

COMMISSION OF INQUIRY OF THE PUBLIC INVESTMENT CORPORATION

HELD AT

TSHWANE, PRETORIA

10

13 AUGUST 2019

DAY 62

20

PROCEEDINGS HELD ON 13 AUGUST 2019

CHAIRPERSON: Good morning Adv Lubbe.

ADV JANNIE LUBBE SC: Good morning Mr Commissioner and members. You will notice Mr Commissioner that there's no witness.

CHAIRPERSON: There's no witness?

ADV JANNIE LUBBE SC: There is a miscommunication for which I take full responsibility. Because of the rescheduling of witnesses as a result of the strike two witnesses were supposed to testify this morning, one had to be rescheduled for tomorrow. Mrs Zulu who will testify
10 today has arrived and she will make herself available earlier at half past one so I suggest to waste as little time as possible that we take an early lunch adjournment and I will try and make up some time to deal with some household matters that must be attended to before we finalise this session of the Commission.

May I with your leave Mr Commissioner then deal with the lifestyle audit reports compiled by PWC? There were five reports filed ... (intervention)

CHAIRPERSON: And what about tomorrow?

ADV JANNIE LUBBE SC: Mr Naidoo will testify tomorrow, we start at
20 half past nine.

MR EMMANUEL LEDIGA: The Lancaster?

ADV JANNIE LUBBE SC: Lancaster.

MR EMMANUEL LEDIGA: Okay 09:30?

ADV JANNIE LUBBE SC: He has filed a statement already and he is available to testify tomorrow.

MR EMMANUEL LEDIGA: Okay.

ADV JANNIE LUBBE SC: There were five reports filed with regard to the individuals identified, Mr Mondli Gungubele the former Chair of the PIC; Mrs Sibusisiwe Zulu former board member; Mrs Dudu Hlatshwayo former board member; Dr Matjila the former CEO and; Mrs Matshepo More who is the CFO.

CHAIRPERSON: Adv Lubbe if you feel like you want to sit down you may do so.

ADV JANNIE LUBBE SC: Thank you, thank you Chair. Chair I'm going
10 to read into the record the affidavit by Mr Van Tonder who compiled these reports and I would also like an order from you to order that the content of the reports dealing with the personal details of the people involved in these lifestyle audits bank accounts, bank statements, asset verification *etcetera*, are confidential information and cannot be made public.

With your leave then Mr Van Tonder is an adult male, he is a director of PricewaterhouseCoopers Advisory Services in Johannesburg. He sets out his experience. I hold the degree B.Juris and I did legal articles, later in '87 appointed as a Public Prosecutor in Mpumalanga. He
20 served as a Public Prosecutor, Regional Court Prosecutor and Acting Magistrate. He was admitted as an Advocate in 1990. He later served as a State Advocate and Senior State Advocate with the Office of the Director of Public Prosecutions in KZN and from '93 to 8 '97 he served as a Senior State Advocate in the Offices for Serious Economic Offences where inter alia he investigated economic crime.

In 1998 he joined PricewaterhouseCoopers as it was then known and he was admitted as a Director of PwC on the 1st July 2001. I still hold this position as a Director in the Forensic Services Department.

The mandate was to perform lifestyle audits and background checks on the following five individuals namely Mr Mondli Gungubele; Sibusisiwe Zulu; Dudu Hlatshwayo, Dan Matjila and Matshepo More. He had to perform background checks on these individuals and their entities.

There was also imaging of electronic devices of these people personally and the PIC Client Server and using keywords, details
10 provided by the Commission to run searches on the data imaged and provide the results to the Commission's investigations team for further review.

He states that he did not perform an audit in terms of the International Standards of Auditing. The affidavit and his reports have been prepared solely for the use of the Commission. He has also included information relevant to the investigation and related circumstances but cannot conclude on the completeness of such information as the possibility exists that not all relevant information and documentation was made available to him.

20 The issues addressed in his affidavit are the following and the procedures performed. The information dealt with in the report was obtained from the sources listed as follows; a copy of ID document; employment history of the person involved; the CV of the person involved; past and present declarations made for the period January 2015 to December 2018 that is the period of the terms of reference of

this Commission Mr Commissioner, and a declaration of interest, gifts, business interests *etcetera*; bank statement for accounts held at all financial institutions for the period under review.

It also included background searches conducted on publically available information on the individuals and we liaised with the below listed financial institutions in South Africa to request bank statements to any accounts in addition to the bank accounts declared namely Absa, Capitec, First Rand Group, Investec, Mercantile Bank, Nedbank and Standard Bank. He also conducted consultations with each and every
10 of the individuals concerned.

He reviewed the documentation provided by the individuals. He used Global Intelligence tools, conducted detailed searches on the individuals. He liaised with the financial institutions in South Africa. He requested additional bank statements identified. He performed analysis on the bank statements received and consulted with the banks and the individuals concerned.

In general Mr Commissioner and members the finding was that there was no indication of any criminal conduct regarding any of these individuals and he couldn't find any substance and you will recall that
20 one of the main reasons for asking these or requesting these lifestyle audits was the allegations contained in the Nogu e-mails implicating some of these people receiving exorbitant amounts of money from transactions within the PIC. So what he can state and what I can place on record is there is no evidence of any criminal conduct and there's no evidence of any substantiating the implications in the e-mails by Nogu.

I must also place on record Mr Commissioner and members, that all these individuals voluntarily took part in this exercise. It was not necessary to subpoena any of them or to subpoena any of the banks for their bank statements; they complied voluntarily with this exercise. The different five reports will be placed before the Commission and if necessary, and if there's any questions regarding any of the individuals they can still be called to the Commission to come and answer to those questions.

Then Mr Commissioner and members ... (intervention)

- 10 **MR EMMANUEL LEDIGA:** Ja sorry just a question there before you go, just in terms of those five people did this arise from the James Nogu e-mails you know starting from the first one and I think the second batch was it the Karan Beef issues and all that, is that why we are looking at this?

ADV JANNIE LUBBE SC: Absolutely correct Mr Commissioner.

MR EMMANUEL LEDIGA: And all of them have been found to be not criminally substantiated and all that?

ADV JANNIE LUBBE SC: There was no evidence to substantiate any of the allegations contained in those e-mails.

- 20 Then Mr Commissioner and members we have also received further supplementary affidavits by witnesses who already testified before the Commission. The first is that of Mr Pholwane the Executive Head of HR of the PIC who requested permission to file a supplementary affidavit in response to allegations by witnesses who testified about HR matters and in particular to respond to allegations in the evidence of Mr

Motimele, Diamond Motimele who testified before the Commission.

There's also a supplementary affidavit by the former Acting Head Legal, Executive Head Legal Pamela Phala. And there is also a written submission by amaBhungane that was filed with the Secretariat to be placed before the Commission.

Then Mr Commissioner and members we have a report by the Hawks regarding the death threats. You will recall that at a certain stage of this Commission there was an e-mail sent to myself and to other witnesses threatening people with their lives including that of Dr Matjila

10 I think if I recall correctly. There was no positive outcome to that investigation. What is still outstanding Mr Commissioner and work that will be handed up to the Commission before ... (intervention)

MS GILL MARCUS: Sorry Adv Lubbe saying there was no positive outcome, I don't, I think that's open to interpretation, can you explain that a little bit?

ADV JANNIE LUBBE SC: They couldn't establish the identity of the author of those e-mails, thank you Mr Commissioner.

20 What is still outstanding is a supplementary affidavit by Matshepo More who requested permission to file a supplementary affidavit dealing with especially the evidence of Dr Matjila. And we also have, we await the outstanding report promised by the Johannesburg Stock Exchange on the Sekunjalo Group which will be tabled hopefully before the end of this month with the Commission. And Mr Commissioner there is also a detailed affidavit filed by Mr Maponya who was implicated you will recall in the SA Home Loans that will be placed before the Commission.

Mr Commissioner that is the business that I had to attend to and can I with your leave ask that we adjourn then till half past one?

CHAIRPERSON: Can you do me a favour Adv Lubbe and list the items that you want me to make an order on?

ADV JANNIE LUBBE SC: Yes, thank you Mr Commissioner I will during the period till half past one I will do so on a formal letterhead of the Commission and place it before you.

MR EMMANUEL LEDIGA: Just a couple of questions there, just in terms of the audit, lifestyle audit which parts will we put on the website
10 and which part we are not going to?

ADV JANNIE LUBBE SC: Mr Commissioner the only part that will be placed on the website is the affidavit of Mr Van Tonder all other details in that report dealing with the personal assets, bank accounts *etcetera* of the individuals are private and cannot be publicised.

MR EMMANUEL LEDIGA: Yes because of sort of confidentiality. Alright and then the statements of Motimele, Phala and the others are they going to be put on the site or?

ADV JANNIE LUBBE SC: They will be put on the website this week
20 yes Commissioner, they are available and they will be posted on the website.

MR EMMANUEL LEDIGA: Okay yes and the Maponya one too?

ADV JANNIE LUBBE SC: Yes Maponya's as well.

MR EMMANUEL LEDIGA: Alright, okay. Alright thank you, thank you very much.

MS GILL MARCUS: And I'm assuming in that process we would get all

of these today?

ADV JANNIE LUBBE SC: Absolutely.

MS GILL MARCUS: Because all the ones you have mentioned as having received we have not yet seen.

ADV JANNIE LUBBE SC: Yes, no it's available except those of ... (intervention)

MS GILL MARCUS: But you said that there're two outstanding but as soon as they are received we will also get them.

ADV JANNIE LUBBE SC: Thank you that will be done.

10 **MS GILL MARCUS:** Because obviously we need to take them as part of the documentation that we are reading in relation to those cases.

ADV JANNIE LUBBE SC: Correct Mr Commissioner.

MS GILL MARCUS: Thank you.

MR EMMANUEL LEDIGA: And just in terms of the Hawks, did they supply a report or it was just a ... (intervention)

ADV JANNIE LUBBE SC: Yes they supplied a report Mr Commissioner that will also be placed before the Commission this morning.

MR EMMANUEL LEDIGA: Okay, alright.

20 **ADV JANNIE LUBBE SC:** Mr Commissioner lest I forget this, there are still some hanging threads about people that have been implicated threatening to bring applications for cross-examination. I haven't heard from those people but it's still out there and hopefully we will not have to deal with it but if it comes to the Commission then it is a matter that can be dealt with you sitting alone, we don't have to sit with the assistants.

CHAIRPERSON: Yes thank you Adv Lubbe and what about a report in respect of the investigations on the identity of James Nogu?

ADV JANNIE LUBBE SC: Mr Commissioner ... (intervention)

CHAIRPERSON: Are we going to get some kind of a report?

ADV JANNIE LUBBE SC: I will try and find somebody to put something in writing. As I've explained to you before the investigation is now I think with the sixth investigator and there is I think little hope that anything will come of it but I will again contact, hopefully it has not changed hands again, I will contact him and ask if there's any report.

10 **CHAIRPERSON:** Yes it will be preferable if we could indeed get something written down.

MS GILL MARCUS: I think even if the question is in terms of that investigation the processes followed, who was asked to look into what, what steps were taken and why it has been in fact difficult to find the author or authors of the numerous e-mails, it's not just the one. So I think that would be important for us in terms of getting a formal report from whoever has been tasked that with that from the Hawks or elsewhere.

20 **ADV JANNIE LUBBE SC:** Thank you I will attend to that Mr Commissioner.

CHAIRPERSON: Yes we're discussing the question of giving an opportunity to all the other people who have not given us affidavits who had been implicated in any evidence that we have heard thus far. Yesterday we indicated to your colleague, Mr Mohapi, that we'll try and get a list together to say these are the people who must be contacted

and invited if they so wish to file affidavits in response.

ADV JANNIE LUBBE SC: Yes Mr Commissioner for the record all people implicated have been advised except in those two instances where you allowed the cross-examination, I think it was General Holomisa and the MST people that were not timeously given notice. All the other people implicated were given notice, not only given notice they were given extracts from the evidence implicating them with an invitation to respond thereto. But I think it's an excellent idea, with great respect, to repeat that to those people implicated to say they're
10 still welcome to respond.

CHAIRPERSON: Yes thank you. That being said we'll then adjourn until 13:30, thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV JANNIE LUBBE SC: Thank you Mr Commissioner members, we are ready to proceed. Ms Zulu is present she can take the prescribed oath. Stand up.

CHAIRPERSON: Good afternoon Ms Zulu.

MS SIBUSISIWE ZULU: Good afternoon Commissioner.

20 **CHAIRPERSON:** I understand that you have acted as a judge.

MS SIBUSISIWE ZULU: Yes Mr Commissioner.

CHAIRPERSON: So you familiar with the taking of the oath?

MS SIBUSISIWE ZULU: That's correct.

CHAIRPERSON: Alright and you don't have an objection to it?

MS SIBUSISIWE ZULU: None whatsoever.

CHAIRPERSON: Fine. Do you then swear that the evidence you're about to give will be the truth, the whole truth, nothing but the truth, so help me God.

MS SIBUSISIWE ZULU: So help me God.

CHAIRPERSON: Yes thank you. You must have done that many a time.

MS SIBUSISIWE ZULU: Normally you get the registrar to do it these days.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner. Ms Zulu you
10 have prepared a written statement for the Commission, is that correct?

MS SIBUSISIWE ZULU: That's correct Mr Commissioner.

ADV JANNIE LUBBE SC: Mr Commissioner, I tried to put a stop to that hopefully it will stop now. Can you please start with your statement and tell the Commission something about yourself?

MS SIBUSISIWE ZULU: Thank you Mr Commissioner. This is the statement to the Commission of Inquiry into the Public Investment Corporation.

I the undersigned Sibusisiwe Nkosinomusa Zulu do hereby state that I'm a major female and former Non Executive Director of the Public
20 Investment Corporation. I provide this statement voluntarily having been requested by the Evidence Leader of the Commission to do so. I further confirm that the contents of this statement are true and correct. I hold a Bachelor of Law degree from the University of KwaZulu-Natal, a Post Graduate Diploma in Corporate Law from the University of Johannesburg and an Advanced Certificate in Business Rescue from

the University of South Africa.

I was admitted of as an advocate of the High Court in 2005. A few months later, I elected to join the corporate world where I worked as a legal advisor and an Assistant Compliance Officer for Ithala Development Finance Corporation which is a KZN provincial development finance institution.

