office and I was dialled into the meeting with the CEO. The CEO was not pleased that I did not agree with her view to proceed to PMC2 without PMC1. Despite the fact that PMC1 was not yet sanctioned, the CEO wanted the resolution to waive PMC1 because due diligence had already been done and to request for final approval to participate in AYO's private placement.

I knew better not to disagree with the views of the CEO, who was not only the chairman of the PMC, but also the chairman of Exco which would have been the forum to vary the powers of the PMC.

It should be noted that PMC did not have any delegated powers to waive its own agreed investment process..."

ADV ISAAC MONNAHELA: If I may intervene? You say that the CEO wanted – in that paragraph 81 – you said the CEO wanted the resolution to waive PMC1, because due diligence had already been done. Had due diligence been done? Was the CEO correct, if you know?

ADV ISAAC MONNAHELA: From my understanding, the due diligence at that time was done, but I understand it to have been a desktop deed which was done on the same – on the 15th. Ja.

MS BONGANI MATHEBULA: If I may ask, is desktop due diligence enough when dealing with a transaction?

ADV ISAAC MONNAHELA: Mr Commissioner, look, I am not an investment professional. I believe that certain transactions would warrant a desktop DD. Certain transactions will warrant a deep-dive DD, if you want to call it that. Ja, so I do not know if this particular transaction warranted a desktop DD or not.

But I also know that in terms of a desktop DD, if it is warranted, it also save as well as a savings for the PIC.

ADV ISAAC MONNAHELA: Okay. The second sentence of paragraph 81. You say: The CEO was not pleased that I did not agree with the view to proceed with PMC2 without PMC1. Did you not agree with that view?

MS BONGANI MATHEBULA: Yes, I did not agree with the view. Hence, I was called into the meeting when the CEO was sitting with Ms Monyela and Ms Louw.

I actually recall the CEO saying that: Bongani, why are we fighting? And I responded to say: I am not fighting with you, Dr Dan.

You know. So, he was not pleased.

ADV ISAAC MONNAHELA: What were your reasons for not agreeing with the view to proceed to PMC2 to PMC1?

MS BONGANI MATHEBULA: Because it would have been a violation of an investment process.

ADV ISAAC MONNAHELA: Okay, you may proceed at paragraph...[intervenes]

MS GILL MARCUS: And just for clarity on the same question. You were absolutely clear that Dr Matjila knew that a due diligence, at least a desktop due diligence, had been done as part of PMC1, even if it had not been formalised?

MS BONGANI MATHEBULA: Yes, it was. Because I believe Victor also had sent an email at that stage, to say that DD has now been done.

MR EMANNUEL LEDIGA: Can I just add? I think we heard from one witness that when you do a DD for a listed company, it is very different to a DD for an unlisted company because a listed company, there is a lot about it and there is no need to visit the company. You just do desktop research, basically.

MS BONGANI MATHEBULA: Precisely, Commissioner. You are quite correct, ja.

ADV ISAAC MONNAHELA: You may proceed at paragraph 82.

MS BONGANI MATHEBULA: Okay.

Paragraph 82:

“So, a request for final approval for the transaction was circulated because the CEO insisted that we

proceed with the transaction on the 15th. Again, no one responded to the requested.

Eventually a PMC list was requested held on the 27th December 2017. The signs were that PMC members were not comfortable to approve the AYO transaction.

It ought to be noted that I was noted that I was not at the meeting. That is the 20th December, as I was on leave and only became aware of the issues when there were numerous media articles regarding the same.

To this day, I still do not understand how the CEO could have speculated that I was responsible for leakages in the AYO transaction...”

ADV ISAAC MONNAHELA: Okay, did Dr Matjila tell you why he suspected that you were responsible for the leakages?

MS BONGANI MATHEBULA: It only became apparent to me when I was handed my suspension letter. That the CEO said he was worried that were minutes of the board and management minutes which were circulated.

It is only then after on the day that I was suspended that I realised. I am stating this on after now, you know, having gone through what I went through. I still did not understand how he could have concluded that I was the one that leaked the management minutes.

ADV ISAAC MONNAHELA: You may proceed.

MR EMANUEL LEDIGA: Ja, all right. Let me ask a broader question.

I think you do address it somewhere probably, but let me try. In terms of the leakage of the minutes,. You are the custodian of the minutes. Is it not? You are the final custodian, but do you think, how could other people sort of leak the minutes? And you know, what is your role in terms of being the custodian of the minutes.

MS BONGANI MATHEBULA: Commissioner, I am the custodian of the minutes, the PIC, but I am not the only person in possession of the minutes of the PIC. Minutes of the meeting are made available, for instance, to the board as a whole. To management. To secretariat. We had at the time an S-drive where all minutes were stored in that network, in that drive.

Minutes were circulated via email to the board. So, there could have been other minutes, you know, for minutes to have been leaked and as a custodian, I do not have control. I control what I can control within the secretariat. I cannot control what other people do, you know, if I give them the minutes.

MR EMANUEL LEDIGA: And so meaning that they do not collect after that and put in the minute book or whatever? I mean, people still have access to the minutes? How do they get sort of safeguarded, somehow? Do they get safeguarded by any chance?

MS BONGANI MATHEBULA: Ja, we do try to safeguard it, but there was and still is an issue at the PIC currently in the new building, where we do not have a strong room, where it would ordinarily after the minutes have been pasted in the minute books, will be then stored.

But before that happens, minutes are still circulated. Either for comments, you know, or... Ja, for various reasons before you could

basically get the final minute and store it in the minute book. Ja.

MR EMANNUEL LEDIGA: These minutes, were they sort of the final minutes or they were just the ones still being corrected? Were they the final ones. The leaked minutes.

MS BONGANI MATHEBULA: The leaked minutes from my hearing were the draft minutes. So, these were the minutes which were not the final minutes.

MS GILL MARCUS: And the minutes are distributed electronically as well to the members?

MS BONGANI MATHEBULA: Yes, yes. Ja.

ADV ISAAC MONNAHELA: You may proceed at paragraph 84.

MS BONGANI MATHEBULA:

Paragraph 84:

“The Sagarmatha Transaction:

The actions of the CEO in the Sagarmatha Transaction appears subject of cause to what this Commission will find not be in line with regular investment process.

The CEO requested me to forward to the Investment Committee members an emails which were received from various political formations on the eve of the Investment Committee meeting to consider the Sagarmatha Transaction...Annexure BM23”

ADV ISAAC MONNAHELA: Okay, if I may... It is annexure. You were about to say Annexure BM23. Can we please go to Annexure BM23?

CHAIRPERSON: Mr Monnahela, before we carry on there. Do you

have any view as to what should happen to minutes, draft minutes that you disseminate after they have been confirmed and you have the final minute? I mean, are you comfortable with the fact that there are people walking around with minutes, whether in bags or briefcases? Whether they are drafts or not?

MS BONGANI MATHEBULA: First of all, I was quite concerned myself and this is something that I told even Dr Dan at the time, to say that I am also worried that minutes, you know, find their way to the public domain.

What... You see the problem, Mr Commissioner is, I can only control what I have control over. And one of the process for approving minutes, for instance, is to circulate draft minutes to the people who are supposed to approve the minutes.

And I do not know how I can curb issues. Minutes are emailed to the board, which as you could tell, which was done as well. So, I do not know how one could control what is beyond my control, but it is something which also worried me and maybe, perhaps one needs to think about things to implement to try and curb such from happening.

I do not know what that will be, but one can think of some innovative ways.

CHAIRPERSON: No, I am just thinking for instance of stopping to send them out, electronically. Sending board packs rather. You know, in hard copy. And then after the approval of the minutes, those copies are collected and taken away from the board members or whoever has them. I am just trying to think at the top of my head.

MS BONGANI MATHEBULA: Ja, that could help, Mr Commissioner.

But in the area of technology that we live in one. So, one of the things that we do is, we do not necessarily give the board members packs in paper.

So, we actually give them iPads and packs uploaded in those iPads. And you know, those iPads – those packs, one can email – you can forward. You can email those things to whoever. So, ja. One can think of – maybe IT people can assist. I do not know.

CHAIRPERSON: Yes, I know. I know people are trying to get away from paper, as well.

MS BONGANI MATHEBULA: Ja, that is actually problem because everything is done electronically.

MR EMANNUEL LEDIGA: But to be clear, I am not sure that the minutes should be top secret, you know. I think the problem with these minutes, they are just disputed minutes. You know, I am not we are speaking as if minutes must be top secret.

They actually should not be, you know. As far as I am concerned. It is just that we have a problem here in the sense that those minutes were highly disputed and all that. Is that correct? Do you think I am correct there?

MS BONGANI MATHEBULA: Okay, I will partly agree with you, Commissioner. To say that minutes are a confidential record of the company, but I agree that the fact that these particular minutes were highly disputed, because remember, this was not the first time.

Even prior to my joining the PIC, it was not the first time confidential documentation, minutes found themselves in the public domain. So, ja. It is because precisely that this were highly disputed

minutes.

MR EMANNUEL LEDIGA: Confidential, but not necessarily really top secret that you got to go to extraordinary lengths to keep them.

MS BONGANI MATHEBULA: Ja, well. For instance, you could argue that if the court orders that you disclose minutes, you have to disclose them at the end of the day. So, confidential, yes. But you know, there are other means. If one really wants to know, they could have means to know. They could go to a court and say: We want this thing to be disclosed. Or if there were discussions of personal nature, one could also ask through a process for those things to be disclosed. So, ja. Limited confidential.

MR EMANNUEL LEDIGA: But not top secret, classified and all of that, you know.

MS BONGANI MATHEBULA: Okay. They are confidential records of a company.

MS GILL MARCUS: I am not sure that, I mean, for my own clarification. The question of minutes like an entity like the PIC at a board level, means you could be discussing and you may well be discussing deals that are in the pipeline.

So, that if you get a minute that is looking at a transaction that might be coming up, that would be of interest to other people. So, the confidentiality and the integrity of the minutes, both in the recording and in the distribution, is something that should be safeguarded and as a priority.

This is not about whether they need to be classified, top secret because of other issues. It is the work of the organisation,

which can be of interest.

And therefore, for me, the question would be, a method by which you ensure that board members or people involved in preparation for boards of for any other committee, it is not just boards. It is also the work of the committee, the investment committee. Who is taken what views and so are confidential to the organisation.

And therefore, the security of those records becomes something that is really important for the integrity of process.

MS BONGANI MATHEBULA: That is correct, Madam Commissioner. So, of course minutes are confidential as well. Ja.

ADV ISAAC MONNAHELA: I asked you to go to Annexure BM23. You say that the CEO requested you to forward to Investment Committee members, emails which you have received from various political formations. Who are those political formations.

MS BONGANI MATHEBULA: So, the emails that we received, there was a letter that came from FEDUSA, signed by the general secretary.

MS GILL MARCUS: And can you give the names when you are doing that as well?

MS BONGANI MATHEBULA: Okay. So, it was signed by Dennis George. That is the General Secretary of FEDUSA at the time. I am not so sure if he is still there.

Then there was COPA and another one was Kopano Ke Matla Investment Company, which I believe is an investment arm of COSATU. I am not sure. It was signed by Steven Thibedi, the CEO.

There was a letter from PGC which was signed by Zweli Nkosi. There was also an email statement from the EFF.

MS GILL MARCUS: Sorry. On the PCG. That is the investment arm of POPCRU.

MS BONGANI MATHEBULA: Oh, okay. And then there was also a statement from the EFF as well. In fact, there was also an email from Mr Survé. That is there email to Dr Dan with the attachment of the EFF.

ADV ISAAC MONNAHELA: If you look at that copy of the email from Dr Survé. At the top there, it is COSATU letter. Was that the attachment?

MS BONGANI MATHEBULA: That was the attachment, actually, yes. Of the COSATU letter. Kopano Ke Matla, I think. Ja. But those were in essence the emails that the CEO requested me to forward to the Investment Committee in an effort to try and show support for the investment in Sagarmatha.

