

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

SOUTH AFRICAN REVENUE SERVICE

BEFORE COMMISSIONER

THE HONOURABLE MR JUSTICE NUGENT (RETIRED)

ASSISTED BY

PROF M KATZ
MR V KAHLA
MS M MASILO

HELD ON

DAY 22

22 OCTOBER 2018

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1 [PROCEEDINGS ON 22 OCTOBER 2018]
 2 [09:19] MS STEINBERG: Morning Judge, panel. We
 3 call Mr Fabian Murray.
 4 COMMISSIONER: Good morning, Mr Murray.
 5 MR MURRAY: Morning Judge.
 6 COMMISSIONER: Thank you for coming.
 7 MR MURRAY: Pleasure.
 8 COMMISSIONER: Do you affirm the evidence
 9 you give will be the truth, the whole truth and nothing but
 10 the truth, if so will you say I do.
 11 MR MURRAY: I do.
 12 EVIDENCE OF MR MURRAY
 13 COMMISSIONER: Thank you.
 14 MS STEINBERG: Mr Murray, will you tell
 15 us your current position in SARS and your historical
 16 position.
 17 MR MURRAY: Certainly. I am currently
 18 the acting chief operations officer for business and
 19 individual taxes. Prior to that, I've been with the
 20 organisation for 12 years. I've always held various
 21 leadership roles. So I started off as the general manager
 22 responsible for performance analysis. I then moved on and
 23 I became the group executive responsible for customs
 24 operations. Subsequent to that I became the group
 25 executive responsible for capacity management and my

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1 permanent position is tax group executive responsible for
 2 tax compliance and case selection and then I've been acting
 3 as the chief officer for the past seven months and continue
 4 to do so.
 5 MS STEINBERG: Mr Murray, you've given us
 6 a written statement in which you say you felt duty bound to
 7 come and testify after listening to the evidence over the
 8 past month and perhaps you can tell us why, why you felt
 9 duty bound?
 10 MR MURRAY: So, towards the latter part
 11 of September I sat in two of the public hearings and I was
 12 absolutely shocked and horrified what I heard and on the
 13 basis also that the judge has on a few occasions requested
 14 leadership and specifically EXCO members to come forward
 15 and to provide insight and I think that's the main reason
 16 why I came. I wanted to make sure that that is not the
 17 only narrative that comes through. I'm hoping to provide a
 18 different narrative and that's the reason why I'm here
 19 today.
 20 MS STEINBERG: Well go head.
 21 MR MURRAY: Okay so firstly my testimony
 22 today would be, I'll be covering two broad areas. In
 23 specific our staff and in more general the taxpayers and
 24 the second area that I'd like to cover, I'd like to speak
 25 about leadership and specifically leadership during the

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1 tenure that this Commission's timeframe is. So from the 1st
 2 of April 2014 to the 31st of March 2018. So unequivocally
 3 I'd like to start off by saying that I would like to
 4 apologise unreservedly to our current staff and to the
 5 staff who have left the organisation. I think as
 6 leadership and specifically now that I am part of EXCO, you
 7 know we've done an injustice to our staff. As I said that
 8 there, you know I sat in the inquiry and listening to
 9 Yousuf Denath give testimony moved me both in horror and in
 10 shock.
 11 I've been pretty fortunate over the recent weeks
 12 to actually have engaged Yousuf and coming face to face
 13 with him again, you know for a very brief moment I was able
 14 to feel the hurt that we're putting through and not only
 15 him but his entire family for 15 months and there are many
 16 others like Yousuf. Friday afternoon I was sitting, or
 17 morning I was sitting in the inquiry and during recess I
 18 bumped into Kumaran Moodley who has also been suspended for
 19 19 months, who is back at work recently. I'm absolutely
 20 horrified and I use the word collective because I am part
 21 of the leadership team. I was not part of the leadership
 22 team during the timeframe or I was not part of the EXCO
 23 team during the timeframe of this Commission of inquiry but
 24 I am part of EXCO now and therefore some part of the blame
 25 I have to absorb and I accept that.

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1 You see we cannot move this organisation forward
 2 without acknowledging our shortcomings in recent years and
 3 the pain we've caused our staff and the broader tax
 4 fraternity. In rebuilding SARS all staff must be on board
 5 and trust needs to be restored and not instructed. The
 6 thing about trust is that it takes a while to construct but
 7 it can be broken in an instant or two. However doing the
 8 right things and doing it consistently will go a long way
 9 in restoring trust.
 10 Secondly the reason why I elected to step forward
 11 and present today is that I wanted to acknowledge that SARS
 12 has lost a number of great leaders and staff members with
 13 requisite technical capabilities. We were indeed in denial
 14 or frankly did not understand the capabilities we lost when
 15 we perpetuated the narrative that we did not lose many
 16 skilled staff members. However SARS still has a number of
 17 great leaders and staff members with the requisite both
 18 leadership and technical capabilities. Our challenge in
 19 recent years is that the available leaders and the
 20 technical competencies were dispersed throughout the
 21 organisation and in many cases grossly underutilised or
 22 downright marginalised. Case in point the modernisation of
 23 SARS in the past four years has grinded to a halt and many
 24 of the resources, the capabilities, managers and leaders
 25 remain in SARS but the strategic direction and the required

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1 funding for execution was channelled into other events such
 2 as international travels, litigation, consultants, bloated
 3 EXCO support staff, the refurbishment and re-kitting of the
 4 second floor in block A, unwarranted security upgrades and
 5 the balance of available funds were returned to National
 6 Treasury as SARS could not spend the allocated funds.
 7 Now I'm acutely aware that there's a narrative
 8 out there and it continues to be perpetuated that National
 9 Treasury has not given us sufficient funds and I think
 10 that's only partly correct because the reality is during
 11 the four, the past four years a huge amount of funds that
 12 was allocated to modernise our systems we were not able to
 13 use and therefore it was returned to National Treasury. So
 14 a part of the current shortfall in funding is a direct
 15 result of our inability to spend the allocated funds in the
 16 prior years. This is particular sad as we have heard that
 17 SARS requires 1 billion over the next three years to
 18 upgrade its IT infrastructure. I must at this juncture
 19 stress that whilst the strategic direction in any
 20 organisation is not only the sole mandate of the executive
 21 team as group executives and executives should feed into
 22 that process. It is not the latter that was our challenge
 23 in recent years. It is the strategic direction at an EXCO
 24 level that has created great inertia within SARS. In
 25 actual fact group executives and executives were