In 2008 I decided to go back to my passion which is practising law. I then served my articles for a period of 1 year whilst doing my practical legal training course under Attorney John Wills who's a Human Rights
10 lawyer and had practiced for more than 20 years. After being admitted as an attorney, John Wills offered me partnership. It was at that point that the firm which I remain a director of Ngobani Wills Incorporated was formed.

I was appointed to the PIC board in October 2015 but resumed my duties at the end of January 2016. My term ended on the 1st of February 2019 when we resigned as the board pending the Minister appointing a new board which occurred on the 12th of July 2019.

During my period at the PIC I was a member of the following subcommittees; Audit and Risk, Social and Ethics and the Investment
20 committee. I was also a member of the Property Investment and the Social Economic Infrastructure and Environmental Sustainability Fund Investment Panel which are subcommittees of the Investment committee.

I was asked by the Evidence Leader to deal with the allegations levelled against me which implicated myself and my fellow directors of

impropriety. I will then respond to any clarity seeking questions that the Commission may have. Before I do so it is worth mentioning that in all instances, all the work of the PIC that I was part of took place through recorded meetings and there are minutes, transcripts and submissions pertaining to those activities hence I've elected not to burden the Commission with regurgitation.

I now move to the allegations levelled against me by James Nogu.

I wish to categorically state that the allegations of impropriety and malfeasance made by an unknown source called James Nogu against
10 myself and my fellow directors are untrue unfounded and not supported by any facts.

On the 29th of January 2019 when the email with these allegations was publically circulated, I immediately requested the board to institute an independent investigation. My instant view was that if these allegations were not dealt with independently and urgently, they had a potential of disrupting the workings of the PIC and destabilise the PIC as an institution whilst tainting the credibility of its board. We had experienced this in 2017 when allegations were made by the very same James Nogu against other directors.

20 When Nogu resurfaced in January 2019 it became clear to me that if these allegations were not investigated, they would have a damaging effect on our reputations and integrity. Not only as PIC directors but as individuals who have a professional life even outside of the PIC. I was thus pleased that on the 1st of February 2019 two days after I had made this urgent request to the board, a special board meeting was convened

by the chairman Mr Mondli Gungubele to deal with this James Nogu email and my request for an investigation to be instituted. The board accordingly resolved that an independent investigation to be led by a reputable senior council supported by forensic auditors and any other experts required be instituted. The timeline anticipated by the board based on previous similar investigations was a period of approximately one month. We therefore expected the final investigation report to be released in March 2019 and this was going to be submitted to the Minister of Finance as the shareholder representative and also to this
10 honourable Commission.

This was a big relief for me because I knew that the James Nogu allegations were going to disable me from pursuing some of my professional commitments because they contaminated the fit and proper standard that one requires to hold positions of trust. Sadly what was to be a month's wait has dragged to six months. It became apparent that since this investigation was now handed over to the Commission at its request, we had to wait for the Commission to conclude its work. I must emphasize I do not in any way blame the Commission for this because I'm mindful of the enormous task that it faces. Our
20 investigation is just one of many.

However at a personal level this has been an agonising period because of this unknown James Nogu, we have been subjected to inaccurate media reports and slammed through social media posts with the narrative that we are corrupt and siphoned hundreds of millions of pensioner's funds. It is my respectful view that a reasonable person

with basic knowledge of PIC processes will understand that these allegations of corruption and impropriety against my colleagues and I contained in the James Nogu emails are completely illogical and balderdash.

Our families have also been negatively impacted and humiliated by this. To give an example, a month ago while I was being investigated by the Commission I was suddenly informed that it had received a report from a whistle blower that I have used my mother's bank accounts to hide the corrupt income that I had received. My entire family was distressed
10 by this. We nevertheless consented to a full probe into my mother's financial affairs and handed over all her personal information required for the investigation. To date we do not know where these bogus allegations emanated from but it has been an interesting- it has been interesting to watch the tactics grow from a concerted effort to discredit me to a low blow of kicking me where it matters most, my family. I'm forever indebted to my parents that despite the trauma and pain that they themselves have had to endure because of this ordeal, they've stood by me, encouraged me, cheered me on even when I was debilitated.

20 It is against this background that I now come to the Commission to plead that we be given an opportunity to move on and rebuild our professional lives. This by no way means if that findings of corruption, irregularity and impropriety committed at the PIC, that these must be swept under the carpet. But I'm more than confident that in my four years of service at the PIC I acted lawfully and ethically. I therefore do

not believe that commitment to the PIC over the years should be rewarded with the dented reputation and an impaired career. We therefore ask the Commission that the Commission assist us in publically setting the record straight and formerly making findings on these James Nogu allegations and at the risk of coming out as putting under pressure on the Commission, it must be born in mind that for us it has been a six months of serious prejudice.

Now that the Commissions term has been extended to October we humbly request that this James Nogu matter be dealt with and
10 concluded sooner. I'm aware that even my other colleagues who were James Nogu targets share this sentiment and I know this because we had these discussions in some of our board meetings.

Mr Commissioner, I would like to now move on to the functioning of the board in general.

I want to unambiguously state my view that I together with my colleagues who are non executive directors served the PIC with dignity and integrity. We offered our skills and knowledge, we acted in good faith and we're fully committed to good governance to grow and protect our clients' assets. We did our level best to contribute to taking the
20 PIC to greater heights. This by no way means we were a perfect board and that all our decisions were quintessential but I believe that at all times we acted in good faith even when we differed. The robustness and vibrancy in our meetings made sure that none of us stepped into that boardroom ill prepared. We read, we researched, vigorously debated all matters put before us.

Mr Commissioner, I want to respectfully submit that even our different views and or positions on matters were a clear illustration of the independence and activeness of directors. In my view we acted without any fear or favour. We endeavoured to make decisions which we believed were in the best interest of the PIC and also our clients whom we invest on behalf.

I must highlight that in the four years of being at the PIC there are only two issues that divided the board. Firstly it was the handling of the allegations against the former CEO Dr Daniel Matjila whether the board
10 could exonerate him without allowing for an independent process to take place or not. In my view this matter reached its finality when former Minister Nene formerly expressed his disagreement with the board's position not to investigate and issued a directive that these allegations be independently investigated. It is also common cause that this matter had attracted a lot of public interest hence the Minister exercised his powers as envisaged in section 6.4 of the PIC Act.

The second issue that divided the board was whether the disciplinary actions taken against some employees based on the James Nogu saga dating back as far as 2017 were reasonable justified fear and
20 independent or could be viewed as victimisation of staff. Again this matter was concluded by the board. We resolved that Ms Menye and Ms Mathebula must be reinstated. The only complication with Ms Menye's process was there a settlement amount had been paid to her and we obtained a legal opinion that stated that this settlement agreement entered into and subsequently the payment made to her

were irregular. The board therefore resolved to seek guidance from National Treasury on how to ensure that her reinstatement process complies with the PFMA and all applicable Treasury regulations. Management led by the acting CEO Mr Vuyani Hako was then tasked to facilitate this process. These were solely the two matters that caused us to even be labelled as a divided board with factions.

As I conclude this statement I would be failing if I do not use this opportunity to acknowledge and express gratitude to the PIC jewel, the most important asset that the PIC has, that is its employees. They've
10 remained brilliant innovative hardworking committed to the PIC vision despite the tough period and the spotlight the institution has been through. Over the past few months I had the privilege of seeing them going an extra mile and even initiating activities to ratify some of the mistakes and shortcomings that they felt could cripple the PIC if not immediately addressed. They are professional focused and committed to the PIC vision. These dedicated men and women must know that this has not gone unnoticed.

I believe that the new culture of transparency, teamwork, the bottom-up approach that has been setting in, in the past few months will motivate
20 the PIC employees and reduce the higher than usual staff turn around that we had witnessed at some point, I believe that the PIC has remained one of the strongest and most functional state owned entities and asset manager because of these resilient and world-class employees. For that we thank them and in instances where they may have felt that we as the board was not paying attention to issues that

mattered to them, we profusely apologise.

That is my statement Mr Commissioner.

CHAIRPERSON: Thank you Ms Zulu.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner. Ms Zulu I'd like to discuss some topics in your statement with you and let me start with your conclusion. You talk of a new culture of transparency and teamwork and the bottom-up approach. Do I understand correctly that that is something that was lacking previously?

MS SIBUSISIWE ZULU: Mr Commissioner some of these matters could
10 be real or perceived in my view but we cannot run away from the fact that the PIC had that reputation out there in general that we are arrogant, you need to be able to get to the top guys to be attended to. And we felt that as the board with everything that was happening and this direct spotlight, it gave us a challenge to say, how do we then deal with the culture?

I want to submit that my view with the PIC is not necessarily that the systems are dysfunctional. The PIC has got quite functional systems and the governance structure do exist but the culture in my view appeared to be the issue and that's what caused a lot of
20 discomfort even with employees or that element of fear of not knowing what to do when or to wait to get approvals from the top. And those are things that we can't run away because they were there and they were being discussed whether real or perceived but they were there.

And therefore to give an example, one of the resolutions that the board had taken earlier on this year was that when transactions

come in the deals screening committee should not necessarily involve senior management. But it should be the deal team that debates and thrashes out a transaction until they get to a point where they say they are comfortable with the transaction to take it up to the next committee. So we consciously removed because previously the deals screening committee still had the CEO, the CFO and other executives but we said let what is seen as junior staff participate because ultimately they must also take accountability in the processes.

So that culture I know there was even a joke at the PIC that
10 now you are taking back power to the people because of that culture. And the fund principals and the deal teams were quite excited because they were now taking full ownership. So they could actually even kill a deal if they don't believe in it at that level without fearing any threats or intimidation.

ADV JANNIE LUBBE SC: You have spent some time in the corporate world and you've been part of the PIC for four years as you've testified. In your experience, you set the culture in an organisation?

MS SIBUSISIWE ZULU: The board definitely being the accounting authority of an institution has a responsibility to set the culture. I think
20 in retrospect having seen what we've gone through at the PIC in a couple of months, there was a lot of reliance when it comes to some of these matter where we would say as the board actually we've delegated that authority to management.

You classic example is the employee relations matters. For example, the matter of Ms Menye, I actually got to know about it when I was

reading the business day coming to a meeting at the PIC. That she had been settled and at that time they were saying she was settled for 7 million but the board did not have that information. What was interesting is that when we got to the meeting, out of interest obviously being a director is this true? And I got to interact with the executive head of human resources and I said, Mr Pholwane I just picked up on this, is this article true? This can't be true, we know nothing about this. And he said to me, well the agreement entered into is confidential and I'm not allowed to disclose it.

10 Now that is basically I think the culture which as the board we need to- well I think as a former director I take responsibility for to say, we had allowed for that culture to settle in. I know a fellow director was standing next to me, we actually looked at each other and that was the end of the conversation until we looked at the matter literally only this year. But he said the agreement was between the CEO and the concerned employee and it's confidential and no one is supposed to know its content.

So perhaps certain things did fall through the cracks in us fully relying on the delegations of authority and saying certain things must be done
20 by management and we will not take responsibility therefore.

ADV JANNIE LUBBE SC: What became very interesting for me over the many days we sat in this Commission is that not a single board member or senior manager testified about a toxic situation in the PIC about fear and victimisation of employees whilst on the other hand the junior employees, middle and senior junior employees talked about the

victimisation, the fear of the culture of victimisation and fear in this organisation and so much so that for the first time in the history of this organisation they had to form a union to protect themselves. Can you comment on that?

MS SIBUSISIWE ZULU: That is correct Mr Commissioner. And I don't believe that completely turned a blind eye on those matters as the board but I believe that we gave and had too much reliance on management and anyone who understand corporate governance will tell you that when people feel you starting to question the authority
10 delegated to them, they'll go as far as saying you are interfering.

But ultimately my understanding is that the buck sort of speaks stops with the board as they are counting authority. So the board is allowed to question anything that may not be in the interest of the institution and I think that's why in my statement I was saying, in the past few months my view is that that culture started settling in and you could see even the attitude of employees because matters that also mattered to them, issues that mattered to them were being dealt with by the board.

ADV JANNIE LUBBE SC: If I can take you back to your response to
20 the settlement of Ms Menye. My understanding is that you were told by the Executive Head of HR, it's a confidential agreement and you as a board member are not allowed to be privy to that. My view of that and I would like your comment is that it is not only unacceptable, it's arrogant.

MS SIBUSISIWE ZULU: Well it was during- Mr Commissioner, it was

literally during a break. We're having a board meeting on the day and I just asked informally and it just so happens that one of the directors were there. And the minute he said well- and it was almost like he was making it clear that this is an agreement between the CEO and the concerned employee and the matter ends there. It's been accepted, it's signed and sealed.

Obviously in retrospect I think one should have probed more and this is exactly what happened what the board subsequently did earlier on this year. We received a report which gave us an update on
10 these employee relations matters and for the first time we actually demanded to see the settlement agreement. We had never seen it as the board until January 2019. And my understanding is that that settlement was in 2018 sometime early 2018. And we demanded to see the settlement agreement and it was made available to us. When we read some of the clauses in that agreement, personally I was flabbergasted. And it goes back to in retrospect we should have done that earlier.

And that's when we said we need to get a legal opinion because firstly we found it very strange that the settlement agreement
20 had been signed by the head of HR and our understanding was that such an agreement should have been signed by the CEO.

When an enquiry was then made there was an indication that the authority had been delegated but we subsequently learnt that there was no such – anything in – there was nothing in writing to that effect and that's what really made the actual agreement irregular because at

the time Mr Pholwane did not have powers to sign the said agreement.

So it does confirm that even when authority has been delegated by the board, Mr Commissioner, the board must still remain vigilant, it must look into matters and be entitled to have access to any documentation should it be in the interest of the board to actually look into such matters.

ADV JANNIE LUBBE SC: Now thank you for that. Can I just get back to the two ladies that were reinstated. In the case of Ms Menye I understand there was no disciplinary hearing. In the course of
10 proceedings there was a settlement reached and she was paid out and that was the end of the matter but in the case of Mrs Mathebula, she went through the disciplinary process, she was found guilty and dismissed. On what grounds, can you share that with the Commission, did the board decide to reinstate her?

MS SIBUSISIWE ZULU: Mr Commissioner, I think the background is important and that's why in my statement I say that the institution of such disciplinary hearing, was it fair, was it reasonable, was it justified because the background then become important because when we actually – so we didn't look at the charges *per se* but we had to take
20 into account the circumstances which those charges had arisen under and the majority of the board felt very strongly that this started as this big James Nogu issue within the institution and then at the time the board says the CEO must look into – because there were allegations that the IT systems had been hacked and intercepted. So the board resolution was mainly concerned about the hacking and interception of

our IT systems.