ADV ISAAC MONNAHELA: So, are you saying that the COSATU letter did not come directly from COSATU, but from Dr Survé?

MS BONGANI MATHEBULA: Yes, it was an attachment with an email from Dr Survé.

MS GILL MARCUS: Can I ask a question on that? Given the issues, how much... Given that this was sent to the Investment Committee, did the Investment Committee actually discuss these letters as part of its deliberations?

MS BONGANI MATHEBULA: They never discussed those letters. IN fact, there was also a request which I deal with later in my statement about when Dr Dan requested me to schedule a telephone conference just before the Investment Committee said the night before, to request

for a telephone conference between the Sagarmatha Leadership and the Investment Committee members.

And the Investment Committee was not pleased with that. They were not happy that their investment processes now will include management of companies or possible investee companies to come and make representation, which is not a process at the PIC.

MS GILL MARCUS: But when you come to that, can you also refer to the attachments? I think it is in the attachments.

MS BONGANI MATHEBULA: There is an attachment, yes.

MS GILL MARCUS: Because of the queries members of the Investment Committee were making with Dr Matjila. So, if we could actually have that into the record. Because what it would seem to me from what you are saying is that, Investment Committee queried the Sagarmatha deal.

As a consequence, letters were sent to the Investment Committee and the request to you to set up a meeting with Sagarmatha in relation to the Investment Committee's concerns.

MS BONGANI MATHEBULA: Okay.

MS GILL MARCUS: And would that be a standard procedure that if the Investment Committee has queries, but you then look at ways from external parties, including the company concerned, to come and meet directly with the Investment Committee. Had that occurred before?

MS BONGANI MATHEBULA: Not my knowledge, Madam Commissioner. It is not a normal process for the PIC when it gets into an investment. For normally what happens, is the investments teams are there do their due diligences and to make recommendations.

They are the ones, the investment teams, who would have

those meetings with the investment company to try and ascertain whether there is an investment case in that particular company, but not the management of that investee company coming to an IC meeting.

So, our investment teams are the ones who rely on the strength on, to say whether there is an investment case or not to a particular investment.

MS GILL MARCUS: This would be overriding in many ways, the Investment Committee and the internal team working on that investment, coming to the Investment Committee. You would then say, they would normally give their views and the Investment Committee would have debate with them, not with external parties.

MS BONGANI MATHEBULA: Not with external parties. It would also be an internal process at all times.

ADV ISAAC MONNAHELA: Was there ever any occasion before this one when you were asked by the CEO to forward emails from outsiders to members of the committees of the PIC?

MS BONGANI MATHEBULA: No, there was never such.

ADV ISAAC MONNAHELA: You may proceed. We are on paragraph 84 and you may proceed with the sentence that starts with the purpose...

MS BONGANI MATHEBULA: Okay.

“The purpose of the emails was in favour of the transaction and the purpose of their dissemination seems to have to influence the Investment Committee to approve the Sagarmatha Transaction.

The interference by the unions and political

formations in board in investment processes facilitated by the CEO is not in line with the investment and the governance processes at the PIC. Interference or interventions of this nature would, I believe, shock those whose monies are supposedly invested responsible.

It caused despair and cynicism amongst those whose applications for investments are turned down for a lack of political lobbying enabled by the CEO and potentially even expose the PIC to unwarranted legal risk.

This goings-on are cause of grave concern, which hopefully this Commission can address in its findings and recommendations...”

ADV ISAAC MONNAHELA: If I may ask. When Dr Matjila sent you an email or the emails, had the Investment Committee sat or it had not sat, when it was it going to sit?

MS BONGANI MATHEBULA: Thank you. The Investment Committee had not sat at that time when I was requested to send those emails to the Investment Committee members. I think the Investment Committee – I am going to have to check.

The meeting was, I think, was going to happen either the day or two days after because the emails was sent on the 9th April. I can confirm that to evidence team.

ADV ISAAC MONNAHELA: Okay, they were sent to you by Dr Matjila on the 10th April.

MS BONGANI MATHEBULA: Oh, yes. It was the 10th April. Sorry, I am looking at the other one from Mr Survé. Ja, it was sent on the 10th April in the evening just before seven, but those emails it appeared were also forwarded to those people to Dr Matjila on the 9th. Some of them. But that was before the IC meeting.

CHAIRPERSON: You talk of facilitation by Dr Matjila. Of course, you do not know, do you? Whether Dr Matjila simply received that correspondence from the various parties and simple asked you to forward it to the Investment Committee. If that had happened, would you find anything wrong with that?

MS BONGANI MATHEBULA: Absolutely, Commissioner. There was everything wrong with it. I think I have already eluded to the fact that the investment processes at the PIC is a closed matter, in terms of first or initial investments.

It is not something that although the investment teams will engage as I have said with the companies. Such engagements are not happening at Investment Committee levels with the possible investee companies or companies that the PIC would intend to invest on.

And Dr Matjila was quite aware, I believe, of that process, that it was just out of the ordinary, to be quite frank.

CHAIRPERSON: And if you had forward them to the transaction team, would you have a difficulty with that?

MS BONGANI MATHEBULA: I cannot hear anything.

CHAIRPERSON: If you had forwarded those or that correspondence to the transaction team, the team that dealt with the transaction, would you have had any difficulties with that?

MS BONGANI MATHEBULA: It would still have been problematic because the transaction teams, to my understanding, they will engage directly with the company itself, not with political formations.

MR EMANNUEL LEDIGA: Ja, and just to check too is that, once you have this groupings it introduces a PEPS element. You know, the PEPSS and all of that and that now changes the DD completely. Is it not?

MS BONGANI MATHEBULA: It would to a certain extent and I am trying to think now, because even if you introduce the PEPS... In fact, everything wrong about it is actually that.

Because even if it introduces a PEPS, at what stage would you then have a process where you then do your enhanced DD, when this kind of communications are send directly to the IC which is supposed to sit on an investment, the following day.

Because then again, you need to have ample time to look into those things. But these I still say, Mr Commissioner, was not supposed to have happened.

MS GILL MARCUS: Sorry. As you proceed, if you can just look at your annexures. There is also a note in the annexure from Dr Matjila about the interaction with Sagarmatha around the share price of R1,00 and coming to a...

Can we read that into the record as well? Because that has been come up before when Dr Survé was appearing before us, about the matter that he said he did not know anything about.

ADV ISAAC MONNAHELA: Mr Commissioner, the witness tells me that, that email does not form part of the annexures to her statement.

MS GILL MARCUS: It does. I just read it. I did not see it anywhere else. It is there.

MR EMANUEL LEDIGA: It is annexure...[intervenes]

MS BONGANI MATHEBULA: Okay. No, you are right, Commissioner.

MR EMANUEL LEDIGA: Ja, BM23, right?

MS BONGANI MATHEBULA: It is 23.

MR EMANUEL LEDIGA: 23. Last page, I think.

MS BONGANI MATHEBULA: Okay.

MR EMANUEL LEDIGA: Or second last page. No, third last page.

MS BONGANI MATHEBULA: Okay. Madam Commissioner, I believe you are talking about the email that Dr Matjila sent to the IC Committee members which says:

“Dear Lindi...[intervenes].

CHAIRPERSON: Date, date.

MS BONGANI MATHEBULA: The date is the 11th April 2018. It was sent at ten past one o'clock. Ten past one. 13:11. It reads:

“Dear Lindi. You can rest assured that we will not do...”

Okay. It was actually sent at 16:00 p.m. by Dr Matjila. It says:

“Dear Chairman. We have attempted to find a deal that bring us closer to our bullish(?) case R20,00 per share. Unfortunately, the PLS price cannot be price. However, we negotiated a deal where we will describe for 3 billion worth of share made up of 50% of the shares at R39,09 per share and the other 50% at

R1,00 per share, together with downside protection.

Best Regards, Dan...”

And of course there were responses to this email. So, I am going to read the responses as I see them. There was a response as well from Ms Hlatshwayo.

MS GILL MARCUS: I think we only need the response from the Investment Committee, if there is one. And Dr Matjila does not refer anywhere as to who he did the negotiations with to get to that price.

MS BONGANI MATHEBULA: Yes. Okay, so there was the response from Dr Claudia Manning, that says:

“Dear Dan. This price averages out at around R20,00 per share. Three times what management brought to the IC today as your base case. I am afraid I fail to see the rational for investing at a price three times higher than what your team has advised will be a good deal for our clients i.e. R7,00 per share...”

And then there was also a response from Ms Toyi that says:

“Dear Colleagues. I will like to express my concern that we are ignoring the stunning work that the teams have done and reported on the transaction. The different teams have also identified very clearly the risk posed by this transaction. The numbers and the facts presented to IC do not support going ahead with the transaction. My humble assessment is that this is tantamount to gambling with pension funds when you have no figures and facts to support economic merit

in the transaction...”

And then Dr Dan responded:

“Dear Lindi. You can rest assured that we will not do a deal that is not supported by our IC. We tried to seek comfort from IC today. It was very clear that IC was not and is still not comfortable. So, far we have not found an appropriate solution that makes the deal work. Therefore, we are not proceeding...”

Those are the...

MS GILL MARCUS: Thank you. That is fine.

MS BONGANI MATHEBULA: Okay. So, there was also... Sorry. Before, there was also a response by Ms Hlatshwayo that says:

“Dear Dr Mkhwanazi. I had serious problems with connecting into the meeting. (She was calling into the meeting) through your telephone this morning and towards the end of the meeting, I got cut off and had to redial. If the decision was that management must exercise their delegated powers and notify the IC, thereafter, could I also ask that management notifies GPF as a courtesy, like we normally do, especially in sensitive transactions like this one. So, that the GEPF Trustees do not read about this transactions in the media...”

So, those were their responses.

ADV ISAAC MONNAHELA: You may proceed at paragraph 85.

CHAIRPERSON: Would this not be a convenient time to take the lunch

adjournment?

ADV ISAAC MONNAHELA: That will be fine.

CHAIRPERSON: All right. It is suggested by my colleagues that we go onto paragraph 88.

ADV ISAAC MONNAHELA: Thank you, Commissioner.

MS BONGANI MATHEBULA: Okay.

Paragraph 88:

“The CEO also requested me to arrange a meeting between the IC and the Sagarmatha Leadership regarding the deal on the 10th April 2018. However, the IC refused to meet with Sagarmatha. This again, is not in line with the investment process.

Evidence has already been placed before this Commission of Inquiry that the CEO signed a sale of shares and claims agreement on behalf of the GEPF with Sagarmatha on the 14th December 2017 before the transaction was approved.

This, again, to my knowledge is not in line with the investment approval process and the decision taken on the 6th December 2017 by the Private Equity Priority Sector in Small and Medium Enterprises. (That is our PEPSS FIP. It is also a sub-committee of IC.) where the PIC’s exist from Independent News Media was submitted for approval.

The PEPSS FIP had made it clear in their approval that their offer exist Independent News Media SA and

Sekunjalo Independent Media, should be separated from the offer to acquire a stake in Sagarmatha.

The PIC's exist from Independent News Media should not be conditional upon the PIC's participation in the listing of Sagarmatha. (I have also attached an extract of that resolution of the PEPSS FIP.)

Communication of the resolution of the PEPSS FIP was circulated to management, as is normal practice after each meeting, including the CEO..."

CHAIRPERSON: I just want, before my colleague asks a question, I just want to make it clear in paragraph 85. There are two things there. You were requested by the CEO to arrange a meeting between the IC and Sagarmatha Leadership and then, however, IC refused to meet with Sagarmatha.

This, again, is not in line. It is easy for one to say or rather one to acquire. What is not in line? Is it the refusal or is it the request? Should you not rather amend that to say that the request by the CEO again is not...?

MS BONGANI MATHEBULA: You are correct, Commissioner. It was the request. I will correct that in the statement.

MR EMANUEL LEDIGA: Ja, just another question. I think two questions on Sagarmatha. If you recall, was this deal approved by the management? Because it seems it moved from the IC back to the delegate management process.