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1 marginalised and excluded from strategic decision making
 2 which was contra to the prior periods where EXCO
 3 periodically called extended EXCO meetings which included
 4 group executives.
 5 I recall having a meeting with the suspended
 6 Commissioner Moyane on a particular matter and in that
 7 meeting present was the GE in the office of the
 8 Commissioner, the suspended Commissioner and I. After we
 9 concluded on the matter at hand I asked the suspended
 10 Commissioner if I could speak to him on a private matter.
 11 The GE in the office of the Commissioner was excused. The
 12 private matter that I wanted to discuss with the
 13 Commissioner was my concerns around the trajectory SARS was
 14 following. At some point in the conversation we spoke
 15 about what is wrong with SARS and I vividly recall telling
 16 the Commissioner or the suspended Commissioner,
 17 Commissioner what is wrong with SARS is that all of your
 18 chief officers think exactly like you and therefore
 19 somebody is not thinking. You need to have a team with
 20 diverse views who can debate and synthesise on complex
 21 matters and reach consensus and ensure execution. I don't
 22 think the Commissioner particularly liked my frankness
 23 because thereafter our relationship cooled off. You see
 24 leadership is more than just a qualification. It includes
 25 cross functional experience, emotional intelligence,

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1 cognitive ability and character and there I refer to moral
 2 qualities. As we have witnessed during the dismantling of
 3 SARS over the past four years some traits of leadership
 4 were missing. Many of the EXCO members have been on board
 5 under the suspended Commissioner's stewardship for at least
 6 a year and others longer.
 7 I am thus perplexed, surprised when I hear I
 8 cannot be held accountable for what transpired as I did not
 9 know. The reality is that as an executive member you have
 10 a fiduciary duty of care and skill and you should have
 11 known or probed more deeply when you saw staff were being
 12 suspended left, right and centre or asked to enforce
 13 irrational and unlawful instructions or in possession of a
 14 list of people who needed to be removed and replaced by
 15 others. I personally, since my appointment as an EXCO
 16 member probed and challenged many established norms. These
 17 were contentious and uncomfortable matters but required
 18 reviewing. They include chief officers flying business
 19 class on local flights. It is important to note that prior
 20 to the suspended Commissioner joining SARS all chief
 21 officers travelled economy class on local flights. I raise
 22 the concern that during this period of austerity why are
 23 EXCO members and the suspended Commissioner's direct
 24 reports travelling on business class when flying locally.
 25 We had a robust discussion on this matter and the general

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1 view was that the policy allows us. This decision was
 2 rescinded and the policy was amended. It is important to
 3 note that whilst the policy allowed this the system or the
 4 form you needed to complete allowed each chief officer to
 5 elect business or economy class. Some of us elected
 6 economy because it was the right thing to do despite the
 7 policy directive.
 8 The second matter, draconian recruitment policy.
 9 I once again table this why do we as EXCO perpetuate the
 10 draconian recruitment policy. There was a general view
 11 that this needed to be amended. I will speak about this in
 12 detail later in my testimony. The third matter the
 13 enterprise compliance programme which has been well
 14 ventilated at this inquiry and in the media. I have asked
 15 who takes accountability for the enterprise compliance
 16 programme and by when will it be refreshed. This to date
 17 remains an enigma. Despite accountability being assigned
 18 and I will continue to agitate on this matter and I'd like
 19 to pause there because you see as part of my permanent role
 20 as tax compliance and case selection the compliance
 21 programme, sorry, I apologise. I need to turn this off.
 22 Sorry, sorry. Technology is fantastic when it works, when
 23 it gets in your way not that great. So the compliance
 24 programme you know three months prior to this programme
 25 expiring I personally presented at EXCO stating that this

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1 programme was coming to an end. This is a significant
 2 programme and underpins our risk and our case selection
 3 within the organisation and therefore it is crucial that it
 4 be renewed. That was about two years and a few months ago.
 5 MS STEINBERG: Mr Murray, can I ask you a
 6 question there.
 7 MR MURRAY: Certainly.
 8 MS STEINBERG: Now we have had evidence
 9 from Dr Malovhele and one of his staff members who had just
 10 resigned about the manipulation of compliance figures and
 11 the auditor general made an adverse finding in that regard.
 12 That was the period when it fell under your control. Were
 13 you aware that the figures were being manipulated?
 14 MR MURRAY: No I was not aware that the
 15 figures were manipulated. However and we were in
 16 Parliament last week and we were at pains trying to explain
 17 this as well. You see compliance is specifically around
 18 CIT where the contentious or the allegation resides.
 19 [09:39] So and it could be two years ago, don't quote me.
 20 It is about two years because our CIT register is
 21 inaccurate. Today we have 5.5 million corporates on our
 22 CIT register. CIPC who is the master, so that's the
 23 Companies and Intellectual Property Commission, who is the
 24 master has 2 million records only. So it's a clear
 25 indication that our CIT register is not accurate. What we

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1 then consciously done for two reasons, one is to make sure
 2 that our resources are directed at activities that we know
 3 will firstly improve compliance and secondly yield. We
 4 then developed a framework which we called Economically
 5 Active, so we took the register and we said that there –
 6 and my colleague's in the room, he will know exactly the
 7 stats, but I think we said that there going back, if you've
 8 transacted with this in the last eight years, okay and
 9 there were 22 discreet criteria that we had. So if you
 10 transacted us in the last eight years, if you've had any
 11 assets, irrespective of whether you've communicated with
 12 this, but you have the assets we'll never, ever move you.
 13 If you have debt, so there were 22 criteria and therefore
 14 we came up with the Economically Active. And that reduced
 15 our active register to about a million, okay. Now again
 16 any prudent tax authority needs to make sure that they
 17 direct their limited resources at the activities that's
 18 going to give you the greatest yield. We believe then and
 19 I still believe now that that was the right thing to do.
 20 And we've disclosed this in the annual report, so what we
 21 actually done, my colleague, in the annual report we had
 22 the full register and then we had the Economically Active.
 23 So categorical to your answer no, on that particular instance
 24 the numbers were not manipulated.
 25 MS STEINBERG: So in which instance were

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1 the numbers manipulated?
 2 MR MURRAY: On the annual report I am
 3 unsure. You see the one thing about SARS is that we're a
 4 data driven organisation and everything is traceable. So
 5 it becomes very challenging to try and manipulate because
 6 when Peter pulls numbers from a system and I pull numbers
 7 the numbers must tie up. If the numbers don't tie up you
 8 need to account as to why they don't tie up. So with the
 9 annual report, to the best of my knowledge, there's been
 10 absolutely no manipulation.
 11 MS STEINBERG: So are you suggesting that
 12 Dr Malovhele and Ms Singh's testimony was incorrect?
 13 MR MURRAY: I'm suggesting that they
 14 perhaps did not understand the difference between
 15 Economically Active and the full register, that's my
 16 suggestion.
 17 MS STEINBERG: Okay I don't think it's
 18 worth a debate here, but perhaps you can give us that view
 19 in writing so that we can weigh it against what we've
 20 heard.
 21 MR MURRAY: Certainly. So the fourth
 22 point, the fourth and final point that I brought up was
 23 protectors assigned to chief officers. Why do most chief
 24 officers and certain staff members have protectors assigned
 25 to them. This matter was robustly discussed and I'm