Now we learnt months later that some of the activities that actually took place were beyond just that. Obviously also there was a concern about the leakages that were taking place but we then discovered for example at the time when the board was alerted or informed by management that Ms Menye would be – was going to be suspended immediately it was because the allegations were that she was – she could be hacking the IT systems.

MS GILL MARCUS: Sorry, do you mean Ms Menye or Ms Mathebula?

10 **MS SIBUSISIWE ZULU:** Ms Menye. So at that time it all revolved around the issue of IT systems at the PIC being had an, you know, therefore you have a James Nogu then accessing information of the PIC, etcetera.

So that was – it was more - the board's position at the time was let us take all the steps to protect our systems and the PIC information. That was the position.

Now we learnt that investigations took place – forensic investigation took place, computers were confiscated, etcetera, a number of things happened and the board, unfortunately, was not kept
20 abreast on those matters to an extent that the charges laid against all the employees, both Ms Menye and Ms Mathebula, the actual charge sheet, we only had sight of it a couple of months ago in 2019 when we said let us look into these matters.

So we had never had sight of the forensic investigation reports which had come out and I know that the report which formed the basis

of charging Ms Mathebula, which was done by S & G, if I'm not mistaken, they specifically said that they cannot make any conclusions and they recommend that should the PIC want to take further steps they must conduct further investigation.

Now that was very concerning to us as the board to say then how do you charge, you know, and employee when a report actually says, you know, it's inconclusive and that was the basis of us saying let us actually relook at all the steps that had been taken by management and say as the board do we remain comfortable with those matters, our
10 decisions, are those the kind of decisions that we would still take ownership of and our view was that no, and we would like to – that is why we then said – we then took the two decisions on the two employees.

ADV JANNIE LUBBE SC: Thank you, I'm not trying to criticise you but in retrospect would you agree that the board in fact should have looked at this much earlier?

MS SIBUSISIWE ZULU: Mr Commissioner, I agree. In retrospect when these matters, you know, like I'm saying, I read it in a newspaper article and I think it was supposed to be at that point that we should
20 have looked into those matters, dealt with them and made decisions on them.

ADV JANNIE LUBBE SC: The reason why I'm asking this is that several witnesses came to the Commission and testified that because of this culture in the PIC of fear and victimisation, if you don't toe the line, the next thing you'll find is a whistle blower or some or other

charge of improper conduct, there will be a disciplinary hearing and you'll face dismissal and I can – I call it the golden line of some senior executives that were dismissed, everybody's not happy with that. But if I can mention Mr Ntuane, Ms Menye, Mathebula, they're all in senior management and going that same route. Do you agree?

MS SIBUSISIWE ZULU: I agree, Mr Commissioner.

ADV JANNIE LUBBE SC: Alright, now ...[intervenes]

CHAIRPERSON: Adv Lubbe, are you going to go to a next issue or are you still with this one?

10 **ADV JANNIE LUBBE SC:** I'm going to deal with just another now but I'm in your hands, Mr Commissioner.

CHAIRPERSON: No, no, but if you don't have further questions with regard to these matters that you've now deal with.

ADV JANNIE LUBBE SC: I'd like to conclude just on the present situation where we have the situation in the PIC that everybody involved in the Ayo transaction is now going to be charged – there's going to be disciplinary charges against them whilst we had the former CEO sitting here under oath saying he can't understand it because what happened there was absolutely irregular there was nothing improper
20 about it and he can't understand why these people are charged.

MS SIBUSISIWE ZULU: Mr Commissioner, I think it's already information that's now before the Commission or evidence that's before the Commission that there was an investigation that was conducted into this transaction and a number of findings were made and when you look at the report it clearly states that there were certain

actions taken by our employees which were not in line with normal governance processes and could be found to be irregular and our view – and the record of that meeting will actually bear me out, we actually felt that there were employees that could have acted under pressure, they didn't know what to do.

There is a – just to give an example, Mr Commissioner, there is a lady by the name of – its Guinee Adams.

ADV JANNIE LUBBE SC: Yes. Gaanewe.

MS SIBUSISIWE ZULU: Yes. What she does is she's told to liquidate
10 and she's told this transaction is going ahead. So is apparently called into an office, you know, because she says well, I need to be told by the powers that be that I must do this.

After being told, she still insists send me an email, I'm not going to move without an email.

Now you can easily draw an inference there that some of these employees had to make a choice between doing the writing thing and running a risk of being charged with insubordination or see how far they can go with what they viewed as irregular outside of the normal PIC processes.

20 So you could tell that, you know, just from the reading of the report, when we sat in that boardroom we said this is a movie, you can tell what each character did here and you can draw an inference from this.

And, Mr Commissioner, it's very important to highlight that our view – because I know there was that view that the board is now further

victimising employees. We said that these are professionals in their own right and they need to be given an opportunity to actually account for this.

Now we were not going to call them in one by one as the board and say well, account what did you do but we said let them go through a formal process because when you subject them to that, they will actually even disclose further information because they understand that their professional – their professions and their careers are on the line here.

10 So they will actually tell you more than what they may have disclosed even during the investigation and we've seen that and I know when in the past couple of months we had actually procured services of, you know, an independent firm just to facilitate the process and they had given us advice to say with some of these employees we will take them through an informal process just so that we say listen, do you realise that what you did here was not, you know, within the PIC process, in line with PIC processes and therefore these are the implications.

20 So we had agreed that that process must actually take place and so I'm not sure where it is now but that is what was actually happening when I left the PIC.

ADV JANNIE LUBBE SC: We'll come back to the Ayo transaction but I think to be fair to you, let me put my view to you and what is my concern about this process whether it is fair or it is victimisation.

It seems to me what happened is that the PIC was hauled

before the parliamentary commission SCOPA about this transaction. There were pressures put on the PIC why didn't you act against people that transgressed in the Ayo transaction?

Then there was a sudden – I would call it a rush investigation by internal audit, who is not qualified to do these type of investigations, with an absolute superfluous report not knowing or not telling the board that according to Dr Matjila and everybody else that if you sign an irrevocable offer before a meeting and a disbursement memo, that's a done deal.

10 The board was not informed of that. SCOPA was not informed of that but after the internal audit report there's a media statement by the board that procedures were flouted by the PIC. That, to me, seems inherently unfair. It's my view, I'm not saying I'm correct, I would like your view on that.

MS SIBUSISIWE ZULU: Perhaps the background is also important that when the – when we appeared before SCOPA in December 2018, SCOPA had asked us to deal with a number of transactions. So we had the reports. We had seen them as the board and we even had a report on this very Ayo transaction and when the parliamentarians started
20 asking specific questions on Ayo, there's information that had not been disclosed at any point previously that actually came out and the recording – I'm certain because the meetings of SCOPA are recorded, it will show that.

In fact when the executive head of listed is pressed for a response, Mr Fidelis Madavo, he ultimately conceded and this is on

record, he conceded that there may have been irregularity insofar as the Ayo transaction is concerned and that's in record.

Now sitting there as non-executive director you are bound to be taken aback because it goes against the information that you already sit with at the time.

ADV JANNIE LUBBE SC: I'm sorry to interrupt you because I wanted just to tie in with your answer. In terms of your statement you sat on the audit and risk committee.

MS SIBUSISIWE ZULU: That's correct.

10 **ADV JANNIE LUBBE SC:** And also on the investment committee.

MS SIBUSISIWE ZULU: That's correct.

ADV JANNIE LUBBE SC: The Ayo transaction was brought to the audit and risk committee.

MS SIBUSISIWE ZULU: That's correct, Mr Commissioner.

ADV JANNIE LUBBE SC: And it was brought to the investment committee.

MS SIBUSISIWE ZULU: That's correct, Mr Commissioner.

ADV JANNIE LUBBE SC: Am I correct to say that at no stage was it disclosed to these committees that an irrevocable offer was signed
20 before the meeting.

MS SIBUSISIWE ZULU: As far as my knowledge is concerned I do not recall such a disclosure being made in any – I've had the benefit of actually going back to the documents that were given to the IC because the audit and risk committee felt that because the matter is already being looked into by the IC it will not deal with it, it was wait for the

report to come from the IC and then they would basically then make a decision based on that report.

ADV JANNIE LUBBE SC: And I suppose as a legally trained person you will agree with me that that fact was not only relevant, it's the most crucial fact in the whole sorry saga of the Ayo transaction.

MS SIBUSISIWE ZULU: It is the crucial fact. Maybe just to go back a bit, Mr Commissioner, what actually happened because when we had the IC meeting that's when internal audit had raised a finding and that's very important to emphasise because a question has arisen that why
10 did internal audit just raise a light finding then and then later come up with a full report?

That was a finding done in their normal course of the business, so they basically, you know, just like the auditor general would conduct, you know, an audit in an institution and then later on you hear that a full forensic investigation has been conducted and certain issues that even the AG may not have picked up have been picked through an investigation.

So that's very important to actually differentiate because when internal audit came they were just presenting a finding which, you
20 know, they came across, you know, when they were doing their normal, you know, audit work.

Now when information comes up at SCOPA, it then became the responsibility of the board to actually say we want this matter to be looked into in detail thoroughly because it appears that we may not have all the factual background in relation to this matter and that's

what happened there.

Because in the meeting, in the IC meeting, it was oh, here's a finding – and remember, with an audit finding, management needs to say how do you ratify this finding and that's confirmed, internal audit accepts and that's the end of the matter.

But the investigation then implicates a number of employees, this is what actually happened, this was the process, certain things were signed, you know, without the necessary approvals, so it gives you that full background now and that was the benefit of the work and
10 the investigation which was done by internal audit and I think, Mr Commissioner, I must also emphasise this was not a forensic investigation, *per se*, simply because you had documentary evidence but you also had employees who had participated therefore gave, you know, evidence verbally to say this was my participation.

So what internal audit did they interviewed everybody who had been part of the transaction and they relooked into the documents so there was no question around the credibility of the investigation *per se* because it was supported by the said employees together with the documents that had been put together.

20 **ADV JANNIE LUBBE SC**: My concern is especially at an institution like the PIC what internal audit should have done and picked up right from the start is that due process was not followed, that irrevocable offer was signed, it was clear – all the facts are there, the documents are there, that the disbursement memo was signed and they should have reported on that, not just as you say a light-hearted type of audit query

by internal, they should have done that initially.

MS SIBUSISIWE ZULU: Mr Commissioner, while I accept that, I think it's very important – it must also be borne in mind that exactly the example that I just made with auditor general. Sometimes there are findings that they will make on certain things and we've seen this with some of the parastatals where an investigation is done at a later stage and institution had received a - you know, a clean audit, you know?

And because it's based on the testing that they do, so they don't basically investigate everything, they test, they conduct an audit
10 on specific areas and they will pick up certain things.

So in this instance my view is that they picked up an element which they immediately presented to management and management said don't worry, we'll take care of this, we'll ratify it but at a later stage when they are asked to then conduct an investigation they then uncover a lot of detail and I think in my view they did do their job in this instance properly.

ADV JANNIE LUBBE SC: Apart from the disclosing to the audit and risk committee and the investment committee, the crucial fact of an irrevocable offer signed before the meeting, that was not disclosed.

20 **MS SIBUSISIWE ZULU:** The irrevocable offer, that information, Mr Commissioner, is what was disclosed through the investigation in January.

At the time they had looked at meeting which supposedly approved what needed to be ratified.

So that's what they had done, that was their finding in 2017

that there was an approval instead of a ratification and management said oh, we'll hold a special meeting where a round robin to ratify and it closed the matter but when looking further and in detail into some of these matters, that's when they then uncovered the details.

ADV JANNIE LUBBE SC: I am not going to dwell on this longer and I'm not – it's not your concern but it is a matter of grave concern for me that senior people in PIC like the CEO and the CFO apparently does not understand the difference between approval and ratification but bet that as it may, can I then deal briefly with you ...[intervenes].

10 **CHAIRPERSON:** I suppose, Adv Lubbe, you know, doesn't really know, we haven't make any finding of course as to whether what they say is true.

ADV JANNIE LUBBE SC: Mr Commissioner, that is correct but the undisputed facts are that an irrevocable offer was signed on the 14 December, a disbursement memo was signed by the CFO which only can mean – there can be no other meaning – that it's a done deal and that can only be ratified, cannot be approved and that's where it seems to be ...[intervenes]

CHAIRPERSON: No, all I'm saying is that we still have to make finding
20 on that because insofar as Dr Matjila is concerned, his evidence is well, to me it means the same thing.

ADV JANNIE LUBBE SC: Yes, which is also surprising.

CHAIRPERSON: Whether that is so or not, that he didn't really know is a matter for us to decide.

ADV JANNIE LUBBE SC: I'm in full agreement with you, Mr

Commissioner. Can we then briefly deal with board meetings and some of these directors have described you as a tough debater at these meetings, is that correct? You stand your ground.

MS SIBUSISIWE ZULU: Mr Commissioner, I think – well, this is my view, I was not just the only director that stood her ground.

CHAIRPERSON: Meaning that the answer is yes, I stood my ground?

MS SIBUSISIWE ZULU: Oh yes, indeed, Mr Commissioner, I did stand my ground.

ADV JANNIE LUBBE SC: Well, can I mention the example, I'm sorry to
10 interrupt you, the whole issue of the Pretty Louw saga and Dr Matjila and the majority of the board changing their decision and you stood up and said no, I disagree and I want my vote to be recorded. That's how you argued, is that right?

MS SIBUSISIWE ZULU: That's correct, Mr Commissioner, and it's not even – it's not anything unusual, we do it all the time at the PIC. Well, in fact, you know, when you don't agree with a decision you would actually ask for your dissenting view to be recorded.

So it was nothing unusual and it's a clear illustration of a director's exercise of their fiduciary duty. So you basically don't get
20 into board meeting to rubber stamp what the majority says even if you do not agree but you exercise your views independently and/or your duties and you do so independently with care and skill.

ADV JANNIE LUBBE SC: Can I ask you, this email of Noku implicating you, did you view it as a whistle blower?

MS SIBUSISIWE ZULU: So generally when these emails, Mr

Commissioner, not even just to deal with my email *per se* but all of these emails. When they come through, my view was that we need to actually look at the impact that they will have on the institution.