And so, the first question: Was this deal approved? And it only collapsed because the JSE did not want to list the company. Just

as the first question. The second one. Was the – when it was approved, did it include the INMSA as part of the transaction or not?

MS BONGANI MATHEBULA: Okay. So, this firstly was, around the 10th, 11th April and I was suspended on the 17th April. As far as I know the deal was not approved before my suspension and I understand that because there were certain compliance aspect that were not complied with the JSE. I do not know whether it was approved after my suspension, but before my suspension it was not approved, but I can check for the Commission.

CHAIRPERSON: Does it not follow that if it eventually went to the JSE, it would have been approved?

MS BONGANI MATHEBULA: I think, I am going...[intervenes]

CHAIRPERSON: If you know.

MS BONGANI MATHEBULA: I am going to base my response on the email from Dr Matjila, where he said, if the deal is not supported, they are not going to approve. So, I think based on that, I do not think they would have because in the first place, the deal fell within the delegation of management.

So, maybe it was because of the risk element to it, that the management decided to go to IC and by virtue of the fact that the IC did not support the transaction, I do not think it would have been logical for management to then approve something which is in the first place they brought to the attention of their principals and it was not supported by their principals.

MR EMANUEL LEDIGA: I think we can double check that, but if I can recall. One witness said that if it was not of the JSE this could have

gone through, but we can double check that.

Mainly because, also there were some put options that were worked out between Dr Dan and the other party, the sponsor. But, ja. It is something which we need to double check, whether if it was not of the JSE, could this R3 billion actually have been spent.

MS BONGANI MATHEBULA: Okay, Commissioner. We will double check that.

ADV ISAAC MONNAHELA: If I may. The evidence placed before this Commission by employees of the PIC is that Dr Dan Matjila signed the irrevocable subscription form relating to the Sagarmatha Transaction on the 14th December 2017. Are you aware of that?

MR EMANUEL LEDIGA: The AYO. Is it not?

ADV ISAAC MONNAHELA: Yes, it is AYO.

MR EMANUEL LEDIGA: It is not Sagarmatha.

ADV ISAAC MONNAHELA: No, no. I am asking about AYO.

MR EMANUEL LEDIGA: Oh, okay.

CHAIRPERSON: We were talking about Sagarmatha here, but you know.

ADV ISAAC MONNAHELA: No, there is a follow up question to the question that I have just asked.

CHAIRPERSON: Oh, okay. I get you.

MS BONGANI MATHEBULA: Yes, I am aware. I have heard about that in the evidence before this Commission.

ADV ISAAC MONNAHELA: So, that would mean, according to your statement at paragraph 86, that Dr Matjila also signed the Sale of Shares and Claims Agreement relating to Sagarmatha on the same

day?

MS BONGANI MATHEBULA: Correct.

ADV ISAAC MONNAHELA: Do you know if any due diligence was done before Dr Dan signed the Sale of Shares and Claims Agreement relating to Sagarmatha?

MS BONGANI MATHEBULA: I do not know if there was any due diligence that was done, prior to the signing of the Sale of Shares Agreement.

MS GILL MARCUS: I think given the question, let us just look at your paragraph 86 and ask you just to, not necessarily now, but just to reconfirm that in fact that the inquiry that the Sale of Shares and Claims Agreement on behalf of the GEPF with Sagarmatha was signed by the CEO on the 14th December, long before the transaction was approved. That is correct?

MS BONGANI MATHEBULA: That is correct.

MS GILL MARCUS: That is correct. And that is Sagarmatha we are talking about.

MS BONGANI MATHEBULA: That is Sagarmatha, Madam Chair. Yes.

MS GILL MARCUS: Thank you.

ADV ISAAC MONNAHELA: Mr Commissioner, I confirm. I have a copy of the agreement in my possession and we will place it before the Commission. It was signed on the 14th.

MS GILL MARCUS: Of December 2017.

ADV ISAAC MONNAHELA: Of December by Dr Dan. And on the 13th by the representative of Sagarmatha.

CHAIRPERSON: We will be happy if you hand up copies of that

agreement.

ADV ISAAC MONNAHELA: I will do so, Mr Commissioner.

CHAIRPERSON: Thank you.

MR EMANNUEL LEDIGA: Then the follow up question is. My second question. Those transactions were linked. So, the Independent News Media issues versus Sagarmatha. Do you know what happened to that issue? Mr Monnahela or Ms Mathebula.

There was always a link that the PIC will invest in Sagarmatha and then there will be a takeout or buy-out of the Independent News Media by Dr Survé's company.

ADV ISAAC MONNAHELA: Mr Commissioner, I do not know if I understand the question, but the agreement that we have, is not what it purports to be. It is referred to as a Sale of Shares and Claims Agreement, but there was no sale of shares. Can I just try to find whether I have it with me, Mr Commissioner.

MR EMANNUEL LEDIGA: It is fine. We can talk about it and then after the break and all that. Ja, there is no issue.

CHAIRPERSON: Yes, I think we will adjourn now for lunch until quarter past two.

MEETING ADJOURNS:

MEETING RESUMES:

CHAIRPERSON: Right, Ms Mathebula. You are still under oath.

MS BONGANI MATHEBULA: Yes, Commissioner.

BONGANI LOUISA MATHEBULA: (s.u.o.)

ADV ISAAC MONNAHELA: Yes, thank you, Mr Commissioner. I just want to make the Commission aware that we managed to get a copy of

the Sagarmatha Agreement. We have made available to the secretariat to make copies.

CHAIRPERSON: Ja.

ADV ISAAC MONNAHELA: We are on page 27 and at paragraph 88.

MR EMANNUEL LEDIGA: And just to check. The copies do confirm what Ms Mathebula. Is that what you are saying?

ADV ISAAC MONNAHELA: Yes, the copy confirms that the agreement was signed by Dr Matjila on the 14th December 2017. And I really would like to have a copy, because there are somethings that I want to point out to the Commission, regarding the agreement.

MR EMANNUEL LEDIGA: Okay, all right.

CHAIRPERSON: You mean, you have given us copies and you did not keep one?

ADV ISAAC MONNAHELA: No, we were given a soft copy of the agreement. That is why we made it available to the secretariat to make copies, but if I maybe allowed maybe to open it on email and refer to the clauses that I want to bring to the attention of the Commission.

CHAIRPERSON: I am sure you can do that. Could not Ms Mathebula carry on the meantime, whilst you...?

ADV ISAAC MONNAHELA: I have managed to open it, Mr Commissioner. I am just waiting for it.. I just want to go to the relevant clauses. I will refer to Clause 5 of that agreement.

CHAIRPERSON: No, then we were talking passed each other.

ADV ISAAC MONNAHELA: Oh.

CHAIRPERSON: We do not have a copy of the agreement yet.

ADV ISAAC MONNAHELA: Okay, then Ms...[intervenes]

CHAIRPERSON: But you can read it into the record.

ADV ISAAC MONNAHELA: Yes.

CHAIRPERSON: Whatever you want to refer to, you can read it into the record.

ADV ISAAC MONNAHELA: Yes. Clause 5.1 reads as follows:

“The purchase price is R1 533 881 920,00 allocated as follows:

- R334 million in respect of the ordinary shares;
- R474 462 266,00 in respect of the preference shares.

And then Clause 5.1.3:

- R261 784 387,00 in respect of the company claims

5.1.4:

- R466 635 207,00 in respect of the same claims.

5.2:

On the effective date, the purchase price shall be discharged by the purchaser alluding an issuing to the seller the purchaser shares credited as fully paid up at the price equal to the offer price.

So, the purchaser here was supposed to be Sagarmatha and the seller be the GEPF, represented by the PIC and it is clear from that clause that the amount – and the R1.5 billion that is referred to is the amount that was owed to the PEIC.

MR EMANUEL LEDIGA: By what? By IMSA?

ADV ISAAC MONNAHELA: Yes.

MR EMANUEL LEDIGA: The Independent Media?

ADV ISAAC MONNAHELA: Yes. And the agreement also... Yes, I am

trying to find the clause dealing with the share price because it also dealt with the share price and if I remember correctly, it stated that the share price was R39,62. Yes, that is Clause 2.4.16.

It says: Offer price means R39,62 per ordinary share of the purchaser. And the Commission will remember that was the same price at which the shares were offered to the PIC.

And the date on which Dr Matjila signed the agreement is on the last page. I think it was signed by Mr T Hove on the 13th.

MS GILL MARCUS: Dan Matjila on the 13th and for Sagarmatha, Mr Hove on the 14th. If you look at that.

ADV ISAAC MONNAHELA: Oh, ja. Actually I made a mistake. It was signed on the 13th. May I correct my earlier statement that it was signed on the same day? It was on the 13th.

MR EMANUEL LEDIGA: So, there was a transaction then? There was a transaction linking Sagarmatha and the Independent News Media SA and all that?

ADV ISAAC MONNAHELA: Yes. And there are copies of emails that I asked the secretariat to make available to the Commission. I do not know if the members of the Commission received copies of those emails? It will be clear from those emails that communication regarding the Sagarmatha Transaction began in mid-November 2017, when they were discussing the non-disclosure agreement.

And the Commission recall that according to Mr Victor Seanie, he received an instruction from Mr Madavo, if I remember correctly, about the same time regarding the AYO Transaction.

MR EMANUEL LEDIGA: Ja, I think we can read this. We can have a

look at this. Ja, I think it is fine. Thank you. We can make a move on.

CHAIRPERSON: I am trying to think what numbers can we give as annexures. Can we use as annexures to the witness's statement?

ADV ISAAC MONNAHELA: Mr Commissioner, I do not know if we can use them as annexures. But we can use... Because there is reference to that agreement at paragraph 86. We can mark it Annexure BM24A.

MR EMANUEL LEDIGA: Ja, that is fine.

ADV ISAAC MONNAHELA: Ms Mathebula, you can continue with your statement from paragraph 89.

MS BONGANI MATHEBULA: Okay.

Paragraph 89:

"Sequence of events which lead to my suspension:

My encounter with Frans Lekubo from Naledi Advisory Services:

On the 4th October 2017, the office of the CEO arranged a meeting between myself and Mr Frans Lekubo of Naledi Advisory Services.

The manner in which the meeting was arranged was strange. The meeting was arranged by the office of the CEO and so I had prepared for a meeting with the CEO and not anyone else.

Although, I was not prepared for a meeting with Mr Lekubo and the manner in which it was arranged in haste by the CEO's office, I cooperated and proceeded with the interview.

Mr Lekubo advised me that they were sub-contracted

by BCX to investigate information leaks within the PIC and would like to understand how information is handled within company secretariat. I took them through that process.

I am concerned about the testimony of Mr Lekubo who testified before this Commission, but when the former CEO found out that he was under police investigation, the investigations scope (That is Naledi's investigation scope.) was extended to provide the CEO with information relating to the police investigation.

Execution Naledi's extended scope and in terms of reference, I submit, cannot occur or could not have occurred without identifying possible state witnesses, obtaining information about the nature extent and location of the evidence they possess in an ongoing criminal investigation and or placing a potential criminal suspect in possession of information that, given his power over witnesses, enables an obstruction with justice.

I have struggled in preparation for this statement to find any binding ethical codes or regulations, concerning how forensic investigators should conduct themselves when instructed by persons implicating in wrongdoing, so as not to become instruments of cover-ups, work place bullying or intimidation.

I am able to testify that in my case, the border between a legitimate application of workplace discipline and harassment of an employee by person with something to hide has repeatedly been breached.

I am also sure the way that I have been dealt with will have a chilling effect on whistle-blowers cooperating or thinking of cooperating with authorities in the future.

On the 28th February 2018, I had a meeting with the CEO in his office at quarter to two. On the 28th February 2018, the CEO indicated to me in a meeting in his office that, he does not trust me anymore and asked me how I have been at the PIC.

I responded that it was two and a half years. He proceeded to say that the first twelve months were okay, but he noticed changes in the second twelve months.