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1 reliable led to believe that this policy is currently under
 2 review. You see this is what responsible leadership does.
 3 It is their fiduciary duty to challenge matters they feel
 4 uncomfortable with and one's moral compass that prevents
 5 them from wasting taxpayers' money by travelling business
 6 class on local flights.
 7 Now before I get accused of flying business class
 8 in the past or in the future when the public see me sitting
 9 in the business class let me hasten to say on occasion I
 10 have been upgraded from economy to business class with no
 11 additional cost to the taxpayer or SARS. And this is
 12 normal practise with most airlines. Leadership must
 13 account, the leadership must ask difficult questions so
 14 that there is absolute alignment and challenge the status
 15 quo, not merely going with the flow to appease your boss or
 16 your colleagues.
 17 Now more than ever SARS needs strong leadership,
 18 not individual leaders who are only consumed with their
 19 narrow divisional mandate or protecting their turf,
 20 leadership that is able to transform or refine the
 21 enterprise mandate and ensure that a coherent strategy, the
 22 machinery and capabilities are in place that will enable
 23 execution and the attainment of strategic outcomes. I
 24 believe that fixing SARS starts with appointing a
 25 commissioner that is apolitical. Furthermore, the new

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1 Commissioner should not undervalue the institutional
 2 knowledge and experience vested in many of the existing
 3 SARS leaders when he or she appoints his or her executive
 4 team. It is my view that this has contributed to the
 5 unwinding of SARS when SARS was gutted of its experienced
 6 executive management team and replaced with a brand new
 7 team that did not understand the business or felt the
 8 urgency to expedite the learning curve. The fact is that
 9 SARS had and still has capable leaders within SARS to
 10 absorb any leadership role. I do, however, believe that a
 11 reasonable balance between old and new resources of
 12 capabilities is required in any progressive organisation.
 13 I am sincerely hoping that the South African public does
 14 not lose hope in SARS especially after last week's debacle.
 15 And as a result of us losing our way in the past four years
 16 SARS still has a depth of leaders and technical
 17 capabilities that need to be better structured and deployed
 18 in rebuilding this once august organisation.
 19 The rebuilding has commenced under Acting
 20 Commissioner Kingon. Our self-inflicted and marginalising
 21 ways must stop and we must start restoring trust and
 22 positive hope across all staff within SARS and across all
 23 the stakeholders. The reason I emphasise all staff, this
 24 was another own goal which I will get back to later. I
 25 embrace the Employment Equity Act and fully support the

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1 SARS transformational agenda. My permanent unit, tax
 2 compliance and case selections, black representation is
 3 currently at 81% compliance which exceeds the SARS annual
 4 Employment Equity plan target of 79%. This positive
 5 compliance is emulated at leadership level and females in
 6 management. And therefore I cannot be accused of being
 7 anti-Employment Equity. However the own goal I alluded to
 8 earlier relates to the implementation of Employment Equity
 9 Act within SARS since the appointment of the suspended
 10 Commissioner. A memo was approved on the 5th of July 2016
 11 which gave effect to the practise in which certain
 12 designated groups, mostly African employees, were ring
 13 fenced for vacant positions within SARS. The memo further
 14 stated that no deviations will be allowed on the base of
 15 race and in exceptional circumstances deviation on gender
 16 will be considered.
 17 The authority was given to the Employment Equity
 18 sub unit residing under the Employment Relations unit to
 19 gate keep this decree. During the recruitment process this
 20 rule was strictly enforced and in many cases Indian,
 21 Coloured and white employees were not shortlisted although
 22 they met the minimum requirements for the job as well as
 23 being recognised as capable resources. It is my assertion
 24 that this filter should be applied at the final selection
 25 stage and not upfront during short listing. This has

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1 resulted in internal grievances as well as disgruntled
 2 employees who felt that the exclusion from SARS's
 3 recruitment process left them with limited career
 4 opportunities and advancements which significantly impact
 5 their level of engagement and commitment. And I think this
 6 was well borne out in the recent connection survey. Any
 7 deviation at interview stage had to be approved as an
 8 exception by the Employment Equity unit as a deviation.
 9 Sadly this practise remains in force today. Despite EXCO
 10 taking a decision a few months ago to correct this practise
 11 and this speaks directly to the point that many staff
 12 members have highlighted at this Commission, that it will
 13 be difficult to change this organisation with the same
 14 people in place that has caused or contributed to the
 15 organisation's downfall as there will be reluctance to
 16 effect change to policies that you have policed. The way
 17 Employment Equity targets were enforced a pre-interview,
 18 short listing phase resulted in excluding certain groups
 19 that actually met all job requirements at the short listing
 20 stage is surely not aligned with good practise. This
 21 decree was supported by the Human Capital Development
 22 Division and signed off by the suspended Commissioner and
 23 enforced by the Employment Relations unit within Human
 24 Capital and Development Division.
 25 The world of tax and customs is evolving and the

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1 complexities associated with new and creative schemes are
 2 also evolving and it is thus crucial that a progressive tax
 3 authority remains as the forefront of these emerging trends
 4 and capacitate accordingly. Here I specifically refer to
 5 transfer pricing and illicit trade skill sets. We were
 6 trying to attract but were constrained by rigid recruitment
 7 requirements within SARS. We were looking to attract the
 8 best capabilities and yet we were placing onerous
 9 requirements to a small national transfer pricing
 10 specialist population which is highly marketable and fluid.
 11 Many of our competent transfer pricing staff members were
 12 poached by outside, mainly financial and legal firms. And
 13 we were battling to fill these vacancies. I recall a
 14 colleague of mine, a group executive who will remain
 15 nameless, lamenting this fact in a quarter revenue steering
 16 committee meeting in which EXCO members were present
 17 including the suspended Commissioner. The colleague tried
 18 on three different occasions to recruit transfer pricing
 19 specialists without success and applied that the EE
 20 requirement be waived for these scarce and valuable
 21 resources.
 22 Now I'd like to pause there because I'd like you
 23 to understand how long it takes to actually get an ad out
 24 within SARS and to do an advertisement and the whole
 25 process. It could take easily up to about two to three