And how you then – and that will then inform how you then deal with them and the 2017 e-mail is a classic example where we as the Board, because that was basically our decision ultimately which I was part of you know, when we as the Board said we will not deal with this matter and we publically declared that we have confidence in our CEO, we disregard these, that literally initiated our nightmares at the
10 PIC. It destabilised the institution. E-mails kept coming through. The media took interest in these matters. We were taken to court. There were even allegations that we were covering up for the CEO.

And Mr Commissioner I actually was not even physically present in the meeting, in that specific meeting so I had not, when I received these e-mails and then I was told that there's going to be a special board meeting to deal with this my immediate reaction was well we need to protect the PIC, we need to protect our CEO and the best way to do so is to actually subject these allegations to an independent process. And we couldn't come as his fellow directors at the time and say now, and I
20 remember saying this telephonically to say colleagues are we going to sit here and say Dr Dan is Pretty Louw yours or not, Dr Dan did you – and I said we can't do that. We basically cannot be investigators, prosecutors and ultimately the judge to actually now say well we think he's not guilty but to protect him let's take this piece of paper, let someone independent look into it, investigate it and then bring it back

and say well there's nothing to it.

Now the only thing that we did what is in my view what was unfortunate is that what we could have actually done in 2017 we ultimately had to be told to do it by the Minister more than a year later and there was a report and we could have done that in 2017 the matter would have been closed then and we would have come out publically and said we received this, our view is that these are mischievous e-mails we have confidence in our CEO, the report clears him and it would have been independent and no one would have raised questions around oh the

10 Board is actually protecting its CEO.

ADV JANNIE LUBBE SC: If we can conclude on this, so I understand your view to be that even if it's something illogical or balderdash as you call it, like in your instance, again the correct way to handle it is to put it to an independent investigation and get a report, is that correct?

MS SIBUSISIWE ZULU: As part of protecting an institution and its leadership we need to be prepared to be subjected to being questioned, to being investigated. In fact I strongly believe once you've undergone that process it's easy to deal with whatever else that's illogical that comes thereafter because you know you will say well we know these

20 things and we've dealt with them properly and this is the process to follow and you close it at that and I think it was a missed opportunity in this instance for us to do so. Hence my attitude and approach that when I received this e-mail you know in 2019 now from James Nogu my view was colleagues let's take it through an independent process. In fact it's in my interest as a professional to make sure that it goes

through that process.

ADV JANNIE LUBBE SC: I apologise to you that it took so long for us to conclude on it but as I've informed you that it has now been concluded. The lifestyle audits were handed up to the Commission and there is no substance in the allegations levelled against you in the Nogu e-mail.

MS SIBUSISIWE ZULU: Thank you Mr Commissioner.

ADV JANNIE LUBBE SC: Just to conclude on the Board matters, there was severe criticism levelled at the previous Chair Mr Mondli
10 Gungubele about what he did in the General Holomisa court application where he didn't side with the majority of the Board but filed his own opposing affidavit. Can you just briefly comment on that, how you see it?

MS SIBUSISIWE ZULU: So we received the court papers and as Mr Commissioner you are aware now and they had cited the Board, the former CEO, the Chairperson of the Board, the Minister, yes and the Minister as respondents and what then happened was even before receiving those papers the Minister had requested the Board to explain
20 well there are subpoenas this thing is all over the media, I hear you know police are involved now they're investigating, can the Board tell me what is going on. And we had put together documentation for him through management and we submitted those.

That was actually the very first meeting we had with Chairman Gungubele. He then, because of the other issue was that he had also

received a subpoena and he then said colleagues I don't know what I'm supposed to give, I don't know any of these matters and clearly the Minister has taken an interest, I need to be taken through these matters. And so he then requested that he does not respond to the subpoena and that was done through our lawyers where they wrote to the police to say the Chairman is new and can he be given an opportunity to try and familiarise himself with these issues.

Then the documents were given to the Minister at that time. Then the Chair called a meeting with the Board and our understanding at that
10 time was that the Minister was asking specific questions so he was saying why have you not investigated this, why did the Board make this decision, insofar as employee matters are concerned why was this employee investigated, why were they taken through a disciplinary process. Those are matters he had no background of and frankly at the time even the Board insofar as the employee relation matters were concerned we did not have much of a background.

He then convened a special board meeting and then at that meeting he said I'm one of you I'm a director, just take me through these matters I've gone through these documents and I want to express my view. And
20 Mr Commissioner for me that's very important because it goes back to the issue that when you are in that boardroom what is your view. You can't inasmuch as ultimately we are bound by the board decision but what is your view and that is exactly what happened.

So a discussion took place in that boardroom and he then expressed his view. He said well I don't agree with the decision of the Board, it

makes me uncomfortable and in the process the Minister has been dragged into these matters and he just basically took us and there's a record to that effect so I don't need to repeat everything he said in the meeting and he was asking specific questions, did the Board take this matter into account, was this factor taken into account *etcetera* and that's what happened.

Now when the papers were then served on the Board, the court papers were then served, he then said the Board then resolved, and there's a resolution to that effect and you know obviously recordings to that effect, the Board then said we understand that the CEO inasmuch as
10 he's a director has been cited as a respondent and the Chairperson has also been cited. The Board then accordingly resolved that should they want to oppose this application independently they should be allowed to do so and that is exactly – and there's a resolution to that effect and the Board approved that, we said procurement processes must be followed this is an urgent matter and then the Board, which was part of the decision which understands the process because remember even the CEO at the time had not been part some of those meetings he had actually been excused from those meetings.

20 Now we said that's why he must basically state his background independently and the Chairman had expressed a strong view to the Board but he also said that he will not necessarily oppose the application he'll abide by the decision of the court but it's important for him to actually say well I came in a month ago and this is what I understand these matters to be. So that's what happened insofar as

the Chairman is concerned.

ADV JANNIE LUBBE SC: Thank you. Another issue that I want you to comment on please is there were allegations that there were tampering with Board minutes. Whilst you were on that Board can you tell the Commission is that true or not?

MS SIBUSISIWE ZULU: Mr Commissioner once again in retrospect because we learnt this afterwards, during that Nogu, the first Nogu, the 2017 Nogu if I may be allowed to call it period, those meetings were not recorded and so the company secretary was basically you know writing
10 down everything that each director was saying at that meeting.

ADV JANNIE LUBBE SC: I'm sorry to interrupt you, the evidence under oath by Ms Mathebula was that it was a Board decision not to record in *camera* meetings?

MS SIBUSISIWE ZULU: Yes that's very correct. The Board at that time said these meetings must not be recorded and the reasoning was that well there're a number of leakages and you know our systems are being hacked etcetera so it was just that culture of fear and discomfort and an element of distrust because documents are going all over therefore the meeting wasn't recorded and the reasoning was that well
20 this relates to the CEO. In hindsight that was a wrong decision because we then deprived any interested party, including this Commission, to actually really listen to the recording or go through the transcript of really what happened in the meeting.

Now the company secretary obviously had to literally take everything down that the Board was saying and so there was a set of minutes

which was circulated to the Board and the Board made comments and I think there was a second set of minutes but ultimately when a Board meeting took place to adopt the minutes the Board felt strongly that there was just too much content on those minutes. They were ugly minutes Mr Commissioner so to speak and so the Board felt that some of the issues must be removed and focus on the resolutions taken. So it was actually I think about two or three sets of minutes which contained a lot content, a lot information, the true deliberations that had taken place at you know in the meeting and then ultimately the set
10 which was adopted was the sanitised, cleaned up version so to speak of the minutes to say let's keep it simple, let's keep it clean, capture what the discussion was about in brief and then say what the resolutions were.

ADV JANNIE LUBBE SC: Do I understand your answer correctly there was nothing dishonest about it?

MS SIBUSISIWE ZULU: Well when we did it at the time of course there was nothing dishonest about it. In hindsight we did miss out on a lot of content especially because those matters attracted a lot of public you know interest.

20 **ADV JANNIE LUBBE SC:** But it's minutes adopted by the Board as their minutes?

MS SIBUSISIWE ZULU: That's correct Mr Commissioner.

ADV JANNIE LUBBE SC: It was not a case of somebody going behind the door and cut and paste and change the minutes?

MS SIBUSISIWE ZULU: Not at all Mr Commissioner.

ADV JANNIE LUBBE SC: I'm taking up too much time, I think there's some questions from the Commission as well.

CHAIRPERSON: No feel free to go ahead.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner. Briefly what is your or what was your relationship with Dr Matjila, was it initially good, was there bad blood can you just briefly tell us about it?

MS SIBUSISIWE ZULU: It was a professional relationship. I have a lot of respect for Dr Matjila Mr Commissioner. Having a lot of respect for someone does not mean you'll agree with every decision they make. I
10 think he's a brilliant mathematician, a solid investment banker and added a lot of value at the PIC, played a critical role. But like I said that doesn't mean you'll question decisions, you will not, not question decisions hence the President himself gets questioned. So being in a significant or powerful position in my view does not necessarily mean then that you cannot be questioned.

So that remains my position, I think Dr Matjila you know and even when he left the PIC all of us in the boardroom expressed that view to say he has contributed significantly to the PIC. In fact one of Dr Matjila's achievements Mr Commissioner in my view and I'll, and this would
20 stand out for me as a young black female, Mr Matjila had an eye for young black talent.

He got the best professionals in the market to actually join the PIC and he gave them you know a chance and for me that must be acknowledged and that is why then it's unfortunate that after such an achievement those same employees would actually feel that they were

victimised, the environment and the culture changed and became one of fear of not operating properly and that for me was very unfortunate. And that is why I was saying that it is the culture more than anything at the PIC that needs to be changed. You would literally hear that, oh and I think it was Ms Menye that gave this evidence, I mean it was literally something that employees would laugh about or share to say phew sometimes when you go to the seventh floor you know this is my institution. But I mean there was never a formal complaint which the Board ever received, it was just that there's this culture of fear and an
10 element of the environment being unhealthy for employees, them not comfortably voicing out their opinions.

To give an example where I actually picked this culture up in a meeting, in an investment committee meeting Mr Commissioner, we were having a property investment meeting and there was a transaction, it's somewhere in your list Mr Lubbe, and the transaction was just wrong in every way and every sense and I kept asking one question. So I went past the point of saying I don't like this transaction we will never invest here. I wanted to find out one thing, Risk how did you put together this report, Legal how did you, you know, and everyone just kept quiet and
20 they were just looking you know at the CEO hoping he'll rescue them. And you could pick up, and afterwards I said to these guys you know during the break and said but why are you messing up your careers, why would you actually support a transaction that is not good for the institution.

Months later when the transaction came out in public the Executive

Head of that unit when we came to the PIC actually said oh Ms Zulu thank you, you rescued us, where would we be. Now ... (intervention)

CHAIRPERSON: Sorry I would prefer identification of these figures and the ... (intervention)

MS SIBUSISIWE ZULU: Of Mr Commissioner?

CHAIRPERSON: Of these figures, these people and the executive head that you're talking about for instance as well as the transaction, which one is it, you say it's in Adv Lubbe's list, which one is it?

MS SIBUSISIWE ZULU: Yes Mr Commissioner may I request that you
10 permit me to give that information to Adv Lubbe for one reason, the
employee, I would not want to spring out names of employees just you
know with them not being aware, I think they deserve a certain level of
protection but I surely will share the details of that transaction with the
Commission, may I be allowed to do so please?

CHAIRPERSON: But what is the problem in telling us what the transaction is?

MS SIBUSISIWE ZULU: So the, well the transaction I can mention,
the, if you, as you are aware Mr Commissioner the initial investment
that took place in, the transaction which you are aware of is the S&S
20 Refineries transaction but there was a second transaction in 2016
where the PIC was being asked to acquire the property, so the
immovable property, you know the plant and S&S was now going to
lease that property. And my question was so we're literally taking over
this white elephant that's one, this where we're currently invested that
investment is not performing so how are they going to pay the rent.

Number three, are we not just stealing from Paul to pay Peter here because by then the loan was already impaired and my view was this is an opportunity for S&S to take the money and just pay the other loan. Remember there are Chinese wall within the PIC so they could have easily paid, we buy this property, they default on their rent and then what we do with this huge plant in Mozambique, you know. And so that was insofar as the investment case was concerned but I went past that because I said colleagues we're not going to do this.

You know I told my fellow directors they said well maybe let's give it, I
10 said we're not going to do this and that's where we stand firm as directors and we express our views freely and then – but I went past that and I said I want the deal team to explain to me how this got here you know. And so it ended up being, because they didn't have responses, the CEO himself had to try and defend the transaction and justify *etcetera* but like I said when it came out in the newspapers you know they executive head called you know and said thank you, you rescued us. So it goes back to whether it's real or perceived but there were those elements that would make one, I can make a number of those examples where you know one knew that the culture of fear had
20 set in at the PIC.

ADV JANNIE LUBBE SC: That is where you experienced it is that correct, when you started questioning risk and legal on their reports everybody kept quiet?

MS SIBUSISIWE ZULU: That's correct, I mean they had, remember they had prepared their reports, now I went through the reports and I

said but you know so you got that sense in some of those matters that there is that element of I need to do things in a specific way, I need to comply, I can't say no to this. But remember we never had the benefit of what happened behind the scenes so you could question what was put before you.

ADV JANNIE LUBBE SC: Was Dr Matjila and Ms More at that meeting?

MS SIBUSISIWE ZULU: I'm not sure about Ms More I know Dr Matjila was at that meeting, in fact because I was requesting that the committee declines the transaction Dr Matjila then requested that it's
10 not declined and it's put on hold so that they do more work and deal with whatever issues and I was comfortable with that. So there was not, there was not any, outside of the professional relationship you know between myself and you know Dr Dan, there was just never any issue.

MS GILL MARCUS: Can I just ask if you are aware that the S&S transaction went ahead?

MS SIBUSISIWE ZULU: The property one?

MS GILL MARCUS: The oil one, the Mozambique one went ahead.

MS SIBUSISIWE ZULU: Yes, no there were two transactions ...
20 (intervention)

MS GILL MARCUS: I understand that but what I'm saying because you've implied from the way that you presented it that the deal was stopped and you just said the decline, is that relating to the property deal knowing that the S&S investment went ahead?

MS SIBUSISIWE ZULU: Yes the property S&S investment was put on

hold.

MS GILL MARCUS: Did not go ahead?

MS SIBUSISIWE ZULU: Yes.

MS GILL MARCUS: And it never went ahead?

MS SIBUSISIWE ZULU: As far as my knowledge is concerned Ms Marcus it never went ahead.