I was taken aback by what the CEO said, as it was the first time we ever had such a discussion.

He raised...[intervenes]...”

ADV ISAAC MONNAHELA: If I may intervene. Did he mention what those changes were that he noticed?

MS BONGANI MATHEBULA: No, he did not.

Paragraph 93:

“He raised the fact that he had not yet signed my balance score card for 2017/2018 financial year. I

responded that delays in finalising my balance score card were due to the fact that Exco had decided that the Moderation Committee shall first discuss and finalise the principles applicable to all BSCs for executive heads and senior management, before any contract could be included, in order to ensure that the BSCs are aligned with the corporate BSC.

None of the executive heads BSCs were finalised at that moment. The Human Resources and Remuneration Committee of the board had also requested sight of my BSC to agree on my CPI's, before any contract could take place.

He indicated that he did not know what I was doing and who I reported to. I responded that I was doing what I had always been doing in the past two years, since I joined the PIC.

I further stated that I would have thought the CEO should have raised these concerns much earlier. On the issue of trust, I expressed my shock that the CEO was only having this discussion with me only now and I assured him that I was loyal to the PIC and that he should not have any reasons to distrust me.

The discussion took me by surprise, also because, the CEO signed my BSC and recommended a moderated score of 4.264 in the 2016/2017 financial year to the board..."

ADV ISAAC MONNAHELA: If I may stop you there. In the first sentence of that paragraph, you say: He indicated that he did not know what you were doing and who you reported to. Who had you been reporting to for the two and a half years that you had been at the PIC?

MS BONGANI MATHEBULA: I have been reporting to the CEO.

ADV ISAAC MONNAHELA: So, he said that he did not know who you were reporting to when he knew that you were reporting to him?

MS BONGANI MATHEBULA: Yes.

MS GILL MARCUS: But surely, the implication is from that statement, if it was used in those words is that, he does not know who you reporting to, making the allegation or sarcastic remark that you are reporting to somebody outside of his line of authority.

That is the way I would interpret that. If he is asking. He is not asking to whom else you are reporting to in the PIC. I am not sure how you would interpret that, Ms Mathebula?

MS BONGANI MATHEBULA: Madam Commissioner, maybe he was making a sarcastic remark, but I was genuinely surprised that he did not think that or he did not know that I was reporting to him all along, because maybe I was – it was out of ignorance from my side or there was something that I did not know at the time that was happening. Should I proceed? Ja.

“On the way forward, the CEO indicated that he would schedule a meeting with myself, himself and HR in due course to discuss the matter.

Corridor talk at that time was that I was next in line for suspension, following the suspension of several

others before me. That is Ms Vuyokazi Menye, Mr Paul Magula and Mr Simphiwe Mayisela.

It was after this meeting that I had reason to believe that the rumours were true, given the behaviour of the CEO towards myself from the beginning of 2018...”

ADV ISAAC MONNAHELA: Okay, may I intervene. There is a question that I forgot to ask you. Was there ever a time when Dr Survé visited the offices of the PIC?

MS BONGANI MATHEBULA: Yes, I recall there was a time when Dr Survé made a presentation to – which I cannot recall is whether it was the IC Committee or the FIP Committee. They were making a report or presentation on the performance of the INMSA which at the time was not performing quite well.

So, ja to try and present how they were going to intervene to ensure that it performs. I cannot recall whether it was 2016 or early 2017. I need to check my records. Ja.

ADV ISAAC MONNAHELA: Okay. What intervention was he referring to?

MS BONGANI MATHEBULA: INMSA was not performing. So, what normally happens in that instance. The IC or the FIP will then invite... Then the PMV Team will then identify the investments which are not performing.

INMSA was one of those and he was then – the management of INMSA were then required to come and present for the IC of FIP - as I have said I must confirm that – to come and present how they want to turn around their investment. Can I proceed?

ADV ISAAC MONNAHELA: Did he specifically mention what the intervention would be?

MS BONGANI MATHEBULA: I am going to have to go and verify my records, but I believe that there was made mention in that meeting of a possible introduction of an IT – I recall they said a Google of Africa of some sort, that they were going embark upon and coming to think of it now, I think that was referring to AYO or Sagarmatha.

ADV ISAAC MONNAHELA: You may proceed at paragraph 97.

MS BONGANI MATHEBULA: Okay.

Paragraph 97:

“On the 2nd March 2018, I had a meeting with the CEO and Executive Head of HR in the CEO’s office. That is Annexure BM27. That is the invite to the meeting.

I had another meeting with the CEO on the 2nd March. The CEO briefed Mr Pholwane, the Executive Head of HR, who was also present about this meeting of the 28th February 2018 with me.

The CEO indicated that the meeting was to explore alternatives. I assumed alternatives to being demoted or dismissed and requested Mr Pholwane to provide advice on available alternatives.

Mr Pholwane requested me to respond to the issues raised by the CEO. Despite my uneasiness, I told Mr Pholwane that I was surprised by what the CEO had told me, especially the fact that he said that he does not trust me without providing me without reasons

why.

The CEO stated that he did not want me to deal directly with the Board anymore. This really shocked me and I asked him whether the Board is aware of this and he responded that he will communicate same to the Board.

I was surprised how a CEO would have taken such a drastic decision on a matter which required the board without the board having any knowledge on the matter.

It ought to be noted that the PIC MOI makes it very clear in paragraph 16 that the appointment of the company secretary is a matter reserved for the board. Section 89(2) of the Companies Act also regulates the removal of the company secretary.

Mr Pholwane advised that in situations such as this there are two alternatives. Firstly, mutual separation or relocation to another position.

I indicated that I needed time to think about our discussion and we agreed to meet on Monday, 12th March 2018 when the CEO was back from his travel. I recall he was travelling that week.

I must note that at no time did Mr Pholwane, an HR practitioner, showed any curiosity about any substantive reasons the CEO might have had to

justify his behaviour towards me. Indeed, the CEO presented no reasons at all, except his subjective feelings, justifying my removal and Mr Pholwane appeared to content to enable my removal on scanty basis.

On the 5th March 2018, I had another meeting with Pholwane. Nothing resulted from the meeting with Mr Pholwane, as he did not present any concrete information, justifying my removal or make any offer to me.

During our brief discussion he made a comment that if the organization wanted to get rid of an employee they always do because they will find something to charge an employee as no one is clean.

He also indicated that he was there to support the executive directors. I felt disempowered as I came to the realisation that I could not even rely on an HR to be neutral, fair and objective when dealing with my matter.

We agreed to meet on the 7th March 2018 for a follow-up meeting but that meeting never took place.

On the 6th March 2018, that is the day after my meeting with Mr Pholwane, I had a meeting with the Head of Internal Audit, Mr Nemagovhani, who informed me that he was requested by the CEO and

Audit and Risk Committee to audit all directors emoluments.

I was surprised as the audit was not a planned audit. I was not informed why the audit was commissioned. My department has just gone through to a planned governance compliance audit, which I have annexed here at Annexure BM28. That was conducted shortly before the internal audit was requested to conduct the audit on directors emoluments. I was not sure why the sudden turn of events, but my thought turned to Mr Pholwane' s comment, that those in power were intend to find fault in what I was doing.

I informed my team about the eminent *ad hoc* audit and requested them to assist Internal Audit with their work. This despite the pressure I was under at the time. The audit was eventually conducted and finalized and it is attached as Annexure BM29.

On the 12th March 2018, I had a meeting with Dr Dan and Mr Pholwane. The purpose of the meeting on the 12th March 2018 was to provide feedback to the CEO regarding my position on the proposed to alternatives, presented by HR, that it is the mutual separation or to be placed in an alternative position.

I highlighted to the CEO that there was no feedback as I had not been provided with the details of the alternatives for my consideration by HR.

The CEO requested HR to urgently provide me with the detail of the two alternatives. So, I immediately after that meeting, at half past three, I had a meeting with Mr Pholwane in his office.

Mr Pholwane presented to me an alternative. The first alternative, he offered me a position of Senior Manager regulatory in the Legal Governance and Compliance Business Unit. This I rejected outright, as it was tantamount to demotion.

For the second alternative, Mr Pholwane advised that he will

...[intervenes]...”

MR EMANNUEL LEDIGA: Just a question there. Were this within the same payment grades, your role in the Senior Legal Advisory?

MS BONGANI MATHEBULA: Mr Commissioner, it is not in the same payment grade, but Mr Pholwane did indicate that if I accept the position, I am not going to lose my current salary which is at a general manager lever.

MR EMANNUEL LEDIGA: Okay, all right. Which is F... Which is E something. E...

MS BONGANI MATHEBULA: Ja, I think it is between E. I think upper E.

MR EMANUEL LEDIGA: The upper E for something.

MS BONGANI MATHEBULA: Yes, yes.

MR EMANUEL LEDIGA: Okay, all right.

MS BONGANI MATHEBULA: And then the second alternative.

“Mr Pholwane advised that he will do the calculation with respect to the proposed amount for mutual separation.

On the 13th March 2018, I had a meeting with Mr Magula who was the Executive Head of Risk at that time. Mr Pholwane facilitated this meeting between myself and Mr Magula, who was the Executive Head of Risk.

Mr Magula informed me that he was suspended for misconducting relating to an alleged non-performance. The charge related to submission of document to board. He requested me to be a witness on his behalf about the process of submission of documents to the board, which I agreed to do.

I eventually testified during Mr Magula’s hearing, who was subsequently dismissed. I believe that my agreeing to testifying during Mr Magula’s disciplinary hearing inquiring might have also contributed to my suspension.

I personally did not see anything wrong with me assisting a fellow colleague, especially since my participation was facilitated by HR and as my

testimony would deal with process issues and nothing more.

On the 13th March, that is in the afternoon after my meeting with Mr Magula, I met with Mr Pholwane. Mr Pholwane presented to me two proposed settlement for mutual separation.

The first proposal which is Annexure BM30 was payment of four months of my total cost to company, and the second proposal which is Annexure BM31, was payment of six months.

He advised me that this was a no fault settlement. When he said this, it drove home to me what was happening to me, without at all being at fault, I was being deprived of a job that I felt at that time I competently performed.

I told Mr Pholwane that I could not accept either offer proposed. He asked me how much will be acceptable and I indicated my plan was to stay with the PIC for five years and that five years will be acceptable...”

This, Mr Commissioner, was my way of saying I really just wanted to do my job.

“All these actions, I submit, were obvious hallmarks of attempts to cost me so much frustration that resign. The CEO’s attempts working with Mr Pholwane did not succeed.

Cancellation of my monthly meetings with the CEO:

CEO had initiated monthly meetings between myself and the CEO which were placed in my calendar. I felt that that was a good initiative as it ensured that regular updates and discussions could take place between myself and the CEO.

I noticed that towards the end 2017, these meetings were all cancelled without any prior notice. This struck me an attempt to side-line and frustrate me and I have annexed some of those cancellations as Annexure BM32...”

I am now going to talk about my suspension.

“On the 17th April 2018, I had a meeting with the CEO and the Executive Head of HR in the CEO’s office. About a month after I turned down Mr Pholwane’s offer of a no fault termination, I was presented with a letter of precautionary suspension for possible misconduct relating to recently leakages and dissemination of confidential documents, that is PIC board minutes and Management Committee minutes.

I still do not understand how the CEO and Mr Pholwane could have concluded that I was the one that was responsible for such leakages.

I read the letter, Commissioner, which is annexed as Annexure BM33 and realised that the letter stated that I was given an opportunity to make representations before a final decision to suspend me

was made, which was not the case.

I was contrary to PIC disciplinary policy, specifically paragraph 4.1.4.2 (a)(b), not afforded the opportunity to make any representations.

I highlighted that to the CEO and Mr Pholwane and requested that the letter be amended.

The letter was amended and I signed. The one that I signed is Annexure BM33. I handed my PIC laptop, cell phone and iPad to Mr Pholwane who escorted me out of the building.

Although I was logically one of several persons who could have leaked the management minutes and draft PIC board minutes which were later deleted substantially, I wish to place on record that I am not the one who did so.