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1 months after you've received all of the myriad signatures.
 2 The colleague has tried on three occasions, three different
 3 ads were put out and she was unsuccessful. The colleague
 4 was lamented from a dizzy height, a very senior Human
 5 Capital Development staff went off at the colleague and I
 6 am paraphrasing, that we are undermining blacks, you are
 7 telling me cannot find capable Africans, you will not get
 8 this deviation. A number of EXCO members sat through this
 9 rant without saying a word. A number of our staff are
 10 complicit in the unravelling of SARS and they have a case
 11 to answer to. I am unsure why they have not yet been
 12 suspended. You see being suspended does not mean that you
 13 are guilty, it does however imply that based on various
 14 allegations and testimonies there's a case that you need to
 15 answer to. On Friday afternoon as I was leaving office I
 16 bumped into a well-respected and talented executive. Now
 17 just to explain how the structures or the positions within
 18 SARS, so you would have a senior manager, then you'd have
 19 an executive and then you would have a group executive, the
 20 chief and then you would have the Commissioner. So he was
 21 an executive and we were engaging on the Commission and the
 22 last week's media coverage that SARS was exposed to. His
 23 overall view was and I paraphrase, "There's far too much
 24 talking and covering tracks without any personal
 25 accountability, consequences being absorbed by wrongdoers."

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1 I must say I support his view, however, remain hopeful that
 2 both the Commission and the Acting Commissioner, under
 3 their different mandates, will address the wrongdoers and
 4 ensure that the appropriate sanction is levied. As an EXCO
 5 member I too will continue to be vocal on highlighting key
 6 individuals I believe were complicit in the unwinding of
 7 SARS. I've already done so to the Acting Commissioner and
 8 will continue to do so. To be quite frank if I was an EXCO
 9 member during the suspended Commissioner's tenure I will
 10 proactively approach the Acting Commissioner and request
 11 him to suspend me as this is the right thing to do in my
 12 opinion in ensuring that the healing and reconstruction of
 13 SARS is expedited. Once the case against me is concluded
 14 and I am found not guilty I will then return with my head
 15 held up high and contribute, without a cloud over me, in
 16 the rebuilding of this once august organisation. I do
 17 believe that it's not yet too late to do the right thing.
 18 Our singular focus should be on restoring our staff's lives
 19 and their trust in SARS again, building stakeholder
 20 relationships and contribute towards building this once
 21 proud organisation. We need to re-ignite the higher
 22 purpose and it starts with ethical leadership, leadership
 23 that has the staff, the tax fraternity and the broader
 24 South African at the core of their decision making process,
 25 Advocate.

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1 MS STEINBERG: I just have one question.
 2 [09:59] We have heard a lot of disquieting evidence about
 3 the risk engine and the manner in which it is calibrated
 4 and the lack of congruence between what the risk engine
 5 spits out as problematic and the capacity of staff to deal
 6 with it. What are your views on that?
 7 MR MURRAY: So I think before I speak
 8 about the risk engine specifically, if you'll allow me I'd
 9 like to, because there is this misnomer in SARS that, well
 10 not in SARS and its being perpetuated externally that the
 11 only compliance intervention that we have is a risk engine.
 12 Okay. So you see compliance, there are a number of
 13 compliance interventions within SARS. The risk engine is
 14 just one of them but we also have detailed profiling, we
 15 have criminal investigation and that gives form of the
 16 entire risk landscape and the execution machinery that we
 17 have in place. Now with regards to the risk engine
 18 specifically, firstly, since the inception of the risk
 19 engine and let's just restrict to PIT currently. We've
 20 gown the yield associated with fraud from round about 1
 21 billion to last year we prevented R9.5 billion fraudulent
 22 activities being processed. Okay. The risk engine is
 23 always calibrated with capacity. We work very closely and
 24 the only unit predominantly that is involved with the
 25 execution of risk engine alert is compliance. So every

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1 year we understand exactly how many resources they have,
 2 what their requirement is and we try and calibrate as
 3 closely as possible. However there are exceptions. When
 4 during filing season we discover fraud we throw capacity
 5 out of the window. We will immediately stop all fraud. So
 6 last year there was huge fraud associated with banking
 7 details and these are banking details that are not FICA
 8 required. So you go to PEP, you can open up a banking
 9 detail and we found huge fraud in that regard. We
 10 immediately, when we found that we immediately clamped down
 11 and we therefore tweaked the risk engine to say that any
 12 banking details that was changed during the last financial
 13 year you will stop. Okay.
 14 Now what was a conscious leadership decision that
 15 we took. What the team then had done is that the team
 16 works 24 hours to try and mitigate. So the first thing is
 17 containing the outflow, the loss to the fiscus. Thereafter
 18 the team then tries to understand exactly how can we refine
 19 the rule because the rule that we implemented was a very
 20 blunt one. So how do we refine the rule, how do we – and
 21 then we discovered well this is actually a very specific
 22 bank set and that's why we knew that this related to non-
 23 FICA'd ones. Okay. Once they've done that we then amend
 24 the rule to be really specific and then we will go back and
 25 we will auto-release. So we'll stop whatever it is 100 000

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1 of them. Once the rule has been amended we will then
 2 backflush of the 100 000 through the new rule and 95% of it
 3 then gets released, but our number one priority when we are
 4 confronted with fraud we are less interested about capacity
 5 at that stage. It's about preventing the loss to the
 6 fiscus.

7 MS STEINBERG: I understand that, but
 8 we've seen as a matter of fact that people who are
 9 obviously wealthy in this society end up paying very little
 10 tax. And compliance tax payers get audited again and again
 11 and again or at least stopped again and again and again.
 12 How do you reconcile those two facts?

13 MR MURRAY: So again and we're speaking
 14 risk engine so I'm going to elaborate on the risk engine.
 15 You see the only time that you'll be alerted on the risk
 16 engine is based on what you declare. So if you don't
 17 declare and you don't have a return obviously the risk
 18 engine won't alert you. We have other initiatives that
 19 we'll pursue with regards to that. Secondly, the basis is
 20 that what you've submitted is correct but we have a whole
 21 lot of different models that we do. So if you're in a
 22 certain salary bracket, we will run that relative to a
 23 population that's similar to yours and if you are anomalous
 24 you'll be alerted. So there's a whole lot and I think at
 25 last count we had about 169 different risk parameters that

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1 we apply in the risk engine.

2 MS STEINBERG: What I'm asking you do you
 3 think they're appropriate and they're working properly.

4 MR MURRAY: So again and it's the
 5 understanding of the risk engine and I've been at pains to
 6 try and make sure that most people understand –

7 MS STEINBERG: I'd like you to answer my
 8 question. Do you think the risk engine is appropriate and
 9 working properly?