MS GILL MARCUS: Okay but you were aware of the S&S actually going ahead, the refiner?

MS SIBUSISIWE ZULU: The initial, yes and that is why I was saying
10 you can't let this one go ahead when it's ... (intervention)

MS GILL MARCUS: No I understand it's just the way you presented it was ambiguous, thank you.

MS SIBUSISIWE ZULU: Thank you.

ADV JANNIE LUBBE SC: Just a couple of more questions. Dr Matjila testified before the Commission that you approached him to be appointed to the Board of ACCSA and that he refused and that you were very unhappy with that.

MS SIBUSISIWE ZULU: Oh Mr Commissioner, no in fact even my
20 fellow directors would know this about me, I had explicitly said I cannot avail myself for any board appointments because of my other commitments which I was more committed to and I wanted to give time to. So I had said that so ordinarily all my fellow directors sat in other boards so I had said to them well between practice and the activity linked to practice that I get involved in and which I'm more passionate about I don't want then to be absent in board meetings so I did not take

up any other boards literally over the period of the four years at the PIC and you'll note that if you look at all the other directors they sat in two, three other boards being PIC appointees.

ADV JANNIE LUBBE SC: That's why I'm asking you because I've noticed that you don't have a seat on any board?

MS SIBUSISIWE ZULU: Yes that's correct Mr Commissioner so ... (intervention)

ADV JANNIE LUBBE SC: Would it be correct to say that that statement of Dr Matjila is factually incorrect?

10 **MS SIBUSISIWE ZULU:** It is factually incorrect Mr Commissioner. We had, in fact that discussion, so for example I know Dr Dan had specifically spoken to me about going to the V&A Waterfront and he had also spoken to me about going to another property company that we were invested in and I told him that I could not avail myself for those and ... (intervention)

CHAIRPERSON: When you say going to, you mean being appointed ... (intervention)

MS SIBUSISIWE ZULU: Being appointed into that board yes. And when the whole you know ACCSA appointment came up you know my
20 name was put there together with one of my colleagues Mrs Dudu Hlatshwayo and she was appointed to the board, there was never even a deliberation about it. I did not sit in the Directors Affairs Committee so at no point did I participate in the engagement you know, and because what he had said to me is that Ms Zulu I think you must consider sitting in more boards you know, I think you can add value

etcetera so you must considerate it. So I said well at some point maybe I'll consider taking one but for me, and I did tell him that I want to then make sure that nothing clashes with my other commitment which would take me away literally for about six weeks, I would not be available even to attend PIC Board meetings.

ADV JANNIE LUBBE SC: While we're on this topic, can you briefly share with us your views on non execs sitting on boards and employees of the PIC like Executive Heads of Listed or Unlisted sitting on boards of investee companies.

- 10 **MS SIBUSISIWE ZULU:** Well Mr Commissioner, we fortunately obtained a legal opinion to actually guide us on how we deal with these matters and it's an opinion I do agree with. That the shareholder has the prerogative to appoint whoever they want to appoint into an investee company including an employee or a non executive director. But what becomes an issue is the element of confidentiality, the Chinese wall so to speak. So and we obtained a legal opinion to that effect.

- 20 Now my view around my colleagues sitting in various boards, I think it was good because they also added value understanding the mission of the PIC and the strategy and what we wanted to achieve in so far as investee companies were concerned. So they had that in mind to say, when we invest in this entity, what were we trying to achieve? So do employees, that is the benefit. But outside of that the PIC appointed a lot of independent directors with various skills from various sectors to actually sit in those boards.

But what we had resolved is that the non executive directors of the PIC will not sit in Listed companies. Obviously because of the regulatory environment in the Listed space but especially in the Unlisted space. Some of those investments are risky, they're new and we approve them because we see the effect the social effect like job creation etcetera that would come with that transaction or with that investment. But then you know that you have A Ms Zulu or Hlatshwayo or Manning or whoever sitting there looking at that investment and knowing what the PIC wants to achieve out of it.

10 **CHAIRPERSON**: Sorry Advocate Lubbe, I'm thinking of taking a short break. Can we make it 15 minutes?

ADV JANNIE LUBBE SC: Yes Mr Commissioner.

CHAIRPERSON: Come back at 15:30

MS SIBUSISIWE ZULU: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Everybody is probably stunned by the fact that only two of us come in when there were three of us when we left. Yes, Ms Marcus has a previous arrangement, she had to excuse herself and
20 attend to what she was suppose to attend to this afternoon.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner.

CHAIRPERSON: But we will continue with the witness.

ADV JANNIE LUBBE SC: Thank you. I have two or three more questions and I have an arrangement with my witness here that the answers will be brief.

Ms Zulu, just a couple of questions about Dr Matjila again and it's not about Dr Matjila. Would you agree that the CEO of an institution like the PIC is a very powerful man or person?

MS SIBUSISIWE ZULU: Without a doubt Mr Commissioner.

ADV JANNIE LUBBE SC: And even more so if that position is combined as the CIO and the CEO?

MS SIBUSISIWE ZULU: That's correct.

ADV JANNIE LUBBE SC: And we have the facts, it's not in dispute, that Dr Matjila phoned Mr Mulaudzi and requested him to assist a lady
10 whose name has also been thrown about here, Pretty Louw, and to assist her with R300 000. Mr Mulaudzi testified that that is the type of request you don't say no to. How would- in what light would you see it?

MS SIBUSISIWE ZULU: Mr Commissioner, I'm conflicted in that matter so I reserve my comments.

ADV JANNIE LUBBE SC: I accept that but let's say he phones Mr B and tells Mr B, listen there's a young woman who's in dire straits at the moment. She needs money, can you assist her with a R500 000?

I think what we can agree- I think it cannot be argued otherwise that it is improper.

20 **MS SIBUSISIWE ZULU:** Mr Commissioner, I think it needs to be viewed in this manner. You have various black business people entrepreneurs trying out, they want to do a deal or two, secure a tender or two and it does not even matter what the view is or what the processes are internally and it goes back to the perception. How does that entrepreneur trying to secure that tender from a state owned institution

or a deal from an institution like the PIC or funding for that matter, how would they then respond to an individual that they see having the authority and power in that same institution.

So it's not even a case of what do you ask for but what message is sent when such a request is made. It could be financial, it could be do this but in what context is it done and that is why our view was to protect the CEO and any other member of the executive. Such engagements should happen in a formal environment so that you can say this is the context and this is our policy. I've complied with the
10 internal processes or policy and this is basically what I require you to do if you are able to do so.

Then it takes away any perception of undue influence being exerted etcetera and I think in this instance that's where the grey area so to speak is.

ADV JANNIE LUBBE SC: Thank you. The last question is I want to take you to the meeting with the then Minister of Finance Mr Gigaba on the 13th of September 2017 where you and other board members and Dr Matjila were all present in a meeting with the then Minister of Finance. And according to Ms Mathebula's evidence under oath here, he
20 mentioned that he received a WhatsApp text from a Cape Town business man reading as follows;

“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 Sifiso a text. I am available to chat anytime.”

And the Minister responded as follows;

“I’m not on the PIC board, chief. I cannot intervene on this as it 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.”

To which the business man responded;

- 10 “Of course, I am 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.”

Can you recall the Minister telling you about this WhatsApp message?

MS SIBUSISIWE ZULU: Yes Mr Commissioner.

ADV JANNIE LUBBE SC: I’m not asking you to try and identify the Cape businessman but can you just briefly tell the Commission in what context did he mention that to the PIC board members?

- MS SIBUSISIWE ZULU:** Thank you Mr Commissioner. The Minister
20 had called us in at the time because he was very concerned that, to use his exact words, “he was being dragged into PIC board processes”. And as shareholder I think at the time he had not met with the board. We had not had any engagement with the Minister, he had just met with management just- it was an introductory meeting which we understood to be very cordial and he even assured management of his support.

Now he then says, well I receiving various calls from the media and the public in general regarding what you as the board are doing, the fact that you are going to hold a meeting, the fact that you are going to fire the CEO. What is going on, why am I being dragged into the board's business? And I think because I've tried to explain myself to the public and to some journalist that have contacted me. Let us do this jointly so that the public knows even those who may not have a clear understanding of corporate governance and what the role of the shareholder representative is. Just let's come out and tell the public
10 that I don't know about this meeting and that the board has convened its normal meeting to deal with its business and has not reported anything to me.

That's what, it was in that context. He then says, "It's gone as far as I'm receiving text messages". That's when he then read it on record.

ADV JANNIE LUBBE SC: Mr Commissioner, thank you. I have no further questions.

CHAIRPERSON: When you say, that's when he referred to the WhatsApp message?

20 **MS SIBUSISIWE ZULU:** Yes, to the WhatsApp message because he was just saying he's receiving various inquiries about what's happening in our boardroom. And then he said, "as an example I received this WhatsApp message which I'm completely clueless about".

MR EMMANUEL LEDIGA: Ms Zulu, good afternoon.

MS SIBUSISIWE ZULU: Good afternoon.

MR EMMANUEL LEDIGA: Yes. I've got quite a number of questions, about 10 to 12 questions, so it's quite a lot. And the first page is more generic about the board and all that and the second page I'm more specific. Ja, alright.

MS SIBUSISIWE ZULU: Thank you.

MR EMMANUEL LEDIGA: So to start off is that, how would you characterise the PIC board? Was it a management board or it was governing board? I think it's a big question which we asked around and then was still not sure in terms of the answer. And that's the first
10 question. I think let's just go question by question.

MS SIBUSISIWE ZULU: Are we going to- should I just ... (intervenes)

MR EMMANUEL LEDIGA: Ja, just one question at a time ja, that's fine, if you could answer in briefly please.

MS SIBUSISIWE ZULU: So the PIC board in my view was a governance board. So firstly the PIC is a state owned entity which must comply with the PMFA and likes and acts as a accounting authority of the institution. But at the same time it's the same board that then takes ultimate accountability for assets under management. So it goes back to authorities delegated to various levels but ultimately
20 the board takes accountability. So it is a governance board.

MR EMMANUEL LEDIGA: And mainly because it's got delegations which it has sort of a push down and people must act within those delegations, is that correct?

MS SIBUSISIWE ZULU: That's correct Mr Commissioner.

MR EMMANUEL LEDIGA: So it's not a management board?

MS SIBUSISIWE ZULU: Not in my view.

MR EMMANUEL LEDIGA: It doesn't take decisions that the management must take?

MS SIBUSISIWE ZULU: It does not take decisions that management must take. It goes back to what has been delegated and that's why on an annual basis or even on ad hoc basis when the need arises the board would then review and revise its delegation. So some delegations which may have been sitting with management the previous year, you might find that the following year the board has felt this is too
10 risky, we are actually taking over or as a board subcommittee must now sit with such delegation.

MR EMMANUEL LEDIGA: Yes, some reserved matters also would- the board would take some stuff and put it in the reserves matters for the board.

MS SIBUSISIWE ZULU: That's correct.

MR EMMANUEL LEDIGA: If it happens he does it?

MS SIBUSISIWE ZULU: Yes.

MR EMMANUEL LEDIGA: Alright okay, thank you. Next one. Just in terms of maybe the problems that were at the PIC. Do you think there's
20 a been a big problem between the investment teams versus the functional teams because if you look at the witnesses and the evidence there seems to be a lot of people that had a problem with Dr Matjila and they are from Risk or Legal or whatever and we haven't had witnesses from the investment team being against them and all that. Do you think there's a rift between say the functions and the investment

section, by any chance?

MS SIBUSISIWE ZULU: My view Mr Commissioner is that there's no such rift purse and I think from at least what I have observed through this Commission is that you found more employees who whether form our current who were on the operational side being more vocal and coming out. But my view is that it's a representative, it could be a representation or a snippet of the general view within the institution because the- if you look at the union for example, that was formed, it's not necessarily membered by just those who are on the operational or
10 the corporate side.

MR EMMANUEL LEDIGA: The corporate side, yes.

MS SIBUSISIWE ZULU: From the corporate side but also employees from who are in assets under management, the investment teams also participate in those unions. So I think it's basically a general view and I think it would be incorrect to actually categorise it and say it belongs to corporate or AUM but it's an institutional issue.

MR EMMANUEL LEDIGA: Ja alright. And then just in terms of the CEO Dr Matjila, the past one is that there was a feeling that he was very powerful and that he had a hold on the board. And I've asked this
20 question to other people like Ms Beswick and all that but they feel that no he was not- he didn't sort of hold them in thrall and they were working quite fine. What is your thinking about that? Did Dr Matjila have a hold on the board?

MS SIBUSISIWE ZULU: Mr Commissioner, I think as the board we trusted our CEO. We had faith in our CEO. And the powers and

authority that was delegated to him, we left it at that. And it goes back to what I said earlier that in hindsight there may have been matters where we should have actually asked more questions as the board. So then that's where the perception would come from to say this is a board that covers for its CEO, this is the board that the CEO has held at ransom or whatever the case may be.

But I think there was generally a healthy relationship with our CEO and we had a lot of faith in him not just him but the entire management team. But the interaction with him would be more common because he
10 was also a director.

MR EMMANUEL LEDIGA: Ja. So but are you saying he didn't sort of have a hold or he sort of had it?

MS SIBUSISIWE ZULU: I don't believe he had a hold purse.

MR EMMANUEL LEDIGA: Okay.

MS SIBUSISIWE ZULU: That's why I'm saying maybe we did not question him enough. But I don't believe I never felt for example at any point I couldn't ask him questions. Maybe that's why then he even had a perception that, oh maybe Ms Zulu didn't like me. But I mean I hold him in high regard.

20 **MR EMMANUEL LEDIGA:** At the okay.

MS SIBUSISIWE ZULU: And we just should have asked him more questions than we did.

MR EMMANUEL LEDIGA: Ja alright, next one. According to you people felt victimised and everything. Say if I had to ask you, who were the biggest culprits in victimising people, do you know? Can you

venture some names? You were on the board so I'm sure you would know.

MS SIBUSISIWE ZULU: Well I think a lot of evidence has come out here. Like I'm saying there was never a formal complaint given to the board to say, as employees so and so or the following employees are being victimised by the following executives or management. So a lot of these things were actually just basically informal being discussed informally where you got the sense that employees were- there was a sense of discomfort and fear.

10 **MR EMMANUEL LEDIGA:** Next on. Just in terms of the IC, there are proposals at the PIC and even the other witnesses have spoken about it. That if you have a new corporate structure, that the IC shouldn't take investment decisions. What's your thinking around that? Am I clear with my question?