I cannot help but connect my being charged with a dismissible offence to my rejecting the erstwhile CEO's and Mr Pholwane's efforts to demote me or to separate me from the PIC.

The period during my suspension:

During my suspension, there were newspaper articles with expanded allegations of impropriety within the PIC, specifically allegations that the board's minutes of Mulaudzi's payment to Ms Pretty Louw had been doctored.

There were also newspaper articles which painted me

in a negative light, suggesting that I was responsible for leaking confidential information of the PIC.

I need to state categorically that I did not leak any information of the PIC.

It was during the same period that a court application was brought by the leader of the UDM, Honourable Bantu Holomisa, making allegations of wrongdoing emanating from the James Nogu email and that of Leihlola Leihlola.

My interview with Sizwe Ntsaluba Gobodo:

On the 5th of July 2018 at 14:00, I was instructed by Mr Pholwane to meet with representatives of another forensic investigation team. This time from SNG. It was Mr Tshepo Nyatlo and Mr Nkosinathi Lothe.

The proceedings of the interview were recorded. Mr Nyatlo indicated that SNG was appointed by the PIC to investigate information that was leaked.

The investigation entailed a review of laptops. They were provided with my laptop and that of other staff members within the secretariat.

I asked them to address preliminary issues before we proceed with the interview...”

And this, basically, Mr Commissioner, because it was not the first time I was subjected to a forensic audit by the PIC.

“So, I wanted to understand whether there were possible conflict of interest by the SNG, whether any

statement I made to them will count as disclosures under the Protected Disclosure Act and the issues of privilege.

That is the status of the answers that I made to them, what would be the status to those answers.

I wanted to also understand the powers that they had, who gave them the authority and the timing of their investigations.

In my email, which is annexed as Annexure BM34 with SNG investigators, I specifically reminded them that as service providers to the PIC, they were ultimately responsible to carry out instructions that were in the interest of the PIC as a whole and to further personal interest of which ever executive might have instructed them, as audit professionals.

This is a theme the Commission may wish to explore in its recommendations, whether the PIC has been well served by service providers such as attorneys and forensic investigators whose actions have ultimately served to delay the exposure of wrongdoing at the PIC and persecute those suspected of bringing such to light.

An audit of the legal and forensic opinions given and actions taken by lawyers and investigators will reveal whether these flowed from instructions in the interest of the PIC as a whole or whether due diligence

measures would have revealed the likelihood that these instructions were illegitimate.

I submit that if we expect PR agencies and auditors to turn down instructions that appear contrary to good governance, HR best practice, the PFMA and other applicable statutes, policies and values, attorneys and forensic investigators should also not be exempt from this expectation as well.

SNG also posed written questions to me, giving me unworkably tight timeframes to respond. I actually did reply to their questions to the best of my ability at the time.

Following my meeting with SNG, I was served with notice to appear before a disciplinary hearing and this is Annexure BM35....”

I am going to talk about my cooperation with the SAPS.

ADV ISAAC MONNAHELA: [Indistinct].

MS BONGANI MATHEBULA: Okay. Annexure BM35. Apologies.

“In April 2018, just after my suspension, I received a call from SAPS investigating officer Sergeant Mpholo. I met with Sergeant Mpholo on the 25th April 2018 who requested me to assist SAPS with an investigation.

It appears that the SAPS had opened an investigation

into the content of the James Nogu email.

Notwithstanding its anonymous nature and scurrilous content, it appears that the crimes alleged therein were deemed credible enough to warrant such an investigation..

I was asked by the investigating officer to assist in his investigation, which I agreed to do. My role was limited to authenticating the two different sets of minutes which had apparently been made available to the SAPS.

I considered myself obligated to co-operate with the SAPS as an officer of the court. I did not disclose this to the PIC, as I took the view that it might jeopardise any investigations being undertaken by the police.

My cooperation with the police was in line with the fraud, corruption and neptunium policy which prevailed at the PIC at the time.

My laptop was also seized by SAPS from the PIC to perform an imaging of my laptop as part of their investigations, in particular to authenticate the two sets of the minutes.

My disciplinary inquiry:

The PIC elected to...[intervenes]

MR EMANNUEL LEDIGA: Ja, ja. Just a question here. When the police are investigating the company or people within the company, is

it right for the company to know and the people, you know, the company to know when people are cooperating with the police, such that the legal department of that company can act accordingly and all that?

Do you think it is proper to sort of to hide or not to tell the company that you are cooperating with the police?

MS BONGANI MATHEBULA: Commissioner, it depends what the police are investigating. If the police are investigating matters of personal nature which does not relate to the company, I do not think the company has a right to know.

But if the investigators relate to the PIC as a company, then maybe perhaps the legal department has the right to know in terms of processes. But as I understand it, they were not investigating official issues of the PIC.

MR EMANUEL LEDIGA: So, you reckon that they were just looking at the person? They were not looking at the problems within the company?

MS BONGANI MATHEBULA: They were definitely investigating a person.

MR EMANUEL LEDIGA: A person.

MS BONGANI MATHEBULA: Ja.

MR EMANUEL LEDIGA: Okay, all right.

MS BONGANI MATHEBULA:

My disciplinary inquiry:

The PIC elected to use outside legal counsel in my hearing and instructed their long-standing firm of

attorneys, Edward Nathan Sonnenbergs, to initiate the PIC's case.

This effectively imposed upon me the need to acquire outside legal assistance. To date, the legal fees I have incurred in my case compute to over R750 000,00 as the case ran to approximately 20 days of appearance, preparation and argument.

I was fortunate enough to be offered funding, covering half my legal cost from an NGO that assist whistle-blowers, called PPLAAF.

Before helping me, PPLAAF assisted the Nenegate whistle-blower and others, victimised for disclosure of illicit payments from Eskom and Transnet to Trillian.

Their support for me, however, was on the basis that even though I did not rely on a whistle-blowing defence in my disciplinary matter, I was being persecuted on suspicion that I was one.

I wish to sincerely express my gratitude for the assistance, strategic advise and invaluable support. I believe that the suspension and disciplinary action taken against me, as well as the associated financial and reputational cost apart from a general pattern of victimisation of employees at the PIC suspected of having a hand in brining wrongdoing at the PIC to light.

When the former CEO informed that he no longer trusted me and wanted me out, what I believe was actually being communicated to me is that I was not trusted to keep quiet about irregular occurrences at the PIC, such as what I have outlined above.

While I am grateful that the board so fit to bring an end to the fast of my disciplinary hearing, is guilty verdict and sanction of dismissal passed upon me, I would urge the Commission to consider recommending that I be recompensated for my proven financial losses.

The PIC had vast financial resources to throw at victimising me and although I am back at work, I am deep in debt. I wish to make brief submissions on the conduct of my hearing.

The point is to show how disciplinary action coupled with suspension was used at the PIC as a tool of victimisation against person suspected of being whistle-blowers.

I would hope that the Commission would consider recommendations to ensure that future legal advise obtained by the PIC on disciplinary matters is obtained from person and firms untainted by the going-ons here at the PIC the last few years.

If my experience is anything to go by, disciplinary action was undertaking on scant evidence without

proper procedure to either demoralising employees into taking a financial settlement, to leave or else to ruin them in their prospective employment opportunities.

This cannot just and equitable and the present players in the legal and HR spaces at the PIC have proven, in my view, unequal to the task of placing the interest of the PIC as a whole above those of the executives, implicating in the wrongdoing.

I do acknowledge that an employer's right to discipline in instances where there is a *prima facie* case of misconduct. However, individuals in high positions can abuse that power, as was the situation in my case and numerous others who presented before this Commission.

In terms of the notice to attend a disciplinary inquiry, dated the 14th August 2018, that is Annexure BM35, I was charged with allegation one.

It is alleged that you breached your duty of...[intervenes]..."

MS GILL MARCUS: Sorry. That would need to BM36, I would think.

MS BONGANI MATHEBULA: 36. Ja.

"It is alleged that you breached your duty of good faith and confidentiality as an employee and in your position as company secretary of the PIC, in that you

caused the distribution and or copying of confidential PIC information.

My legal representatives requested to be furnished with full particulars of the charge, as it appeared to be extremely vague, in that no details of the charge was set out in the notice.

I was forced to enter blindly into the first day of the inquiry, after the chairman of the disciplinary hearing refused to grant us a postponement to allow us to prepare thoroughly.

I would even go as far as to say that it felt like an ambush throughout the proceedings, as it turned out, there were multiple charges encompassed within the single charged reflected on the notice, as I will set out hereunder.

As a result of the charge being wholly devoid of any particularity and totally ambiguous and in the light of the PIC's refusal to provide or answer a request for further particulars before the commencement of the proceedings, it was agreed after I was coerced that the initiator in its opening address will provide the particularity.

From his opening address, it then appeared that I was charged with, first, the downloading of a PST folder into an external hard drive, providing Mr

Simphiwe Mayisela with special board minutes of the PIC.

That I exploited my position as company secretary to obtain extremely sensitive information, belonging to the PIC and place this information on insecure platforms.

The charge was then formulated in a letter dated 18th September 2018, after the first stage of the hearing set out by the PIC's legal representative. This will then be Annexure MB37, I believe.

So, the letter read: The charge relates, amongst other things, to the following:

1. The leaking of confidential minutes of board meetings to Mr Simphiwe Mayisela.
2. The distribution and dissemination of confidential information, belonging to our client.
3. Exposing our client to risk and undermining the safety and security of our client's confidential information.
4. Placing our client's confidential information on unsecure platforms; and
5. The copying of backup PST.\

Despite the wide ambit of the charges against me, I was blamed in essence for two things, both of which I denied. The first is that without lawful excuse or authorisation I disseminated the original draft

minutes of the board deliberation on the conduct of the former CEO when he prevailed upon Mr Mulaudzi to donate R300 000,00 to a third party.

In the original minutes, as stated above, the board was critical of the CEO's intervention, although he did not formally censure him. The final minutes exercised all these criticism.

The second charge flow from the fact that a laptop computer I was assigned had in it PST files that to my understanding, which was later explained to me, were emails, copied onto an external hard drive, which hard drive was later also accessed by Mr Simphiwe Mayisela.

I had indicated from the onset during the hearing that I did not know to transfer a PST folder, since I have never done so in my life.

From the onset of the hearing, Mr Pholwane acknowledged that many other people had access to both the original draft and final minutes.

I was advised by my lawyers that any decision to prosecute must be made with *prima facie* evidence of wrongdoing, not mere speculation.

The sum total of the facts led in evidence against me was that I had access to both version of the minutes. Clearly I should not have been charged simply on the basis of the emergence of both sets of minutes,

because numerous other people also had such access and could have leaked the minutes.

The vexatious nature of the charge is also so reflected in the incomplete SNG forensic report. NO other evidence linking to the leak of the original draft minutes were presented.

The SNG report, Annexure BM38, stated in the conclusion that due to the limited nature of the additional forensic investigation conducted, we cannot conclude whether any of the fourteen individuals whose computers were reviewed, leaked the information in question or not.

PIC should consider additional and more comprehensive investigation as stated in the recommendation.

That those running my hearing persisted with the second allegation against me, is every more worrying. This is the allegation that I allowed copying of PST files from my computer which months later ended up on a hard drive, used by Mr Mayisela.

After running the hearing for several days and the PIC closing its case, it took me to appoint my own IT forensic investigation firm, Cyanre, the Digital Forensic Lab. It is also annexed as Annexure BM39 and calling as witnesses the PIC's only IT personnel to discover the elementary fact that the laptop on

which the PIC forensic investigators found PST file transfer on the 1st September 2017, had only been issued to me on the 24th October 2017. The IT report confirming this aspect is also attached as Annexure BM40.

At all material times, during which the supposed suspect transaction of PST file was made, the laptop was in possession of IT.

Any competent and good faith investigation conducted by this passionate forensic investigators would have discovered this fact.