10 MR MURRAY: I think the risk engine is
 11 appropriate, I think the risk engine is working properly
 12 but the risk engine needs to be continuously tweaked and
 13 that's what the team does. We have a team that
 14 continuously looks at it. When they find fraud they will
 15 then implement a rule set to be able to mitigate that. So
 16 yes, I do believe that it's appropriate, I do believe that
 17 it's working properly.

18 MS STEINBERG: So the complaints we get
 19 about compliant tax payers being audited again and again,
 20 are you aware of that? Is that part of what you think is
 21 appropriate?

22 MR MURRAY: I'm absolutely aware of that
 23 and this year specifically we have implemented – again as I
 24 say this is an iterative process. So each year firstly we
 25 try and reduce the number of alerts. Okay. So this year I

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1 think we're going to alert 100 000 fewer tax payers because
 2 we understand that we do stop tax payers, sometimes for the
 3 same. So this year you'll be stopped for medical aid, next
 4 year you'll be stopped for medical aid as well. Okay. So
 5 we're continuously refining it and we've just had EXCO
 6 approval for next year that we're going to revolutionise
 7 the way we do filing season because we're probably going to
 8 stop about 50% less alerts based on materiality. So it's
 9 again pointedly to your question, this is an iterative
 10 process but we're at the stage now where we're going to
 11 take a quantum step forward and make sure that we minimise
 12 the alerts with repetitive alerts.

13 MS STEINBERG: Well I think that's
 14 important that there is an iterative – we have – there is a
 15 wide held perception that whether you're a compliant or a
 16 non-compliant tax payer you get treated the same and
 17 there's no incentive to comply. So I suppose I'm confused
 18 as to what you're saying, that you need to change the risk
 19 engine but you're also satisfied with the risk engine.

20 MR MURRAY: So what I am saying is that
 21 the risk engine is a iterative, and not only in SARS but
 22 throughout the world with all tax authorities. You need to
 23 continuously – fraud is ever moving. So today we'll
 24 mitigate something, tomorrow there's a full time team out
 25 there that works to try and penetrate your risk engine. So

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1 what I am saying is that the rules that we have there we
 2 believe that they are sound. However the rules need to
 3 continuously be evaluated but the step change that I'm
 4 speaking about where you are right and I totally agree with
 5 you, there are times where we stop tax payers for the same
 6 thing and I'm one of those tax payers. So without fail
 7 every year I get alerted. I have rental property. Now
 8 rental property is high risk. Okay but not everybody in
 9 the category of rental property is submitting fraudulent
 10 returns. So we're acutely aware of that and that's why
 11 we're saying that there, we've now taken and a lot of what
 12 we're discussing and implementing, you know, it's not knew.
 13 We've always wanted to do this but there was just no
 14 appetite to do it. Now that there is an appetite and I
 15 can't recall in SARS filing season, we're speaking about
 16 filing season 2019 where the plan has been signed off.
 17 It's unheard of in SARS in the last four years.

18 COMMISSIONER: Can I just ask you about a
 19 question that was raised there and for the moment you can
 20 just help me on technical issues, we'll come on to broader
 21 issues in a moment. The question that was asked concerned
 22 tax payers who are apparently very wealthy but who pay very
 23 little tax. Now as you say your risk engine doesn't pick
 24 that up at all. Is there any capacity here at all that is
 25 looking at apparent capital coming from nowhere?

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1 MR MURRAY: So, Judge, yes there is and
 2 that's the second leg, the leg around profiling and really
 3 going into a taxpayers affair in detail and the one that
 4 I'd like to make reference to is that –
 5 COMMISSIONER: Well don't talk about
 6 taxpayers if you don't mind.
 7 MR MURRAY: No –
 8 COMMISSIONER: Don't mention taxpayers.
 9 MR MURRAY: No I won't mention names.
 10 No, absolutely not. So the scenario I'd like to make
 11 reference to is that we have a compliance system and it's a
 12 direct interphase with National Treasury and we now have
 13 all of the data associated with tenders that National
 14 Treasury pays. So we have superimposed that data with
 15 compliance. So firstly we're seeing that everybody that
 16 received huge tenders, are you on the tax register. If you
 17 are on the tax register are you actually compliant and
 18 paying. And we have and again my colleague is here, he's
 19 more, he'll be more detailed on this. At last look we had
 20 about 20 to 30 cases on the tender loan with non-compliance
 21 that we have triggered. So yes, we definitely look at it
 22 but I think you also need to understand that when you speak
 23 about the risk engine you are speaking about millions.
 24 Last year we probably alerted across tax types I would say
 25 probably about 2.2 million returns. When you are speaking

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1 about profiling we can only do 10 000 cases and that's cut
 2 across all tax types. So the capacity is very restricted
 3 because of the nature of a profile and the execution that
 4 happens thereafter. It's very detailed. It cuts across
 5 taxes, it cuts across periods, it could take up to three to
 6 six months to actually conclude one of these. So to your
 7 answer specifically, yes, we are. Can we do more?
 8 Absolutely.
 9 COMMISSIONER: Well you know you're
 10 talking again when you talk about matching treasury figures
 11 with whatever, it's a matching of figures. Really it's
 12 what your risk engine does to a large degree. And I'm
 13 talking about – is there not someone who uses the human
 14 mind because we have, if you say yes we have that capacity
 15 I would like to know why it's not being used because we
 16 have seen the tax affairs of a number of taxpayers and it's
 17 perfectly clear that it passes through the system simply
 18 because the minimal income tax that is paid by a person
 19 year after year doesn't get picked up by the risk engine
 20 for obvious reasons. That it's always consistent. But if
 21 you look at lifestyle, reputed lifestyle and apparent
 22 lifestyle of some of those tax payers, they bear no
 23 relationship to the income tax they pay. So what I, and
 24 this has been going on for years and there's no sign at all
 25 of anyone looking at that. That's why I'm asking you about

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1 is there no one who is not merely matching figures but
 2 sitting back and say I better look at that tax payer's
 3 affairs and I've, we've seen in one company, it was
 4 produced for me, was a spiders web of related companies,
 5 bank accounts and everything, I must put it up on my wall
 6 at the end of this as a bit of graphic art, it would take a
 7 long time to investigate that. But it is worth
 8 investigating but we've seen no sign of that occurring.
 9 Let me just add another one. Huge VAT refunds are paid,
 10 they are paid out on the basis of documents. Well a lot of
 11 those VAT returns, VAT repayments you'd expect the
 12 documents not to be genuine and yet they're simply paid out
 13 because all the documents are there. That's what concerns
 14 me is that kind of thing which requires human intervention,
 15 not just mechanical intervention and it doesn't seem to me
 16 there's anything anyone doing that. Would that be correct?
 17 MR MURRAY: No, Judge, I don't think that
 18 is correct. So we definitely have capacity and capability
 19 and I'm acutely aware where we do what we call asset
 20 reconstruction of individuals.
 21 COMMISSIONER: Yes.
 22 MR MURRAY: Okay. And there's a number
 23 of those cases going. So we have a number of them in the
 24 pipeline, it goes through the audit facility. So but again
 25 I reiterate that the – so if you're looking at personal