MS SIBUSISIWE ZULU: Well Mr Commissioner, you would expect the IC to be able to make some form of decision on investments. And it goes back to, if you look at the current structure there are transactions that are approved at PMC level and then there are transactions that are approved at Fund Investment Panel level. Then there are transactions
20 that go to the investment committee and I think the investment committee, if you look at its terms of references to do exactly that. And the idea of having the fund investment panels reduces the load on the investment committee and gives delegates some authority to the Fund Investment Panels and it becomes- it's also sector specific.
So you would have the Property Investment Panel, you would have the

Infrastructure Investment Panel etcetera so in the years that I've been at the PIC those structures for me have worked.

MR EMMANUEL LEDIGA: Okay alright. Two more broad questions and then I'll go to specifics. In terms of the chair person of the PIC, do you think that person should be a politician, Deputy Minister of Finance?

MS SIBUSISIWE ZULU: Mr Commissioner, my view is that whether you have a politician or not, what is important is the independence, is acting ethically and in the interest of the institution. I've had the benefit of having three chair persons at the PIC whom I believe for
10 example the first- no it's actually four because the first chair person when I arrived in 2016 was former Minister Nene. He was still the Deputy Minister and I saw him adding a lot of value in the board and he would bring even that government perspective.

Ultimately these are pensioner's funds and government is also the guarantor. So in some of the investments just to understand for example what governments' thinking is around infrastructure investments for example and he would bring in that perspective into the board. In as much as he was the chair, he never participated in any investment decisions because at board level very few- I think in the
20 time I've been at the PIC maybe one or transactions have been to the board. But that perspective for me added value.

That was the case as well with Deputy Minister with chair person at the time Mcebisi Jonas and all of them, yes.

MR EMMANUEL LEDIGA: Alright okay. But what about the fact that because of cabinet reshuffles, you find that then the chair person

changes and the PIC is a long-term investor, it needs a stability in the board, that the board should serve 3, 5, 10 years to see investments through.

MS SIBUSISIWE ZULU: So my experience as well at the PIC was that when there are cabinet reshuffles, the PIC committees would still sit, the board committees would still be operational. So it would be business as usual and then the Deputy Chairman of the board would act as the chair person pending the appointment of the new chairman being the Deputy Minister. That's what happened to us. Only when it was
10 only in one instance where the board was actually asked to put on hold its business but generally over the four years the board have never been directly negatively impacted by the change in ministers because the board meetings would still take place, decision would still be made etcetera.

MR EMMANUEL LEDIGA: I can go on there but let's drop it there and go to another question alright. Just in terms ... (intervenes)

MS SIBUSISIWE ZULU: So Mr Commissioner, my view is that either or I'm not completely opposed to- I can't say I've seen disadvantages with having then Deputy Minister being the chair person of the board. It had
20 added value in some instances so either or I don't have an issue with it.

MR EMMANUEL LEDIGA: Okay alright. And then just in terms of skills of the board. The broad skills, would you say which ones would be the key ones? 3, 4 or 5 skills that are required on the board, the members of the board? We know there's legal, we know there's ... (intervenes)

MS SIBUSISIWE ZULU: We'll take away legal.

MR EMMANUEL LEDIGA: The HR, IT maybe what else?

MS SIBUSISIWE ZULU: Yes IT. So in the past I think in the recent past we actually saw that we needed an IT specialist to sit in the board because ultimately the PIC is about its Human Resource and also its systems. And so you need a non executive director with that skill to actually assist in overseeing the committee and chairing that committee. And then obviously we are an asset manager so you need that strong skill in asset management, investment banking, general
10 corporate governance because I've heard of boards where you have 10 CA's but the company has collapsed.

So you generally a vast number of skills to complement each other and for the record Mr Commissioner I think the PIC has had that skill in the years that I've been there.

MR EMMANUEL LEDIGA: Okay alright. Then I'll go to specific questions because there's been a lot. I think Advocate Lubbe has asked some but there's been a lot of specific allegations which I want to hear your versions across the board, you are an acting judge so you need to give us your ... (intervenes)

20 **MS SIBUSISIWE ZULU:** I'm lawyer Mr Commissioner.

MR EMMANUEL LEDIGA: Your version. The first one is this, is that Dr Matjila he said that together with you and Dr Mkwanazi were in cahoots in making sure he is fired. I mean in a nutshell that's what he said. What do you say to that?

MS SIBUSISIWE ZULU: Well I deny that allegation.

MR EMMANUEL LEDIGA: Okay alright, you're going to stop there?

MS SIBUSISIWE ZULU: I'll stop there.

MR EMMANUEL LEDIGA: You are wise to stop there.

MS SIBUSISIWE ZULU: In the interest of time Mr Commissioner I'll stop there.

MR EMMANUEL LEDIGA: You deny it completely, ja.

MS SIBUSISIWE ZULU: I found Mr Mkwanazi to be independent. He's and experienced corporate executive, I've never had any private sessions or (inaudible) with him. I mean I just- it was unfortunate that
10 Dr Matjila had to make such a comment because I think he's also seen in the boardroom how sometime we would differ amongst ourselves even between myself and Dr Mkwanazi.

MR EMMANUEL LEDIGA: Alright. And then next one is that in terms of Fidelis Madavo and Victor Seanie were suspended on a draft report. There was a meeting going on the whole night and the following morning they were given letters and all that and I think it was Ms Beswick, she said that you actually typed the letters. You were quite active actually in participating to make sure that these people were gone. I just want - you type the media statement, you typed the letter,
20 you know, to accept this – like sort of his – you know sort of him resigning. I just want to understand.

So the picture we got here from Beswick, from Matjila and the others was that you were quite active in the board and you were doing things that the management was supposed to do, the HR that, you know, it was supposed to be Chris Pholwane and then the corporate

affairs were supposed to write the media statement, so I just want to hear your version there.

MS SIBUSISIWE ZULU: Yes, thank you, Mr Commissioner. I think in some of those matters I won't get into detail because there are records and, you know, the record and transcripts will actually, you know, bear me out. But I think at a personal level just to make the Commission understand, one of the personal skills I have is that as, you know, you are deliberating, I write. So I literally just start writing my own notes whether it's in an iPad or it's here.

10 So if you look at some of meetings where remember there was not a single individual from management because there were meetings *in camera* and we had a board secretary just sitting there basically recording.

 So what I would do when the board is busy deliberating I would be writing and taking notes and when my turn comes to actually, you know, make a comment I would then say colleagues, having heard what you said, this is what I've noted and I would read out.

 So is this correct, are we saying this is our resolution because at some point you need to close a matter and then colleagues would
20 say no, no, no, actually can you add this? No, no, no, we didn't say it this way and the records are very clear, I mean after one of my colleagues have made that comment I asked for the transcripts and they clearly reflect that and we used to do it all the time and it was not just during this period but even previously where certain matters would come up and we would say colleagues, let's prepare a draft statement

and sent it through.

So that is what happened and, for example, when the letters were being, you know, done ultimately the company secretary would then put the letter on the letterhead and take the notes, you know, which I would prepared and type, you know, the letter.

Notes which would include, by the way, other directors' comments and then in a letter that needs to be signed by Chris Pholwane, for example, it would be handed over to him to make sure that it includes all these other, you know, HR terms or conditions
10 basically for a suspension. That's how it was done.

MR EMMANUEL LEDIGA: But wouldn't that job be better done by the company secretary I would have thought in the meeting to do exactly what you were doing?

MS SIBUSISIWE ZULU: No, so the notes would be for myself, Mr Commissioner.

MR EMMANUEL LEDIGA: Yes.

MS SIBUSISIWE ZULU: So I would literally be writing for myself.

MR EMMANUEL LEDIGA: Yes.

MS SIBUSISIWE ZULU: And at the time unfortunately we had, you
20 know, very efficient board secretary and she would ask just to be assisted to say can you give me, you know, the wording, can you – is this properly captured, etcetera, Ms Louw, and we would do that because at the time Ms Mathebula was on suspension and she would capture those things properly and then circulate it to the board.

We would read it, we would literally read it out or she would

read it out for us and then we corrected, make the final corrections and then say can you then hand it over to, you know, the necessary signatory.

MR EMMANUEL LEDIGA: Okay.

MS SIBUSISIWE ZULU: Whether it's the HR head, etcetera.

MR EMMANUEL LEDIGA: Oh, I see, I see, ja.

MS SIBUSISIWE ZULU: And the records will show that clearly, if you look at the transcripts of the meetings.

MR EMMANUEL LEDIGA: Ja.

10 **MS SIBUSISIWE ZULU**: So it was never a oh, you know, Ms Zulu's drafting and then that's it.

MR EMMANUEL LEDIGA: Yes, it's quite interesting because all of them, I mean, I've looked at 8.9 of Beswick, whatever, 8.9.5, I mean they are saying that you actually was heavily participant and the impression we get at the Commission here was that you were almost the final person to write these things, but maybe you are saying a different story here.

MS SIBUSISIWE ZULU: Mr Commissioner, may I request that for the benefit of the Commission and in the interest of time you just go
20 through the transcripts.

For example, I you look at the transcript, that where the board had been presented with the investigation report and ultimately resolved, you know, to suspend.

I mean, there was a strong – it was a unanimous decision of the board and the board was saying, I mean, at some point some

colleagues were saying can't we just fire this executive head immediately, this is not his first violation. I said no, no, colleagues, let's calm down, you know? That is the kind of engagement.

So also I was as surprised when then I heard, you know,. some colleagues making certain comments but for me, those are easily, you know, cleared out, you know, through transcripts.

MR EMMANUEL LEDIGA: Ja, with the transcripts, okay.

MS SIBUSISIWE ZULU: Yes.

MR EMMANUEL LEDIGA: And then just in terms of the Matjila firing
10 that they say that when the meeting was going on or so and they wanted to get a legal opinion, you already had some case law and some opinion and you said this is the opinion, you know, and there's no need to go to external council, that's what Beswick, you know, or (indistinct) I think, ja.

MS SIBUSISIWE ZULU: No, no, no, that's not correct, Mr Commissioner. The colleagues were saying – there was a debate on whether the letter could be regarded as a resignation letter or not. That was basically what was being debated in the boardroom.

So each director was expressing a view on that matter. And
20 once again the recording will make that clear to say everybody was expressing, you know, a view, you know, on the matter and the question was being asked is this a resignation letter, you know?

Is this not – so everyone expressed a view and when, you know, my turn came I also expressed my view, you know, to say well, clearly the CEO is intending to resign so the only issue now is the when

part but this basically a resignation letter where he's saying I want to resign in March and now we're at the end of November so what the board needs to discuss is whether he leaves in March or he leaves immediately and the record will show that.

MR EMMANUEL LEDIGA: And then just in terms of the Budlender and, you know, the – I think it's Nemagovhani, in terms of the investigation of Dr Matjila and More, they say that he says that he was cleared almost twice, you know, with the Budlender the second time and then with the MST, sort of he was cleared also but I think – by the board and
10 but I think you and Dr Mkwanazi and the other people insisted that this has got to go on and on and that millions of rands were spent on something which could have been dealt with very clearly, you know, and he did mention about you that you were not happy, you wanted to open the whole thing again and again and again.

MS SIBUSISIWE ZULU: So Mr Commissioner, once again, that's not correct and the records are clear. What happened was the board took a decision and when the board was taking that decision, when the decision was taken, my dissenting view was recorded as, you know, per the norm. That's what happened.

20 **MR EMMANUEL LEDIGA**: Yes.

MS SIBUSISIWE ZULU: The matter was closed.

MR EMMANUEL LEDIGA: Was closed then, yes.

MS SIBUSISIWE ZULU: The matter was closed then. The matter was closed. The only time the matter was reopened was when Minister Nene wanted answers.

We then were served with court papers and ultimately Minister Nene issued a directive to the board so the matter was closed in 2017. That's what led to the matter not being closed publicly, that's what – that's how it ended up creating excitement because the board had said this is our decision and that's it.

So even when we met with Minister Gigaba, he was told this is the board decision and that was it.

We met with Minister Nene, we told him this is the board decision and we stand by it and after having that session with him he
10 then wrote and said I'm not happy with your decision and I'm hereby directing you to reopen the matter.

So the investigation was not instituted by the board, it was actually instituted by the Minister through the board, so it was a directive saying I want you to investigate.

Hence when the report came out, it was handed over to the Minister because by then the board had already expressed itself on the matter.

MR EMMANUEL LEDIGA: Okay. Ja. And then tell me then, so why was that reported, you know, the Budlender report, why wasn't it
20 released to the media and to other people because Dr Matjila said that report was there but for months or weeks, I don't know, for months actually it was kept under lock and key and his reputation was suffering and all that?

MS SIBUSISIWE ZULU: So what happened, Mr Commissioner, the report was actually sent to the Minister.

MR EMMANUEL LEDIGA: To the Minister, ja, okay.

MS SIBUSISIWE ZULU: With the request that he then guides the board on how to deal with the report.

MR EMMANUEL LEDIGA: Yes.

MS SIBUSISIWE ZULU: Because the report even had findings on the board, by the way. There were certain findings that Adv Budlender had made on the conduct of the board. Now we needed, as the board, to be guided by the owner of the report on how we go about implementing the recommendations and I think the Minister must have left at some point
10 and the matter was never properly concluded by the board took a resolution to say now that we've received the report we'll take it to the Minister and say as per your directive this is the report then can you guide on how deal with matters that arise from this report.

MR EMMANUEL LEDIGA: And did the Minister guide the board or did that report stayed for a year or a year and a half in the drawers?

MS SIBUSISIWE ZULU: Well, I think Minister Nene then left at some point and then obviously you must take the matters forward with the new Minister, etcetera, I don't remember us engaging, you know, on matters that had arising because I know personally I was quite
20 concerned on some of the findings that were made against the board itself.

ADV JANNIE LUBBE SC: Chair, can I perhaps assist? The report was a treasury report and when the Commission started with its sittings, I requested treasury to have the report handed over to the Commission and be published. That's how it happened.

MR EMMANUEL LEDIGA: Alright, thanks. Ja, I think it's clearer now. Okay, so it was not a board report.

MS SIBUSISIWE ZULU: It was not a board report.

MR EMMANUEL LEDIGA: It was a treasury report.

MS SIBUSISIWE ZULU: That's correct.