Ethical legal practice would have compelled that this fact should be known to me. It was withheld from my legal team and I had to pay my own forensic experts in tens of thousands of rands to discover the obvious. This is at the risk of repetition that I could not have made the PST file transfer to the suspected digital device as the laptop was not mine or under my control at the time the transfer was made.

It should be noted that the content of the PST file that was supposedly transferred from the laptop to the suspected hard drive were never disclosed to me. Again, confirming that the charge which proffered against me was purely speculative. No allegation and or prove was put that the content of the PST files were my emails.

In addition to confirming the PST file transfer, the IT Forensic Report conducted by Cyanre also confirmed that they could not establish the user who copied the backup PST file on the 1st September 2017, before the laptop came into my possession over a month later.

In his statement to this Commission of Inquiry, Mr Pholwane stated that:

Background:

- A. The genesis of the disciplinary hearing conducted in the PIC, emanated from a report that implicated several employees in senior management in acts of misconduct, predicated by a forensic Audit Commission by the PIC.
- B. A Forensic Audit Commission by the PIC which established the company secretariat currently on suspension and undergoing a disciplinary hearing had in her laptop after it was imaged, indicating a use of a removable device that contained information and backup files of the emails as per the SNG report. The same device was used and accessed by senior manager in the IT Department. This may indicate the two employees may have exchanged information for purposes unknown to the PIC.

The evidence of Mr Pholwane is devoid of the truth in that firstly, he withheld crucial information to this Commission, that the PIC only issued me with a laptop in question on the 24th October 2017.

I was never in possession of the said laptop in the period of September 2017.

In suffice during my disciplinary hearing that the said laptop was purchased by the PIC on the 24th August 2017 and was stored by the IT Department until it was handed to me in October 2017.

I have no knowledge of whatever email backup operations that were performed on that computer before it was given to me.

Mr Pholwane also did not disclose to this Commission of Inquiry the very crucial fact that the forensic report the PIC commissioned and relied upon to attempt to drive me out of the organisation did not find that I committed any misconduct and it was incomplete...”

CHAIRPERSON: Is there some documentation that indicates you signed for acceptance of the computer of on such and such a date?

MS BONGANI MATHEBULA: Yes. So, if Commissioner... I just need to... There could be but the IT report which I referred to in Annexure BM39, shows Commissioner that the first time I logged onto that laptop, and this report was performed by PIC internal IT personnel that

I locked onto my new laptop on the 18th October 2017. So, this was performed by PIC IT personnel.

ADV ISAAC MONNAHELA: Mr Commissioner, that will be at page 3C of that annexure.

MS BONGANI MATHEBULA: So, Commissioner, the very same aspect was also confirmed by my own forensic IT company that I had to appoint to confirm the very facts.

ADV ISAAC MONNAHELA: The original annexure number is BM39.

CHAIRPERSON: Which will now be 40, but it is 39 on the documents.

ADV ISAAC MONNAHELA: Yes, Mr Commissioner.

CHAIRPERSON: At what page do we find that?

ADV ISAAC MONNAHELA: That will be page 4 of the annexure, paragraph 3C.

MS GILL MARCUS: We will just need to sort out these annexures afterwards, okay?

ADV ISAAC MONNAHELA: I will do so. Mr Commissioner, may I just request to make my own page available to the Commission?

CHAIRPERSON: Certainly.

ADV ISAAC MONNAHELA: It is 3C.

CHAIRPERSON: C reads: Martin Theunissen and Phelo Matolo logged onto the laptop named PTAL Mathebula to establish... I supposed that is established. The first Bongani Mathebula logged onto the computer and the date is 18 October 2017.

ADV ISAAC MONNAHELA: That is correct, Mr Commissioner.

CHAIRPERSON: That is the document you are referring to?

ADV ISAAC MONNAHELA: Yes. Her evidence is that she did not access – she did not use the computer in September 2017 because it had not yet been given to her.

CHAIRPERSON: Now can we take this or do we make copies of this and give it back to you?

ADV ISAAC MONNAHELA: You can take it, Mr Commissioner.

CHAIRPERSON: Thank you. You may proceed.

MS BONGANI MATHEBULA: Okay.

Paragraph 153:

“Mr Pholwane also did not disclose that the two forensic investigations conducted by the PIC did not investigate the content of the backup PST.

If this was done, it was withheld from my lawyers. This crucial aspect was raised by my lawyers during my hearing but never was considered by the appointed chairperson of the hearing.

My lawyers informed me that the case has caused the PIC about R3 million, yet here I sit still an employee of the PIC, after this wasteful and disruptive exercise.

I am advised by my lawyers that the selected chairperson ignored vital evidence that clearly exonerated me and yet at the same time drew conclusions based on speculation.

At one stage during the course of the hearing my counsel had to remind the chairperson of the hearing

that the PIC was legally represented when he appeared to interfere on behalf of the PIC.

The chairperson denied me an opportunity to thoroughly prepare for my hearing, when it became clear upon advise from my lawyers that the charge levelled against me by the PIC lacks particularity...”

I need to emphasise this Commissioner, because if I was given the opportunity of full particularity during the opening, I believe that I would have taken the decision much earlier to appoint forensic IT personnel, but we had to go through the hearing without the fully disclosed particularity and it was towards the end when we then realised what the actual charge was.

That I had to know take it upon myself to say I also needed to appoint my own IT forensic investigators because there were so many crucial issues that I believe were withheld from us during the hearing.

Hence, we had to now establish the various aspect of my laptop – of the new laptop haven been given to me in October which the PIC withheld from us from the onset.

“I am also advised of the case law on how the conduct of a supposedly independent disciplinary chairperson can constitute biased is to be found in the case called Surgical Innovation (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others...”

I am not going to give the full citation. The full citation is there in the statement.

“In this case the legal court made the following adverse factual findings against a chairperson of a disciplinary hearing for conduct in a hearing that closely resembled what I experienced in my own hearing:

“A study of the record of the disciplinary proceedings gave a strong indication that Hutchinson had in some or other manner been pre-briefed in this matter and his manner of participation in the proceedings gave an uncomfortable sense of undue involvement. The refusal of the postponement request to just enable the third respondent to properly prepare in my view certainly added to this perception. The manner in which Hutchinson chose to intervene in and steer the disciplinary proceedings equally added to this perception of pre-determination”

CHAIRPERSON: Can you just read the first sentence again, please?

MS BONGANI MATHEBULA: The first sentence.

CHAIRPERSON: Of that quotation.

MS BONGANI MATHEBULA: Okay. It says:

“A study of the record of the disciplinary proceedings gave a strong indication that Hutchinson had in some or other manner been pre-briefed in this matter and his manner of participation in the proceedings gave an uncomfortable sense of undue involvement.

CHAIRPERSON: Just that quotation is not set out fully here.

MS BONGANI MATHEBULA: Oh, okay.

CHAIRPERSON: The first sentence in the statement that we have is a study of... I supposed it might have been in her later statement.

ADV ISAAC MONNAHELA: Mr Commissioner, may I just point out something? She indicated in the morning that she had added something to the quotation. That would mean that the updated statement was not made available to the Commission.

CHAIRPERSON: Well, to be fair. I must say it was brought to us in the room that we occupy, but since we had read this statement we did not hand it – it was given to us this morning. So, we did not go through to that later statement.

ADV ISAAC MONNAHELA: Okay.

CHAIRPERSON: But you say that it has been corrected. It now correcting the last version.

ADV ISAAC MONNAHELA: Yes.

CHAIRPERSON: Okay, thank you.

MS BONGANI MATHEBULA: Mr Commissioner, incidentally the chairperson so coitized by the labour court in the case that I have outlined above the chairperson who rendered the PIC's own matter against me is the same person.

“Throughout my hearing, we tried, in vain, to ascertain...[intervenes]

CHAIRPERSON: Sorry, sorry. Are you saying the chairperson who is being coitized or has been coitized in this case, is the same chairperson who chaired your disciplinary hearing?

MS BONGANI MATHEBULA: Chairing my disciplinary hearing. Yes,

Commissioner.

“Throughout my hearing, we tried, in vain, to ascertain who instructed the PIC's attorneys to continue my hearing. They refused to provide their letter of authorisation.

In the context of CEO and the board en masse resignations, it may well have been that the person driving my disciplinary action is actually now implicated in serious misconduct of their own.

I believe the attorneys for the PIC should be given the opportunity to explain from whom exactly they took their instructions during the hearing in the context of an inquorate board and an executive in disarray.

Surely, the responsible thing would have been to allow the work of the Commission to complete before proceeding with my disciplinary matter.

I note especially that, on the executive side, the people who were in charge of my disciplinary enquiry after the resignation of the former CEO, Dr Matjila, have also been implicated in the allegations, contained in the anonymous whistle-blower emails, that is the executive head of HR, reports to the CFO, who is also implicated in those emails.

I note that the former acting CEO, CFO has recently also been suspended allegedly for thwarting the work of this Commission of Inquiry.

I also wish to flag, in general terms, the danger posed to the standing of the legal profession when it becomes associated with enabling the capture of state institutions.

I would urge an audit be conducted by the Commission of legal instructions given to law firms by the PIC, so that a view may be expressed on whether the PIC as a whole has been well-served by those earning millions in legal fees.

I am fairly confident that an objective evaluation of the conduct of my own hearing would determine that it was run not to discover the truth of the allegations but to rush a predetermined outcome.

Going further, perhaps the time has come, as it is in the auditing profession, to require a rotation of law firms so that personal relationships between longstanding attorneys and executives who are under fire does not cloud the advice the former provides to keep the latter in place.

This will also create an atmosphere for legal firms deprived of access to big corporates to have such access....”

MR EMANUEL LEDIGA: Just a quick question from my side. We had supplied chain management people here. I think one witness. And they said that they do change companies. They do not stay with one company for a long, long time. Are you saying this is not the case?

MS BONGANI MATHEBULA: Commissioner, I am speaking from my experience and my observation of how one legal firm has constantly been used by the PIC in all the matters and that law firm is ENS.

ENS were used for all the disciplinary hearings and if you go back, the legal opinions that were given, it was also ENS. So, I am speaking on that basis.

MR EMANNUEL LEDIGA: Yes, okay. Sort of within just the Human Resources matters.

MS BONGANI MATHEBULA: Precisely.

“The verdict by the chairman of my hearing:

The verdict of guilt was handed down on 13 March 2019. (It will now become Annexure BM41 but is now in the documents as Annexure BM40.)

I will not repeat what I have already said about the uncontested evidence showing that I was not in possession of my laptop at the time the hard drive was mounted to it. IT had control over the laptop.

The sanction by the Chairman of my hearing:

The inevitable sanction of a summary dismissal recommendation was issued on 20 March 2019. (It will be Annexure BM42)..

On the 26th of March 2019 I received a phone call from Mr Pholwane indicating that he is about to email me a letter (Annexure BM43).

I received the letter which indicated that I was to report for duty on 27 March 2019. It appeared as per the letter that the board decided not to uphold the sanction of the chairman of the hearing.

I was instead given a final written warning for the acts of misconduct for which I was found guilty by the chairperson. I am profoundly grateful that my disciplinary ordeal has been brought to an end by the board.

Having said that, and with respect, I regard the imposition of the final written warning as unwarranted in the law and facts. I am considering my legal options on the outcome of the disciplinary hearing and the consequent final written warning...”

And this I am doing for the sake of my reputation as a professional person.

ADV ISAAC MONNAHELA: If I may intervene. Were you given any reason why instead of being dismissed, you were given a final written warning?

MS BONGANI MATHEBULA: I was not given any reasons. The letter is there. There were no reasons given. I also do not know what the board could have explored to arrive to that decision.

ADV ISAAC MONNAHELA: You may proceed on paragraph 68.

CHAIRPERSON: Sorry. Are you saying – did you say anything about a letter?

MS BONGANI MATHEBULA: Yes, Commissioner.

CHAIRPERSON: Which letter?

MS BONGANI MATHEBULA: The letter that no reinstated me. Also indicating that the board decided not to uphold the recommendation of the chairman, but instead they are issuing me with a final written warning.