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1 income tax or individuals, of the 10 000 that we do
 2 annually I think PIT we do less than about 800. So there's
 3 800 of them that we can only do. So yes, there might be
 4 some that we have not done, okay, and I'm not saying that
 5 the only reason we haven't done it is as a result of
 6 capacity, but that is one of the reasons. So we have
 7 limited capacity. These are in-depth cases. They span
 8 multiple years but we definitely have the capacity. Do we
 9 need more? Absolutely.
 10 COMMISSIONER: Is this capacity in the
 11 auditing field?
 12 MR MURRAY: In auditing. That's right.
 13 So this is your –
 14 COMMISSIONER: Ja. Your auditors.
 15 MR MURRAY: - your auditors.
 16 COMMISSIONER: Now I'm also told and tell
 17 me if this is accurate, that the KPIs of the auditors are
 18 weighted towards the number you get through. So it's very
 19 easy to pick up my tax return, phone me, it'll take 10
 20 minutes for me to give my documents and there's one down
 21 for the day and is that correct that the KPIs are weighted
 22 towards numbers rather than substance?
 23 MR MURRAY: So again, Judge, when we
 24 speak about audit you have compliance audit that is your
 25 numbers.

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1 COMMISSIONER: Yes.

2 MR MURRAY: Then you have investigative

3 audit that is more intense.

4 COMMISSIONER: Yes.

5 MR MURRAY: This one on the left-hand

6 side it spans multiple months to do. So this is not

7 weighted around numbers. On the right-hand side –

8 COMMISSIONER: Sorry, no you've got the –

9 you haven't understood the question. The KPIs, in other

10 words what you need to achieve in order to get your bonus

11 is it weighted towards numbers or weighted towards

12 substance?

13 MR MURRAY: Ja, so that's what I'm trying

14 to explain, Judge. I'm saying firstly in audit there are

15 two different audits –

16 COMMISSIONER: Yes.

17 MR MURRAY: - that take place. The one

18 is definitely weighted towards numbers. The other –

19 COMMISSIONER: Is that the verification –

20 MR MURRAY: That's the verification,

21 here, because remember the risk engine is very specific.

22 The risk engine says that I'm alerting you for medical aid

23 –

24 COMMISSIONER: Yes –

25 MR MURRAY: - so it's one year, one risk

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1 alert and that's where the auditor needs to then hone into.

2 The risk engine then also automatically generates a letter

3 and sends it out.

4 COMMISSIONER: Yes.

5 MR MURRAY: Only when that information

6 comes back then the tax payer, or the auditor needs to

7 then, the compliance auditor needs to have a look at that.

8 But I think your point is correct that that contributes

9 towards –

10 COMMISSIONER: Sorry, Mr Murray, I'm not

11 sure you're really dealing with my question. Just confine

12 it to my question and I'm not talking about document

13 verification.

14 MR MURRAY: Okay, yes.

15 COMMISSIONER: I'm talking about

16 substantive audits. Are the KPIs of the auditors weighted

17 towards numbers in that field or are they weighted towards

18 substance in that field?

19 MR MURRAY: I think they're definitely

20 weighted towards substance. Again that's my perception of

21 it. Audit is not an area that reports into me but I work

22 quite closely with them and the mere fact that it takes

23 anything from three months to six months to complete an

24 audit, I think it's more, it leans towards substance and

25 less so numbers.

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1 COMMISSIONER: Do you know what the KPIs

2 are of those auditors?

3 MR MURRAY: No, what I do know is that –

4 COMMISSIONER: Sorry, they must be in a

5 document of some kind.

6 MR MURRAY: Yes, so the group executive

7 or the chief officer responsible for enforcement will have

8 all of that.

9 COMMISSIONER: Okay, that's all I need to

10 know, thank you.

11 PROF KATZ: Sorry, Judge, can I just

12 follow – the judge asked you queries whether there is human

13 intervention. Can I ask you the converse of that? What

14 stops human intervention operating adversely to the fiscus?

15 MR MURRAY: Do you mind rephrasing that

16 question for me?

17 PROF KATZ: Can there be human

18 intervention that assist the tax payer against the fiscus?

19 In other words that says I won't look at that case for

20 audit, rather than that I will –

21 MR MURRAY: Sure.

22 PROF KATZ: - or having looked at it I'll

23 let it through?

24 MR MURRAY: Sure.

25 PROF KATZ: What checks and balances are

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1 there on that?

2 MR MURRAY: So firstly the reality is

3 that we are speaking about individuals, okay, and it's

4 possible that individuals can overlook something but on the

5 audit space specifically and again, you know, you're asking

6 me an area that's not my area of expertise but –

7 PROF KATZ: No, sorry, all I'm asking is

8 there any systemic –

9 MR MURRAY: Ja.

10 PROF KATZ: - mechanism –

11 MR MURRAY: Yes.

12 PROF KATZ: - to prevent that?

13 MR MURRAY: Yes. So there is. So again

14 on the audit side is the, you know, there's a number of

15 sign offs. So a case goes through different steps and at

16 each step it needs to be signed off by either a specialist

17 or a senior person. So there are handoffs and sign offs in

18 that regard and that should mitigate some of it.

19 MR KAHLA: I just want -

20 COMMISSIONER: Are you finished – sorry.

21 MR KAHLA: I just want to go back, Mr

22 Murray, to your meeting, the private meeting you had with

23 the Commissioner. So if you could just help me recall what

24 position were you at that time?

25 MR MURRAY: I was the group executive

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1 responsible for tax compliance and case selection.
 2 MR KAHLA: Yes and what was his reaction
 3 to the submission that you had made around his team taking
 4 exactly the same way as it did and therefore no one able to
 5 provide any diversity of thought?
 6 MR MURRAY: He did not respond.
 7 MS MASILO: Mr Murray, the question that
 8 the judge posed about, you know, people who do your in-
 9 depth risk profiling and why I'm able to map up and just
 10 make a link between the wealthy people and their assets and
 11 their income so that SARS can end up collecting what it
 12 needs to collect, is that the type of work which was done
 13 by those specialised investigative units which were
 14 disbanded by SARS?
 15 MR MURRAY: So we have and I know you
 16 want yes or no but I can't give you yes or no answers. So
 17 we have profilers that actually, in case selection, we have
 18 profilers that do detailed risk assessment and they will
 19 generate the profile. So no, that is still in place.
 20 However the unit that was disbanded also had very specific
 21 capabilities and would go after niche tax payers or
 22 industries and that's, again that's an area that I'm not
 23 close to but we've heard that there's very cases coming
 24 from there currently. I think I am being generous when I
 25 am saying very few cases coming from that aspect of it.