MR EMMANUEL LEDIGA: Oh, that's clearer now. Next one, just in terms of the affidavit that the Chairperson in the Holomisa matter, you know, signed and, you know, there was a board decision taken and he didn't agree. I mean, do you think he was right to dissent and to
10 actually file that affidavit to say he support the suspension of the CEO? Do you think – I mean, the board takes a decision and someone in a court of law, you know, changes and goes a different route in terms of corporate governance. I know you addressed it earlier.

MS SIBUSISIWE ZULU: Mr Commissioner, I think the content of that affidavit is very critical because nowhere does it say that the Chairperson supported the suspension of the CEO. That affidavit, if I remember correctly, it basically said I've come in as the Chairman of the Board, I've now been cited as a respondent in this matter and these are my views on what – on these allegations, I will then abide by the
20 decision of the court and he left it at that.

And I think that's very important to highlight because even the board itself did not oppose the entire application. The board only opposed specific prayers in that application.

MR EMMANUEL LEDIGA: Yes.

MS SIBUSISIWE ZULU: So we did not – so we said we will stay out of

certain matters, the court must make a determination but on matters that affect us as directors, that raise questions about us acting in good faith, you know, with skill and care, we wanted to respond to those matters.

So even our affidavit was very narrow, just like the Minister deal with matters that related to him where he said well, the court must give me an opportunity to deal with my board as the shareholder representative.

He did not get into what had happened in the boardroom and
10 he said all I'm asking for is that I've now taken action and I'm considering these matters and I'm going to direct the board accordingly.

The CEO also opposed the fact, you know, the prayer that he must be suspended and then – and so each party dealt with matters, you know, that related to it. But it was not basically direct agreement that he has fired the board or suspend or this board or whatever, it was nothing like that, or suspend the CEO.

MR EMMANUEL LEDIGA: Okay. Just in terms of the divisions that you mentioned in the board, I've asked before, you know, and apparently there were two factions, you know, and tell me if it's sort of right or
20 wrong that there were six or seven or eight people in one faction and there was you and Dr Mkwanazi and the Chairperson in the other. Is that correct, is that in terms of how the battle lines were drawn?

MS SIBUSISIWE ZULU: Mr Commissioner, in my everyday job you're on the opposing side with someone, with a colleague, the following day you are literally working together opposing someone else and I think for

me, I've had a serious struggle to identify with the so-called factions because I've had times where I've opposed Chairman Gungubele, I've told him outright I do not agree with his views and I've given reasons and I've actually, you know, been on the side or whether it's Ms Hlatshwayo or Ms Beswick and you know?

So for me it has been issues-based and therefore what my view on the matter would be. I've never seen it as factions. We don't know each other outside of the PIC, we are there as professionals and I wanted to believe that we acted as professionals.

10 **MR EMMANUEL LEDIGA:** So you never like sided in one group all the time their point of views and all?

MS SIBUSISIWE ZULU: Not at all.

MR EMMANUEL LEDIGA: Ja, alright.

MS SIBUSISIWE ZULU: So, for example, there was even a view that the board was divided on certain matters, you know? So, for example, with regards to the CEO's resignation, it was a unanimous decision by the board to say we must accept this resignation. It was a unanimous decision.

20 The only issue was then there were two or three members who were saying let's accept his terms and the majority of the board, you know, which included, you know, directors who are said to be in other factions, we are saying well, the letter is concerning what the CEO has said in the letters concerning he raises issues of trust, etcetera, how the board has treated him and the board was clearly uncomfortable with some of the allegations that the CEO had raised and hence the board

then said let us thank him and say that we will allow for him to actually leave three months earlier than the terms that he was dictating to the board.

MR EMMANUEL LEDIGA: Okay, alright. The final question here then it's some comments there. You know, we spoke about Fidelis Madavo and Victor Seanie and you seem to say there was a bit of process followed and all that.

On the one hand there was some findings on Mathebula and Menye and you say that that's fine and all that, you know, so I'm trying
10 – and, you know, Dr Matjila said you and Ms Mathebula had a good relationship so you used to meet. That's what he said, that you were meeting her.

So how do you sort of reconcile those two in a sense that on the one hand there was a process but there was a draft report with Madavo and Seanie.

On the other hand, with Menye and Mathebula. There were findings, you know, with the – ja, you know? So how do you sort of reconcile your stance on those two issues and all that?

MS SIBUSISIWE ZULU: So firstly, Mr Commissioner, with regards to
20 Mathebula and Menye, there were no findings. There was a forensic investigation and the report was inconclusive.

MR EMMANUEL LEDIGA: Oh, alright.

MS SIBUSISIWE ZULU: Then they were taken through a disciplinary process. A hearing, the Chairperson of a hearing recommends to an employer. Whether they say final warning or whatever the case may

be.

MR EMMANUEL LEDIGA: The recommend.

MS SIBUSISIWE ZULU: It's a recommendation.

MR EMMANUEL LEDIGA: It's a recommendation, okay.

MS SIBUSISIWE ZULU: And the employer is not bound by that recommendation. So the Chairperson of a hearing can say it's a good guide and in most cases it would be accepted and he could say well, I think this employee must get a final warning and the employer can say well, actually we want a dismissal here, you know, the transgression is
10 serious enough for a dismissal.

MR EMMANUEL LEDIGA: Ja.

MS SIBUSISIWE ZULU: And so the board as the employer exercised its authority on the matter and we concluded it and my view is that we acted, you know, in good faith and in the interest of the institution because we took into account all the other factors including a report which was inconclusive and how his disciplinary hearing had emanated.

Same goes with the Madavo process. The board was presented with a report which it fully considered and we deliberated on it. Like I was making an example now, in that meeting there was even
20 a strong view by some directors that why are we wasting time?

And we had to actually correct those matters to say well, let's follow process but it was clear to use and it must be highlighted, Mr Commissioner, that the reason for the suspension was not necessarily just the transgression but it was the allegations in the report which were saying the said employees were not fully cooperating, not

disclosing information and therefore could actually interfere with the investigation and that was the basis of the board saying place them on – because remember, there were a number of employees who were also implicated in the report but at the time the board after looking at the report unanimously resolved for those two employees to be suspended.

MR EMMANUEL LEDIGA: And the board in terms of all those four cases, you know, did the board have the powers or the delegations or whatever to do that or was that area for management?

MS SIBUSISIWE ZULU: So it goes back, Mr Commissioner, to what I
10 was saying, that the board has the ultimate authority. But in terms of the PIC's delegations, the CEO would suspend – take a decision to suspend but if you remember, at the time the Acting CEO was implicated.

MR EMMANUEL LEDIGA: Oh, yes.

MS SIBUSISIWE ZULU: And she had correctly written to the board herself.

MR EMMANUEL LEDIGA: Yes, yes.

MS SIBUSISIWE ZULU: To ask to be recused from those processes because she knew that her name had been mentioned and she had
20 participated somehow in the transaction.

MR EMMANUEL LEDIGA: Ja.

MS SIBUSISIWE ZULU: Now when the CEO is removed then the board had to make decisions. Hence the executive head of HR could not have gotten instructions from the CEO but had to get instructions directly from the board to say the board has accordingly resolved to suspend

the following employees, now implement the decision of the board.

MR EMMANUEL LEDIGA: Ja. Did it happened for both sides in terms of the first part of Madavo and Seanie and the second part of Menye and Mathebula? Did the CEO say take the powers for now because I'm conflicted or a conflict?

MS SIBUSISIWE ZULU: Well, in the Menye as you would already know, Mr Commissioner, in the Menye and Mathebula matter the board only got involved now in 2019.

MR EMMANUEL LEDIGA: Yes.

- 10 **MS SIBUSISIWE ZULU:** Before then it was strictly management through the CEO that was making decisions hence, for example, we learnt about the settlement agreement and the processes, you know, *ex post facto* but we still tried to rectify those matters.

But insofar as these were concerned, the investigation had been initiated by the board, the report was presented by the board *in camera*, the board resolved on what action should be taken insofar as the content of and the findings of the report is concerned and that's when the decision to suspend and take further action was taken by the board.

- 20 **MR EMMANUEL LEDIGA:** Okay, Alright, Ja, then the final – that's the final, final question there, is just in terms of the leaks, the leaks and the IT issues and all that, do you think that the actions taken by the CEO or CFO, you know, Mr Pholwane, were they justified? I mean, this is our terms of reference. Were they justified?

MS SIBUSISIWE ZULU: Mr Commissioner, in hindsight the board

should have actually – we should have considered the fact that the CEO is actually implicated in some of these matters that have come up.

MR EMMANUEL LEDIGA: Yes.

MS SIBUSISIWE ZULU: So as part of, you know, managing conflict we should have actually excused the CEO from participating in that process for this own protection.

MR EMMANUEL LEDIGA: Ja.

MS SIBUSISIWE ZULU: And for the integrity of the process and then allowed or designated some directors, which we always do. We would
10 have a task team, an *ad hoc* committee which was directors and they deal with matters that we are of the view that management can't deal with and I think there we may have erred. We should have allowed for the process to actually happen at the board level to protect both the CEO and the CFO.

MR EMMANUEL LEDIGA: Yes because he said – when he was asked he said he could do it because he was cleared, you see? Was he cleared? I mean, you know?

MS SIBUSISIWE ZULU: Well ...[intervenes]

MR EMMANUEL LEDIGA: By the board – he said – when we asked him
20 we said you were conflicted so, I mean, how could you carry out the process, he said no, he could because by then he was cleared.

MS SIBUSISIWE ZULU: He had been cleared by the board.

MR EMMANUEL LEDIGA: By the board, yes.

MS SIBUSISIWE ZULU: That's correct. And the board had gone as far as saying any other allegations must not be investigated and that's a

decision that the Minister ultimately overturned.

But I think because of – because remember these matters were already in the public and inasmuch as we had cleared the CEO they kept, you know, coming up. We should have actually for the integrity of the process have said we remove the CEO and allow for the process to be independent.

MR EMMANUEL LEDIGA: Yes, finally, so just there, you know, on the leaks still is that do you think that there was a process that, you know, it appears that people were quite frustrated in the PIC and some
10 wanted to make sure that things get heard and all that and maybe the whistle blowing policy they felt it was not the best policy or whatever, you think the way it was approached was the last straw? You know, people felt powerless and they said let's do leaks and get to them to the media or do you think there could have been other ways to deal with these issues?

MS SIBUSISIWE ZULU: Well, Mr Commissioner, there certainly could have been other ways, you know, to deal with these matters and express frustration but at the same time I think we need to take responsibility as the board that perhaps the culture that was already
20 there didn't inspire confidence with our employees that should they raise some of these matters they will still be protected and I think we should have actually done more work just to deal with that because that's really the issue, you have a whistle blowing policy but then they say oh, well, yes, it goes through whatever internal audit and internal audit must report it to the CEO.

So how do we actually – yes and the audit committee.

MR EMMANUEL LEDIGA: The audit committee, yes, yes.

MS SIBUSISIWE ZULU: You know, the audit committee and some of the directors are said to be recovering, you know, for the CEO, so I think we should have then put systems in place to assure our employees to say you can still trust the system.

MR EMMANUEL LEDIGA: Ja.

MS SIBUSISIWE ZULU: You can still be able to express your concerns, your views, your frustrations and you will be protected, they
10 will not jeopardise, you know, your employment.

MR EMMANUEL LEDIGA: So are you saying that there could have been a way where the employees could have taken these matters to the board without worry, you know, to the Chairperson, Deputy Chairperson or a task team of the board and take these issues without a worry?

MS SIBUSISIWE ZULU: Well, there was no such platform and remember, in an environment of, you know, fear, whether it's perceived or real, you know, when you are not certain, when you don't know what's going on, you know, any decision you make you don't know if you should do it or if you shouldn't do it and I think we should have
20 actually taken more steps to ratify, you know, those matters.

So that is why, for example, I don't necessarily dislike Mr, you know, James Nogu, save for the fact that he's just delayed and messed up one's career but generally, if there could have been issues that were raised there that needed to be looked into, investigated, then you allow for that.

MR EMMANUEL LEDIGA: Ja.

MS SIBUSISIWE ZULU: What if it was an employee so frustrated and thinking oh, Mrs Zulu and other directors are corrupt and they are busy approving deals and they are getting billions from the PIC and it was genuine and they don't trust the whistle blowing system, they can't go the Chairperson of the board or any other directors because those are my colleagues and they would alert me.

So that's why the board needs to actually formulate a system where employees or in fact any other party, even external stakeholders,
10 are able to blow the whistle and know that those matters will be properly attended to.

MR EMMANUEL LEDIGA: Yes, yes, ja. Alright okay. Ja, so I wanted to ask whose James Nogu but I think you are not going to give me something there. Is there something you want to say maybe on who James Nogu is, any ideas?

MS SIBUSISIWE ZULU: I'd love to have tea with him.

MR EMMANUEL LEDIGA: Really?

MS SIBUSISIWE ZULU: Advocate Lubbe says I will kill him.

MR EMMANUEL LEDIGA: Anything you want to venture there? None?

20 **MS SIBUSISIWE ZULU:** No, none whatsoever.

MR EMMANUEL LEDIGA: Okay alright.

MS SIBUSISIWE ZULU: I think Mr Commissioner that is why my view was we can't even focus on who this individual is. Let's deal with the allegations ... (intervenes)

MR EMMANUEL LEDIGA: With the issues.

MS SIBUSISIWE ZULU: Because once you deal with the allegations and you know that if they are unfounded, you are able to clear individuals and you move on.

MR EMMANUEL LEDIGA: Ja.

MS SIBUSISIWE ZULU: Because as I was in preparing the statement I was like, do I refer to him as Noku or Nogu or Noko?

MR EMMANUEL LEDIGA: Ja.

MS SIBUSISIWE ZULU: So you don't know if it's various parties or one individual.

10 **MR EMMANUEL LEDIGA:** Yes. Alright ja thanks, I think I'm done ja. Thank you very much. I had questions but I wanted to hear your version. Thank you very much for ... (intervenes)

MS SIBUSISIWE ZULU: Thank you very much Mr Commissioner.

CHAIRPERSON: You're not done yet.

MR EMMANUEL LEDIGA: From my side, ja.

MS SIBUSISIWE ZULU: Thank you Mr Commissioner.

CHAIRPERSON: I'm going to ask one or two questions. The first one is there's a small discrepancy that I'd like cleared in the Lifestyle report. I don't want to raise it here. I'd rather send that discrepancy to
20 you through Advocate Lubbe. Would you be prepared to send us an affidavit in that regard?