CHAIRPERSON: Ja, well it does not mean that they did not uphold the finding of guilt. It is just that the sanction was changed. Is it not?

MS BONGANI MATHEBULA: The sanction was changed, yes.

CHAIRPERSON: Yes. Okay. I suppose the minutes of the board...[intervenes]

MS BONGANI MATHEBULA: Will assist...[intervenes]

CHAIRPERSON: Could assist.

MS BONGANI MATHEBULA: May I proceed?

ADV ISAAC MONNAHELA: Yes.

MS BONGANI MATHEBULA: Okay.

“The past year has been difficult for me and my family. I have been hospitalised for stress. I have also lost investments to pay forced legal and IT forensic fees. My savings are depleted and I am indebted to various creditors. My reputation has been impugned even with the final written warning. In spite of this, I remain committed to serving the PIC as company secretary and am hopeful that the Commission and other good faith role-players can set things right for the organisation. I wish to reaffirm my complete devotion to the PIC and its stakeholders.

MR EMANUEL LEDIGA: All right before we forward, two questions.

Given that the board got your back into the company, would the company pay back some of the fees that you spent on your legal fight?

Do you think so?

MS BONGANI MATHEBULA: The company, as I understand it, the disciplinary codes states that if one is to use legal representation, they use that at their own cost. My plea to the Commission is that, first of all, my whole disciplinary hearing was unwarranted.

It was solely and I have demonstrated in my statement that it was based on unfounded allegations against myself. Hence, I am imploring upon the Commission of Inquiry to consider that aspect.

MR EMANUEL LEDIGA: Second question. It seems like you are away from the PIC for about a year or so, around there. Like how different is it now? I mean, you know, when you left there was a lot of issues and since then there is a Commission of Inquiry, people have come, some have come back. How is the – how are you feeling about the PIC? How is the environment currently from the time you left up until now? Just broadly. Just simple and briefly, you know. If you can.

CHAIRPERSON: Which of course, will be your view.

MR EMANUEL LEDIGA: Yes.

CHAIRPERSON: Because others may think otherwise.

MS BONGANI MATHEBULA: Of course, it is my view, Commissioner. Yes. Again, my view. The prior – there was a street(?) of fear at the PIC, you know, but after I came back now and I do not know whether it is because of the Commission of Inquiry, I feel that employees are much freer to speak their minds as well and I think even with the

current leadership, the current CEO, I believe, he is really trying his best to ensure that there is also full participation.

And one of the things – I am going to give you an example now. One of the things I have observed is, prior my suspension before we could amend the terms of reference of for instance the PMC and Exco, they were clauses in those terms of reference that said that no meeting with have a quarrion in the absence of the CEO and the CFO.

If both of them are not in the meeting, there was never a quarrion. Even if the whole Exco is there. We then changed those things. So, what is happening currently right now is that, because the PIC is quite a busy entity, it takes decisions on a daily basis.

So, the current CEO has created a mechanism where you could have an Exco meeting or you could have a board meeting, at the same time you could have a PMC meeting, where the one of the executives could be chare that meeting.

So, I believe that there is in a way trying to decentralise the power, you know, of one particular individual. So, that is my observation from a process and investment process point of view.

MR EMANNUEL LEDIGA: You can proceed.

MS BONGANI MATHEBULA: Okay. I am going to talk about the prevailing MOI.

“Evidence had been presented before this Commission about non-compliance with the provisions of the MOI, as it relates to the executive structure at the PIC, which I fully agree with and implore the Commission to ensure that this is

addressed. There is a real extreme urgency to address the concentration of power which is vested in the CEO and the CFO in the current executive structure.

It is undesirable to have investment, operations, financial, executive and assurance functions to be all centred around two Executives.

I must state that attempts were made to amend the MOI in March 2017. The proposed amendments were initiated through a letter from Minister Gordhan dated 24 March 2017. (It is now Annexure BM44. It will be Annexure BM45.)

On 29 March 2017 (Annexure BM45 which will change to BM46) the board met to discuss the letter of the minister.

Subsequent to the meeting of the 29 March 2017, a resolution was crafted to the minister to implement the resolution of the board and specifically the directive of the Minister. (Now the resolution is Annexure BM47).

The revised MOI was filed with CIPC on 30 March 2017 and endorsed on 19 April 2017. (In Annexure BM48 we will talk about that)..”

And then we also then received later on... I need to indicate Commissioner that at the time Minister Gordhan wrote the letter to the PIC, just after that, when there were changes at National Treasury and

then we receive the letter dated from Minister Gigaba on the 19th April. The letter... I just want to read it for the record.

The letter from Mr Gigaba was regarding the amendments to the MOI of the PIC. It is dated 19th April 2017 and it says:

“I have been advised that the CIPC has approved their amendments on the MOI as per the board resolutions of 30th March, resulting in the PIC having a new MOI. Kindly ensure that this MOI is not affected and urgently refilled the old MOI with the CIPC for approval, which will remain in existence until I have well-acquainted myself with the PIC and be in a position to make an informed decision any amendments to the old MOI...”

I must say Commissioner that some of the amendments related to the structural issues, the fact that it now, it was taking away the position of CIO, COO and CRO and hence I was saying, there were attempts during my time to change those as well.

But then based on the instruction from Minister Gigaba who had to now refilled the old MOI. So, we are now back with the old MOI which now, in terms of structure, also requires the PIC to have a CIO, COO and CRO.

“It should be noted that prior to those abovementioned processes there was a legal that was sought on these aspects...”

MR EMANUEL LEDIGA: Can I just ask something, but I am not sure whether you might have an answer, but do you know that the CIO

position across the board is no longer a big position, generally, globally?

MS BONGANI MATHEBULA: It is no longer...?

MR EMANNUEL LEDIGA: The CIO position is no longer as big as it was like the ten years ago and all that. Do you know that?

MS BONGANI MATHEBULA: No, I do not know that.

MR EMANNUEL LEDIGA: I am just saying global asset managers and locally here, that position is no longer as big as it was. You do you not know that?

MS BONGANI MATHEBULA: I do not know that, Mr Commissioner.

MR EMANNUEL LEDIGA: Okay, all right.

MS BONGANI MATHEBULA: My basis is only based on the PIC and the fact that the PIC is an asset manager. I do not know the global trends in that.

“Employee instability:

I set out hereunder how the company experienced functional instability, causing instability among staff members and will use my own experience as an example:

The resignation of Ms Petro Dekker:

After the resignation of Ms Dekker in 2016, the former Executive Head of Corporate Services, the functions of the Corporate Plan and Records Management were added to my department without additional Human Resources accompanying the function.

During an Exco meeting of 2017, the function to do the Corporate Plan was removed from the company secretariat to the executive assistant in the office of the CE.

It is common practice for functions to be moved from one department to another without following a sound transitional procedure. This was in my view exacerbated by the lack of a proper succession plan at the time.

The Board decided during the strategy session held in October 2017 that the function of records management cannot be performed by the Office of the Company Secretariat to ensure that the company secretary devotes attention to the functioning of the board and not perform management function.

Appointment of PIC representatives to investee companies:

The PIC makes recommendations to nominate and/or appoint non-executive directors to investee companies in certain investments.

This function was performed by the Company Secretariat team until the former CEO through an Exco resolution took a decision to remove the function from company secretariat and moved it to a position which he had included in the organizational

structure of Executive Head of Investment Management.

I personally was not averse to such an Exco decision however this was done without proper governance processes and lack of communication with relevant stakeholders especially investee companies themselves and the board. Some investee companies continued to communicate with Company Secretariat Department, despite my request that investee companies be informed of the changes.

The appointment of PIC non-executive directors into the boards of investee companies may have oversight merits. However, this practice poses potential or perceived conflict of interest which needs to be reassessed. The conflict of interest which applies is not only conflict in terms of the Companies Act but also conflict in terms of the FAIS Act.

The interest of the investee company and the client has to be balanced but certainly aligned as well. The concept of checks and balances has to apply.

One remedy to cure this would be to appoint a mixture of internal and external candidates.

CHAIRPERSON: Sorry, sorry. When you arrived at the PIC what system was used with the appointment of representatives on investee companies? Was it the CEO who decided on it or was it in someone else?

MS BONGANI MATHEBULA: Oh, you mean the process. Okay, so in terms of the process, Mr Commissioner. The employment of internal employees was a matter that was delegated to the CEO. However, the appointment of external candidate or PIC non-executive directors was a matter which was delegated to the Directors Affairs Committee of the board.

So, but however, if there were agents appointment that require the CEO to sign off, those will be made by the CEO and then we will then go to the DA for certification, because sometimes, there could be agent in appointing board members.

We also had in place a directors database which we kept at my office of CV's of potential candidates that we could identify to be appointed to those investee companies, comprising of external candidates.

We also, we are doing it in line with the governance policy at the time which I am going touch on it briefly, on some of the aspect that it sought to address.

CHAIRPERSON: Why are you suggesting that it is better for it to be done by the secretariat?

MS BONGANI MATHEBULA: I am not saying it is better to be done by the secretariat, Commissioner.

CHAIRPERSON: What is your view? What did you say about the secretariat?

MS BONGANI MATHEBULA: Sorry?

CHAIRPERSON: What did you say about the secretariat?

MS BONGANI MATHEBULA: I am saying, Commissioner if you look at paragraph 182, I am saying that this function was performed by the Company Secretariat Team until the former CEO and Exco resolution took a decision to remove the function from the company secretariat and moved it to a position which he had included in the organisational structure of the executive head of investment management.

I personally was not averse to such an Exco decision, because it is a management function.

CHAIRPERSON: So, when you arrived there, it was already done?

MS BONGANI MATHEBULA: When I arrived, it was something that was performed by my division, but then it was later moved to another division which is okay. I mean, it is a management function if you think about it.

CHAIRPERSON: You do not want to see it come back to your division. I am saying that because you said it is a management function anyway or should be.

MS BONGANI MATHEBULA: Well, it is a management function if you think about it because - although it is a function that has a lot of governance aspects to it, it is about appointment of both the investee companies. Where was I?

ADV ISAAC MONNAHELA: Paragraph 185.

Paragraph 185:

“Some of the initiatives that I presented to the DAC (And my presentation is there in Annexure BM51 which will be BM52) which I hope may assist this Commission of Inquiry, were the following:

The integration of provisions of rotation of nominee directors, that is the tenure shall not exceed three years and be subject to annual review...”

I am going to try to expand a little bit on this, Commissioner because at the time, there were also concerns that the tenure of some of the directors of non-executive directors that we have sent to those investee companies, seemed to have been quite long.

So, they were not being rotated. So, we are trying to introduce that aspect of rotation as well, which also, you know, I think it also assist in terms of independence.

Because sometimes when a director has been sitting in the board of a company for quite some time, their independence tends to questioned. So, that was an aspect that were introduced.

“We have also introducing a qualitative measure of effectiveness of the board and individual nominee directors to achieve a desired outcome and we wanted a 360 degree independent annual assessments to be done....”

So, at the time when I came to the PIC, those were not done and I felt that if that – those could be done, it would give the PIC a picture of whether those – the people that were sent to those boards were adding value in terms of what they were doing in those investee, and for us to assess that, will be based on those assessments, that the investee companies with the PIC.

“We also wanted the removal of reference to a transitional period...”

At the time of my appointment, the prevailing policy still was having a transitional period and this transitional period was on the issue of appointing a director to investee company in South Africa.

So, one of the things to try and to avoid competition law and anti-competitive behaviour, the recommendation was that we cannot appoint directors to investee company in listed entities, where the primary listing is in South Africa.

So, when they were trying to do away with that, there was a transitional period and I felt that the transitional period at the time before me was a year and I felt that I am in 2017. I am still sitting with that transitional period.

I felt that we needed to do away with that transitional period and you know, try and implement that, because there was a real risk of having to have to deal with competition issues.