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1 [10:19] But with regards to profiling that is happening,
 2 if anything over the last three years we've actually
 3 increased our capacity around profiling.
 4 COMMISSIONER: Mr Murray, sorry are you,
 5 did you want to ask something?
 6 MS STEINBERG: Just to say, Mr Murray we
 7 have a number of affidavits that speak to the issue of the
 8 KPIs, they are based on numbers, there's no question about
 9 that and that's why I put to you that there is a mismatch
 10 between what the risk engine is demanding and what
 11 investigative auditors are capable of doing. We have
 12 affidavits testifying to the enormous stress that those
 13 people are under and I think it's something that has to be
 14 looked at.
 15 MR MURRAY: But I think that's, that's
 16 the problem you know in the statement that you articulated
 17 there. The risk engine will never ever generate an
 18 investigative case. Okay. So the risk engine is purely
 19 for compliance. It's high volume, it churns, you know and
 20 it takes -
 21 MS STEINBERG: Let me say case selection.
 22 The whole process of case selection and then the people
 23 available and their KPIs, there seems to be a mismatch.
 24 MR MURRAY: I think in any organisation
 25 when you have two different units, you know one that

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1 creates cases and the other one that executes is always
 2 going to be constructive tension and I think that tension
 3 we need to encourage. So I on a monthly basis get a report
 4 in terms of each region, how many cases, just in terms of
 5 numbers because we sit with enforcement at the beginning of
 6 the year and we understand exactly what their capacity is
 7 and the team is to make sure that they actually then
 8 provide them with that capacity and as I say that there's
 9 always constructive tension in that regard. So some
 10 regions might not have enough, some have a little bit over
 11 but the case selection team will always strive to ensure
 12 that they balance that.
 13 MS STEINBERG: I would suggest that it's
 14 destructive tension at the moment.
 15 COMMISSIONER: Well I mean you'll look at
 16 that, will you -
 17 MR MURRAY: Certainly.
 18 COMMISSIONER: You're in charge of BAIT.
 19 Can I just go back to some broader issues you raised? The
 20 first one relates to transgressions and disciplinary
 21 proceedings. My impression is I've, we've heard some
 22 evidence on this. That it's open to abuse in the sense
 23 that people can be targeted, in other words you dredge up
 24 things from the past every time you want to target someone
 25 and it seems to happen here from time to time that things

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1 get dredged up when necessary. Is that your experience as
 2 well?
 3 MR MURRAY: Judge, that's definitely my
 4 experience and I think it was well ventilated with various
 5 examples at the Commission.
 6 COMMISSIONER: Now the question that I
 7 ask you is, because believe it or not this Commission is
 8 really concerned with going forward but is there a case to
 9 be made for some type of audit process before these, before
 10 disciplinary proceedings are commenced against people? So
 11 that you don't have it in the hands of one or a few people
 12 to decide who should be, against whom proceedings should be
 13 brought?
 14 MR MURRAY: So Judge, if the process
 15 works well there should be no issues. The challenge is and
 16 it happened with me, so when one of my staff members were
 17 investigated for multiple months, I didn't know anything
 18 about it, when they were about to suspend the member they
 19 came to see me and I said I refuse to get involved with
 20 you, you want to engage me now that you want to suspend the
 21 member, why didn't you engage me upfront. So again if the
 22 process works according to the way it should, so if you
 23 want to investigate somebody's direct report you need to
 24 engage the person. There needs to be formal charges laid
 25 against the person.

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1 COMMISSIONER: No, but you can lodge
 2 formal charges against people, you can drag something up
 3 from five years ago, ten years ago and lodge formal
 4 charges, you can go through the formal process.
 5 MR MURRAY: Sure.
 6 COMMISSIONER: But I mean the problem
 7 still is dredging up things to pursue people on, that's the
 8 problem. Now that's a matter of judgment. It's not a
 9 matter of process as it were. Is there a case to be made
 10 for some type of oversight of that? Some audit process
 11 before these things are started to avoid what has been
 12 happening?
 13 MR MURRAY: Absolutely and especially in
 14 lieu of what has happened over the last few years.
 15 Absolutely and categorically yes.
 16 COMMISSIONER: Can I come to another
 17 issue and that is EXCO. Is there a case to be made for a
 18 formal EXCO rather than just an informal EXCO. So that it
 19 can't simply be disbanded at will.
 20 MR MURRAY: So my view again, I think
 21 there's definitely a case for a formal EXCO. EXCO is the
 22 advisory body to the Commissioner, you know. So you need
 23 to have an EXCO and most well-functioning organisations
 24 have an EXCO, okay. But I think the core there is a well-
 25 functioning EXCO.

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1 COMMISSIONER: I understand that, you can
 2 have a well-functioning EXCO and you can have a
 3 Commissioner that disbands it as we've seen. The question
 4 I'm asking you is, isn't there a case for a formal EXCO
 5 that legislatively provided for. So that it can't
 6 summarily be disbanded.
 7 MR MURRAY: Ja, so Judge, I'm not one for
 8 putting on to much red tape and we've really been exposed
 9 to much red tape, you know, you allude to one example.
 10 We've had multiple commissioners prior to that where it
 11 never ever happened. So one example does not constitute
 12 to, so my view again and this is my humble view. That you
 13 know a formal EXCO that reports to the Commissioner and the
 14 Commissioner needs to be held accountable and, so the
 15 Commissioner needs to be accountable to someone before he
 16 actually disbands an EXCO.
 17 COMMISSIONER: So you don't support the
 18 idea of a legislatively established EXCO? You see the
 19 problem is that I think we're finding not only here but
 20 elsewhere in society here, that perhaps the procedures are
 21 not robust enough to withstand attack. You understand what
 22 I'm saying?
 23 MR MURRAY: Yes, yes.
 24 COMMISSIONER: You know one might put in
 25 place systems on the assumption that everyone's being