MS SIBUSISIWE ZULU: Or even immediately after this session if you want it done in camera Mr Commissioner, I would be prepared to do so.

CHAIRPERSON: Okay, we'll talk about it after I finished. What was the or let me start with the letters of suspension. I'm not sure that I

got your answer. Did you or did you not personally write these letters of suspension to Madavo and Seanie?

MS SIBUSISIWE ZULU: The letters of suspension were dictated, the company secretary was there so it's not like I was typing the letters. So we had written notes because we said the board by then had taken a resolution that these are the reasons why these individuals are going to be suspended. So I wrote those matters down and then the company secretary typed that and then the HR Executive was called and he was then given the content because he had not seen the report, the internal
10 audit report and was not aware what the board resolution was.

But he was given the reason why the board wants to suspend. Then after that he completed because a suspension letter would have certain conditions you can't- so he put that part. But in terms of the content and the reasons why the employees were being suspended, that content was given to him through the company secretary who sent it to him and then he put it on the letterhead.

So if you look at the record Mr Commissioner you will see it is the entire board engaging so the initial part because we had said, okay colleagues what are the reasons for suspending? And then are these
20 the reasons and colleagues would say; Yes, this is correct. No, actually we must include this. And then we'd be like; No, let us not include that. Let's it's a simple suspension letter. So you'll pick that up in the record that the entire board is engaging around those matters to say how much content do we put in the letter. Let us leave it at that. And then it's handed over to HR.

CHAIRPERSON: Thank you. What was the intention of the board? What was supposed to happen after the letters of suspension were issued?

MS SIBUSISIWE ZULU: So the board then the letters were given to the HR Executive to finalise and they sent to the relevant employees. One of the directors then raised the issue- no if I remember correctly it was actually the board secretary who then said, I need to actually remind the board that Mr Madavo is appearing at the Commission tomorrow. He's being called and he's just basically going like all the other
10 executives. So he's going there just to give background on his etcetera and the Listed unit. Then we said, what must happen? We then called in the acting CEO to say please formally write to the Commission to actually inform them of the decision that the board had taken and also so that the Commission is not taken by surprise because these things have a way of leaking.

But in so far as the suspension is concerned, one of the conditions is that an employee will avail themselves when they're required by the employer and therefore him going to the Commission the following day was part of him fulfilling his responsibility as an employee of the PIC.
20 So that's basically what happened and I understand that a letter was written to the Commission to actually inform it of the decision that the board had taken.

CHAIRPERSON: Was the intention that he be charged at some or they be charged at some stage, Madavo and Seanie?

MS SIBUSISIWE ZULU: Yes, they were charged Mr Commissioner.

They were charged. My understanding is that the hearings are ongoing. They were charged a couple of months ago if I'm not mistaken.

CHAIRPERSON: Yes.

MS SIBUSISIWE ZULU: They were charged.

CHAIRPERSON: Alright okay, thank you for that information. In your statement at paragraph 9 says something to the effect, sadly what was to be a month, this is now with regard to investigations, am I correct?

MS SIBUSISIWE ZULU: Yes Mr Commissioner.

10 **CHAIRPERSON:** Investigations of the allegation against who?

MS SIBUSISIWE ZULU: So that James Nogu- so the background there Mr Commissioner is that when the report as I stated in my statement that when we got these allegations, the board held a meeting and it was resolved that just like the Budlender process we'll follow the same process. So that an investigation, the implicated directors are subjected that independent process and then the report and the investigation is concluded and because we were aware at the time that there was a- there's Commission of Inquiry and it was looking into matters of impropriety. We were going to hand over the report to it and
20 to the Minister as well.

What then happened was an engagement took place between the board and the Commission to say instead of the board doing an independent process through forensic investigation and another senior council being appointed to investigate these allegations, why don't we hand over the investigation to the Commission and we were quite comfortable with

that. And we were kept abreast Mr Commissioner to say well the investigation is still going on and then the information was being requested etcetera. So we were kept abreast on the developments.

I think at the time we just thought it would be an investigation that would take a month or two and be concluded. We've felt it was critical for it to actually happen like that.

CHAIRPERSON: Yes, my concern was in the second line where you say that investigation has now been handed over to the Commission at its request. Was that from communication between you and the
10 investigation team or your board and the investigation team?

MS SIBUSISIWE ZULU: Yes, that's correct. That's correct Mr Commissioner. We had a- after the board resolved to conduct an investigation independently, we were then informed that the Commission has approached the board to say let this investigation be handed over. Then there was actually a telecom between ourselves where we accepted and we agreed as the board that we would like to hand this process over to the Commission.

ADV JANNIE LUBBE SC: I think Mr Commissioner, just to set the record straight. We offered to assist and that offer was accepted.

20 **MS SIBUSISIWE ZULU:** Yes.

CHAIRPERSON: Thank you. You mentioned that you got a legal opinion in respect of Ms Menye's settlement agreement. Am I correct?

MS SIBUSISIWE ZULU: Yes Mr Commissioner.

CHAIRPERSON: Can I ask Advocate Lubbe, do we have ...
(intervenes)

ADV JANNIE LUBBE SC: It has been made available. Thank you Mr Commissioner.

CHAIRPERSON: It has been made available?

ADV JANNIE LUBBE SC: Yes.

CHAIRPERSON: We'd like to have copies of that please.

ADV JANNIE LUBBE SC: Yes.

CHAIRPERSON: But was there any legal opinion in respect of Ms Mathebula?

MS SIBUSISIWE ZULU: With Ms Menye the only issue that we were
10 looking at was the settlement agreement and we needed to because
when we looked at the settlement agreement as the board, we were
uncomfortable with some of the terms in that agreement. That's when
we then said, let us be guided on how because remember there had
already been a payout in that matter. And so we wanted to be guided
on how best we implement the board resolution which was to reinstate
Ms Menye. But there was this issue a settlement agreement had been
entered into and an amount had been paid. So we understood that
there could be PMFA challenges around us just reinstating her and then
do we get the money back, do we let her keep the money, do we- those
20 are all the questions that we did not have immediate responses to as
the board and we said, let us rather be guided on how we then deal
with the settlement amount. That's why we then asked for- so the
opinion focuses on solely the agreement and the payout made.

CHAIRPERSON: I take it your answer with Mathebula is that no we
didn't get a legal opinion but we discussed it and we decided ...

(intervenes)

MS SIBUSISIWE ZULU: Yes, that's correct.

CHAIRPERSON: On what to do.

MS SIBUSISIWE ZULU: That's correct Mr Commissioner.

CHAIRPERSON: Yes okay. In respect of the memorandum of incorporation which fund were you operating under? There's the one in my filed signed by Minister Gordon in 2012 or 13 but there was talk about other memorandums. Which one were you operating under if you can remember?

- 10 **MS SIBUSISIWE ZULU:** Well there was at some point Commissioner an attempt to amend the memorandum of incorporation so we initially operated under the one signed by Minister Gordon and then after that we- there was a process to amend the MOI and because remember at some point there were amalgamation of positions specifically that of the CIO and the CEO etcetera and so those needed to go through the amendment.

- 20 I know at some point there was even a discussion around amending the term of the board to say the board can serve three terms rather than two terms. So there was that discussion but I think at some point there was the MOI was filed and it was recalled and I think we reverted back to the old position on the basis that there must be a proper discussion around the MOI itself and understand the organisational structure because that's what it impacted on.

So we operated under the 2012 MOI hence there was a discussion to say we need to reinstate the position of the CIO.

CHAIRPERSON: But that position had already been done away with by that time and I'd like to know how that happened or whether the board knew that there was that move to change the MOI and do away with the position of CIO and I think is it COO?

MS SIBUSISIWE ZULU: That's correct Mr Commissioner. So there was obviously there were deliberations on the amendments of the MOI. So the minute the Minister approved the organisational structure, I know this was when we had just joined the PIC because that's when the position of the CIO was done away with and Dr Matjila was appointed
10 as the CEO. But there had been a discussion to amend the MOI and the ultimate signatory is the shareholder representative.

But that was never then finalised hence when we looked back in fact even the GEPPF raised concerns to say they believe the position of the CIO must be reinstated. And it was not even going to call for an amendment of the MOI, it was just going to call for the position to be reinstated within the structure but also and importantly redefine the roles because the powers and the job descriptions of the CIO was now sitting with the CEO and some of the functions was also sitting with the Executive Heads so there was a lacuna then. So if you then reinstate
20 the position of the CIO, you need to basically say where do you take the powers from or the functions from in order to reinstate that position because previously the Executive Heads were just senior managers.

CHAIRPERSON: Ja. Why I'm asking is because I was a bit worried that the board carried on with the business of the PIC probably knowing that the MOI requires a CIO and there is no CIO.

MS SIBUSISIWE ZULU: That's correct.

CHAIRPERSON: Yes and that carried on with the boards knowledge?

MS SIBUSISIWE ZULU: That's correct Mr Commissioner. The discussion of actually reinstating the position of the CIO is if I remember correctly like almost a year old so it had been an ongoing discussion because initially it was the amendment of the MOI to address what was already approved and then that did not happen and then at some point there was a discussion of about reinstating and it was just never implemented. And I know that the decision that the
10 board took was that HR together with management must actually assist us in redefining the functions of the CIO.

CHAIRPERSON: Okay, one last matter. What happened to what was due to Dr Dan Matjila when he left?

MS SIBUSISIWE ZULU: So Mr Commissioner when Dr Matjila left the amounts that the board was authorised to pay to him were paid to him. Then the amounts that require the shareholder to approve were not paid to him just like all the other executives. So it was not just him in fact the board I think at the beginning of the year went as far as taking a resolution that we need to actually consider that in as much as Dr
20 Matjila had left the PIC, he had already left the PIC, whenever the shareholder approves LTI or the balance of the bonuses due to the executives. It must be considered that at the time he left, he was already entitled to such amounts. So that decision was taken by the board. So when the shareholder approves it that resolution is there to say in fact it was not just Dr Matjila it was also Mervin ... (intervenes)

ADV JANNIE LUBBE SC: Mervin Muller.

MS SIBUSISIWE ZULU: Yes, Mr Muller where we took that decision because he had made it clear that he wanted to leave the institution but he didn't want to leave and then lose his bonus.

CHAIRPERSON: So the place to go to is then the shareholder?

MS SIBUSISIWE ZULU: Yes according to the compact, the place to go is obviously the shareholder but generally my view Mr Commissioner is that those matters should be resolved at employer level at board level concluded because you would have assessed the performance of the
10 employees. They had been scored. There's a process that actually takes place and then they are given what's due to them because it's led to employees being demotivated to an extent because they feel well we work for the largest asset manager in the continent but our bonuses must be decided by a shareholder who will take into account what's happening in other SOE etcetera. So there had always that issue which I think perhaps going forward the board must be empowered to conclude those matters.

CHAIRPERSON: Do I hear you correctly that the board of the PIC, your board of course didn't do it, should press the shareholder to fork
20 out as it were?

MS SIBUSISIWE ZULU: Well it's not even about pressing the shareholder but it's empowering the board to make the decision rather than it going to the shareholder because the board would have taken into account all the factors.

CHAIRPERSON: Say this is what is due to him.

MS SIBUSISIWE ZULU: Yes and say this is what is due to you and make the final decision on the matter and then pay out. So shouldn't actually wait for the shareholder approval but rather ideally my view is that the shareholder must be notified that this is the decision the board has taken. So the final approval should actually sit with the board.

CHAIRPERSON: With the board.

MR EMMANUEL LEDIGA: Ja, just one quick question there. Just in terms of the PIC sort of moving forward and to heal and all that given that it has been a very bruising what two years, the past two years or
10 so with different sides and everything, it's been quite bruising and all. And the Commission is here, it's been so much complexity. How do you think the PIC can recover and heal given that you are on the board? What is your thinking there? Going forward the culture, will the people gel together, how can the PIC heal?

MS SIBUSISIWE ZULU: Well Mr Commissioner I think in the past few months one had started witnessing certain steps, actions which were meant to heal those wounds so to speak. And I think the new board which I view as being more than capable to take the PIC forward will prioritise on those matters to say, how do we actually listen to the
20 employees more? How do we give the employees an opportunity to voice out whatever issues they may have and assure them that we are there as the board to address those matters.

I think it's continuous. When trust has been tainted, when a culture of fear has intercepted and institution, it takes time just to- in fact in any relationship even including an employment relationship, it takes time to

actually assure employees to say you are in the right place of employment and you can still grow and you have a role to play and I think that is ongoing work by the board.

MR EMMANUEL LEDIGA: Thanks, I'm done.

CHAIRPERSON: Advocate Lubbe, anything further?

ADV JANNIE LUBBE SC: Thank you Mr Commissioner. No, that concludes the business of the day. If we can start tomorrow at 9:30?

CHAIRPERSON: Yes. But can we arrange that ... (intervenes)

ADV JANNIE LUBBE SC: Ja, we will arrange that request that you
10 mentioned.

CHAIRPERSON: Just after the sitting. May I ask Ms Zulu behind you is a man and a lady, is that your mother?

MS SIBUSISIWE ZULU: Yes.

MR EMMANUEL LEDIGA: And your father there? Okay. From KZN, you guys travel there?

MS SIBUSISIWE ZULU: Yes.

MR EMMANUEL LEDIGA: Alright okay.

CHAIRPERSON: In thanking you I want to thank them as well to come
up here to give you support as I supposed they were expected to. But
20 thank you very much convey our thanks to them as well.

MS SIBUSISIWE ZULU: Thank you.

CHAIRPERSON: We thank you, we needed your testimony because there were many gaps in the evidence that we have been given thus far and your testimony has assisted us of course as from an acting judge, you know what the position is. We are still going to make findings and

whether or not we find against you, that is the name of the game. I said yesterday to Dr Matjila when he finished his testimony, that we certainly wouldn't crucify anyone but we'll make findings according to the facts that have been placed before us. You've helped us with the fact that you placed before us but we still have to consider it together with the other facts that- when I say it, I mean the testimony.

MS SIBUSISIWE ZULU: Yes.

CHAIRPERSON: Consider that testimony with the testimonies of other people that testified before us. Otherwise thank you very much and if
10 we have caused you any inconvenience, we apologise for that.

MS SIBUSISIWE ZULU: Thank you Mr Commissioner.

CHAIRPERSON: Alright, thank you. We shall then adjourn until 9:30 tomorrow morning.

INQUIRY ADJOURNS TO 14 AUGUST 2019