If, for instance, a director is sitting in a listed entity in South Africa where the competition commissioner may raise issues of competition laws, for instance, or insider trading.

“We were also talking about the issue of inclusion of sampled Disclosure and Representation Permission Agreement as an annexure to the policy...”

So, one of the things again was the issue of the – how do you deal with information when you are appointed to an investee company where at the same time you are an employee of the PIC. How do you deal

with information that you get in your capacity as a director or as a non-executive director in an investee company.

And we wanted to introduce a mechanism where the investee company and the PIC could then enter into that disclosure and representation permission agreement, so that when specific issues of information are to be disclosed, there is an agreement to that effect.

So that those directors are not found wanting to have disclosed to the PIC information which they were not supposed to have disclosed.

“The removal of exceptions with respect to the prohibition of non-executive directors and employees from serving on boards of investee companies listed in South Africa...”

I have already talked about this.

“The inclusion of criteria with respect to categories of employees who can serve on boards of investee companies based different factors that would have been the value of the investment and the strategic nature of the investment...”

Because one of the things there was, for instance, if you have a big investment in – I am just going to give an example of an investment that is coming to mind now.

In Kenya, for instance, where you have invested in Cayan. What – do you send a senior executive or do you send and a junior executive?

So, those were some of the things that we wanted to do and you want to test the experience of that particular person that you are sending to that particular company, given the funding that would have provided the strategic nature of that particular investment for the PIC.

So, those were some of the things and hopefully it will assist this Commission to come to a conclusion and then I am going to talk about the delegation of authority review process.

“During 2017, there was a process to review the Delegation of Authority and company secretariat was responsible to ensure facilitation with all business units and to ensure that it is implemented. T

here was a need to review the DOAs as the last time that was done was 2015.

Engagements were held with all relevant business units and subsequent to that all inputs from the business units and proposed changes to the Corporate DOA and the investments DOAs were incorporated in the proposed DOAs.

The proposed DOAs were submitted to respective PMCs and Exco. Exco made a recommendation to submit to board for approval via a Round Robin Resolution...”

The reason why it was done via a Round Robin, I believe it was submitted to Exco on two different occasions and there was the sense of feeling that there was delay in doing that. Hence, Exco had to ultimately sign off a Round Robin Resolution.

“So, during the SEISS FIP meeting of 23 August 2017, the proposed DOA for unlisted investments was submitted for recommendation to the board for approval. The committee did not approve the proposed DOA, as management was requested do a write-up on the proposed changes and to provide reasons for the changes, which management undertook to do..

After the SEISS meeting, the CEO called me to his office and was very upset. He asked me who gave me permission to submit the proposed DOA.

This gave an impression that I on my own initiative decided to submit the document. I was taken aback by this query since Exco had made recommendations to submit the revised DOAs to the board for approval which the CEO himself signed off.

After our brief meeting I then wrote an email to him to clarify and also indicate my concerns in terms of the process. (I have annexed that email.)...”

I am going to talk about the incentives.

“The approval and annual salary adjustments for Tier 1 and Tier 2 to management of the PIC for the financial year ending 31 March 2017. (Annexure BM53)

The minister wrote to the chairman of the board on 6th November 2017, raising issues regarding the

process followed to obtain approval for the incentives of Tier 1 and Tier 2 and highlighted amongst others the following...”

And I am going to quote from his letter. He said:

"The submission requested salary adjustment of average of 33% increase with effect from 1 April 2017, but records shows that in 2015/2016 financial year. PIC's executive directors and executive heads received salary adjustment of between 30% and 32% and will receive 7% increment in 2016/2017 and 0% increase in 2017/2018 and the submission did not have relevant signature from the board chairman and the chairperson of the Human Resources and Remuneration Committee.

The submission only has the CEO's signature, who also signed on behalf of the CFO. "

The minister then highlighted the communication protocol, which is followed by all other entities under his portfolio, when making submissions for his consideration, wherein submissions are submitted by the board chairperson through the Company Secretariat office to the minister....”

And then, I have also attached that the correspondence minister.

I will like to implore to this Commission when making recommendation to make a determination on a

centralized communication office between the shareholder and the PIC....”

I do also believe, Commissioner that this one area which also cause a a lot of confussion at the PIC where certain divisions will be communicating directly to the National Treasury, you know.

I think there should be a central mechanism to communicate between the National Treasury and the PIC.

MR EMANNUEL LEDIGA: Just a question on paragraph 189. The salary increases of 33%. Were this part of the restructuring programme in 2015? Did they arise because of that?

MS BONGANI MATHEBULA: Unfortunately, Commissioner. I was not there when the restructuring happened. I believe so, from the communication from the minister. Ja.

MR EMANNUEL LEDIGA: Yes, it would be...[intervenues]

MS BONGANI MATHEBULA: Because it referred to 2015/2016 financial year.

MR EMANNUEL LEDIGA: So, it is quite likely that because of the changes of the structure, people then got more money and with different bends. Ja?

MS BONGANI MATHEBULA: Yes.

MR EMANNUEL LEDIGA: Okay, all right.

MS BONGANI MATHEBULA: Should I proceed?

ADV ISAAC MONNAHELA: Yes.

MS BONGANI MATHEBULA:

“The whistle-blowing and recommendations to this Commission of Inquiry:

If the Commission is so minded, I would urge it to make recommendations concerning the creation of a truly independent whistle-blowing policy and procedure at the PIC. It was not ideal that the tensions which built up the conduct of the previous CEO and some board members found expression in the scurrilous allegations of James Nogu.

But with channels for authorized whistle-blowing blocked by a culture of victimization, the abuse of forensic investigations and legal processes.

These symptoms are bound to emerge again. It is naïve to assume that the political and other forces that sought to capture PIC decision making will simply desist in future.

In that context, it needs to be made as easy, safe and non-stigmatising as possible for persons with knowledge of wrongdoing even at a senior level to bring this to the attention of the board, the shareholder, the executive or a truly independent ombud.

Currently, the PIC whistle-blowing policy is inadequate and leaves a lot to be desired when it comes to disclosures about senior executives without such a whistle-blower exposing themselves to the

harrowing experiences I have undergone. The culture of reporting on ethical breaches is not embedded. The leakages of information is a classic example where employees are not free to report unethical conduct.

Hence the culture of complying without questioning the leadership for fear of victimization and persecution is prevalent at the PIC.

Although there is a certain level of independence to the policy insofar as reporting is concerned, the policy also says that Internal Audit must then report to the CEO any whistle-blowing matter that has come to their attention.

The policy does not deal with the fact that the CEO himself may be implicated. It therefore goes without say that employees who wish to report corruption, irregularities and impropriety against management would fear to do so.

Hence it is possible that employees may resort to other means.

Ethics and Ethical Culture:

The PIC requires an authentic ethics management function that operates in earnest allowing employees to question and offer divergent views to those of management, whereby issues are debated instead of being imposed to employees by virtue of seniority.

Not one that is there as tick box exercise but one which is functioning..

The Executive Head of Risk is the ethics officer in terms of the Ethics Policy and the function is not performed from an ethics management perspective.

The Ethics Risk Assessment remained an outstanding agenda item in the Social Ethics Committee since 2016 until my suspension.

The board should set the tone at the top and provide a clear strategic direction on the management of the company's ethics, but as authors Peter Rea *et al* suggest:

“Corporate ethics cannot be reduced to compliance. One of the unintended and more unsettling consequences of a focus on ethics as a compliance issue, they say, is that ticking all the boxes creates the illusion of reducing risk without actually doing so. The term tone at the top has been in popular use ever since the corporate failures of the early 2000...”

That is Enron, WorldCom and the like. This led to the board of directors to accept that they needed to lead by example by setting the right tone through their own behaviour, but as management is charged with the responsibility for living by and overseeing the implementation of the code of ethics within the company, this was often where things came unstuck.

Ultimately according to the Greek philosopher Aristotle, moral virtue is learned, not inherited and excellence is not an act, but a habit learned over time. Leaders are already teachers of their culture, whether they are aware of it or not. The truth is unless the tone at the top is translated as the tone in the middle, implementation of ethics is unlikely to flow to lower levels in the company...”

And allow me Commissioner, in my closing remarks, to say a quote from an unknown author, which resonates profoundly with me with me. It says:

"Your life has purpose. Your story is important. Your dreams count, Your voice matters. You were born to make an impact..."

I also want to thank the Commission for giving the PIC employees a platform to talk about their experience at the PIC. Thank you.

CHAIRPERSON: You sound a bit emotional at the end there.

MS BONGANI MATHEBULA: [No audible reply]

CHAIRPERSON: Mr Monnahela, is there anything else?

ADV ISAAC MONNAHELA: Mr Commissioner, may I just inquire whether members of the Commission have questions for the witness. If there are no questions, that will be the evidence of the witness and that concludes the business of the day.

MR EMANUEL LEDIGA: I just have one question, which is just a bit different. If you go to paragraph 18. It is a simple question. Ja, the

first paragraph. Paragraph 18 on James Nogu. We are back to James Nogu. The last line. If you can just read it for us? It starts with the pic making...

MS BONGANI MATHEBULA: Okay. The one that with, I refer to the author?

MR EMANUEL LEDIGA: Ja.

MS BONGANI MATHEBULA: Okay.

“The PIC making disclosures or allegations of serious wrongdoing, albeit it in a highly unorthodox and scally manner...”

MR EMANUEL LEDIGA: Explain to me, why are you saying this? I mean, I also found those letters quite scally, you know. So, can you please explain why you find them scally and unorthodox?

MS BONGANI MATHEBULA: Okay, I am going to say unorthodox, because it – of course it did not follow the process which one would have expected it to follow, but then there were reasons given for that, why they did not follow the processes that they were supposed to have followed in making those allegations.

Scally in the sense that – and I think again, it then warrants my view that it needed to be probed further, because if you look at it, it was like it was touch and go. It was not detailed in terms of what exactly are the allegations.

For instance, it talks about salary adjustments. It is not specific, you know, in terms of what salary adjustments. What process. What are the specific issues that relates to those allegations.

So, I feel it was a bit scally. Hence, again my confirmation it

warranted an independent investigation.

MR EMANUEL LEDIGA: Thank you.

CHAIRPERSON: It has been a long day, Ms Mathebula and I noticed that you did not seem to be tiring. You were just carrying on and for that we are really, really grateful. Grateful for the time you have spent here. It is a long day indeed. I can feel it. And the courage that you have and that you have shown in coming to give evidence and give us all the information that you have done.

It has gone into the issues that we are there to investigate and for that we appreciate your efforts. Just one thing, or rather, let me start off – or end off by saying.

It may very well be that one of these days before the end of the life of this Commission, we might call you back to come and give more explanation or enlighten us on certain aspects and I hope that you would still make yourself available, if that were to happen.

MS BONGANI MATHEBULA: I will make myself available, Commissioner.

CHAIRPERSON: You will make yourself available. Thank you, once again. With regard to... Where was I looking? I think in paragraph 167 of your affidavit, you mentioned that you are considering – the last sentence of that paragraph:

“I am considering my legal options on the outcome of the disciplinary hearing and the consequent final written warning...”

Somewhere, I think, you are imploring us as well to deal with your disciplinary outcome and so on. I must say – and you are talking

about, you know, monies that you had expended that you would like to be compensated on.

Regrettably, we do not have the mandate or authority to order whoever to pay money and so on, but I would say to you what you say in paragraph 167: That is the right course to follow. That is considering your legal options in respect of that.

We do not have the power to set aside a disciplinary committee decision. We do not have that authority. What we maybe to say – we maybe able to say something about it, but we cannot set it aside.

So, your only option is what you referred to in paragraph 167. So, thank you very much. For now you are excused.

MS BONGANI MATHEBULA: Thank you.

CHAIRPERSON: And you said that is the business for the day?

ADV ISAAC MONNAHELA: Yes, Mr Commissioner.

CHAIRPERSON: All right. The Commission will then adjourn again until ten o'clock tomorrow morning.

MEETING ADJOURNS UNTIL 25 APRIL 2019