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1 honest and is on the same route, but we are finding I think
 2 in various aspects of our society that they're vulnerable
 3 to attack and that's why I'm asking you about that. Should
 4 one not strengthen that? You say no not really?
 5 MR MURRAY: I'm always for strengthening,
 6 Judge, I'm just in my mind I am just not clear what would,
 7 you know, what would a legislative mandate, you know what
 8 additional impetus would give to having an EXCO in place
 9 that reports to the Commissioner like in the past that
 10 functions quite well.
 11 COMMISSIONER: Yes.
 12 MR MURRAY: That's the haziness in my
 13 mind.
 14 COMMISSIONER: And then you talk about
 15 apolitical appointment of the Commissioner. I'm sure
 16 you're correct, especially in a revenue authority. They
 17 ought not to be political swirling and I'm getting the
 18 impression increasingly as we go along that there are lots
 19 of political swirling going on. How would you suggest a
 20 Commissioner be appointment in order not to be politically
 21 motivated in any way?
 22 MR MURRAY: So I think there were a
 23 number of suggestions made, one you know a panel of
 24 reputable experts, so that's one suggestion. The other one
 25 is that the Finance Minister, I always have a challenge

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1 specifically the Commissioner which is such an important
 2 function, where you have one individual only appointing
 3 him. So my view is, and again this is my view is that you
 4 should have a reputable diverse panel appointing the
 5 Commissioner. Who that panel is, you know I'm less
 6 interested, as long as they have the requisite
 7 capabilities, they understand the business, but not only
 8 the business, they have broader leadership experience, they
 9 have, you know so it must be a diverse panel that appoints
 10 the Commissioner.
 11 COMMISSIONER: And what do you say about
 12 the proposal that there should be an inspector general who
 13 is sitting here on the side at least, it's like a car
 14 guard. He may not be able to intervene when the person
 15 steals the car but he can at least tell someone.
 16 MR MURRAY: You see I thought and again I
 17 can be wrong, but I thought that and now that I'm actually
 18 thinking my thought is incorrect but I'll continue with it.
 19 COMMISSIONER: Well if you haven't
 20 thought about it, I'd rather not have thoughts given off
 21 the cuff.
 22 MR MURRAY: I haven't thought about it
 23 then.
 24 COMMISSIONER: Okay, thank you very much.
 25 PROF KATZ: Sorry could I just ask one.

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1 You made a personal statement about how this continued,
 2 this malfunctioning for a long time. What is your analysis
 3 why it didn't stop, why no one challenged it?
 4 MR MURRAY: Ja.
 5 PROF KATZ: Systemically it continued.
 6 MR MURRAY: I think it will be unfair to
 7 say that no one challenged it. So a number of us had, you
 8 know, aired our views and dissatisfaction but you know when
 9 something is moving at speed and moving with absolute
 10 authority it becomes very difficult to stand in its way
 11 because it will take you out.
 12 PROF KATZ: Sorry when it's crashing at
 13 speed?
 14 MR MURRAY: When it's moving with speed.
 15 PROF KATZ: I'm repeating, crashing with
 16 speed.
 17 MR MURRAY: Crashing with speed as well.
 18 PROF KATZ: In the way says anything
 19 constructed to stop it.
 20 COMMISSIONER: Well I think you added
 21 over there they will take you out, is that what you said or
 22 didn't you say that?
 23 MR MURRAY: I did say that.
 24 COMMISSIONER: Ja.
 25 MR MURRAY: I did say that. When it

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1 moves with so much speed you know it will take you out and
 2 I think many folks including myself you know we tried to
 3 influence where we could. Okay. But similar to a few
 4 people that stood up here and said you know I too have a
 5 family, okay and as selfish as it might sound okay I wanted
 6 to make sure that I'm not one of the individuals that's
 7 taken out. So where I could influence I did.
 8 COMMISSIONER: You know there was an old
 9 saying that for evil to flourish all that is required is
 10 good people not to stand up. The problem with that is that
 11 it's said by people who are in the position. When you're
 12 in the position it might be more difficult. But anyway
 13 there is, you also said, I mean you, the Commissioner made
 14 an unconditional apology to people who had been damaged in
 15 the process here and I think implied in that is that we
 16 don't want that to continue damaging people.
 17 MR MURRAY: Yes.
 18 COMMISSIONER: And I think you repeated
 19 that, you said as a senior leader you support that.
 20 MR MURRAY: Absolutely and categorically.
 21 COMMISSIONER: You don't want people to
 22 continue being damaged in order to go forward. Is that
 23 your view?
 24 MR MURRAY: Absolutely and categorically
 25 yes it is, Judge. There's been enough hurt.

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1 COMMISSIONER: You think there is a view
 2 in SARS that people ought to continue be damaged? A view
 3 within SARS anyway.
 4 MR MURRAY: Judge, if there is a view
 5 that is no longer the dominant view.
 6 COMMISSIONER: Is there anything -
 7 MS STEINBERG: Is it not the dominant
 8 view on EXCO?
 9 MR MURRAY: Advocate, I have great
 10 difficulty whilst I am an EXCO member speaking on behalf of
 11 EXCO.
 12 COMMISSIONER: Anything?
 13 MS MASILO: I'm not sure if you'll be in
 14 a position to answer the question but I should ask. Why do
 15 you think the people are still fearful, there's still this
 16 mistrust at SARS long after, I mean you don't know where it
 17 came from, but why does it continue and what are you doing
 18 as an EXCO member to, you know to bring that to an end?
 19 MR MURRAY: So I think why, why it
 20 continues for one is that we have a Commissioner still in
 21 place, although he's suspended. Secondly many employees
 22 know that his henchmen are still around.
 23 MS MASILO: What do you mean about
 24 henchmen?
 25 MR MURRAY: The team members that has

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1 executed his instructions, they're still around. Okay and
 2 therefore that fear is still there.
 3 COMMISSIONER: Did you read a, I'm not
 4 sure if you noticed a press, media release that was put out
 5 by the existing Commissioner through the mouth of his
 6 attorney. Somewhat recently, the journalists seem to be a
 7 bit confused as to why there were a media statement, did
 8 you see that media statement?
 9 MR MURRAY: I could have, I'm not sure
 10 what it said but -
 11 COMMISSIONER: Well the last paragraph,
 12 let me quote it for you, perhaps not exactly. "People
 13 concerned better be warned that in South African law an
 14 employee, even if it's guilty may be put back into his
 15 position purely on procedural grounds."
 16 MR MURRAY: 100%.
 17 COMMISSIONER: It seemed to be a very
 18 ominous warning. No one seemed to pick that up. Anyway so
 19 I think that that's what you're saying that -
 20 MR MURRAY: Absolutely.
 21 COMMISSIONER: People, reason for people
 22 to remain afraid. I said in an interim report that this
 23 place is racked with fear. Do you agree with that?
 24 MR MURRAY: Absolutely.
 25 COMMISSIONER: I said it's racked with

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1 intrigue, do you agree with that?

2 MR MURRAY: Absolutely.

3 COMMISSIONER: Thank you.

4 MS STEINBERG: Thank you very much, Mr

5 Murray.

6 MR MURRAY: Thank you.

7 COMMISSIONER: Thank you very much, Mr

8 Murray. It's been very constructive and I thank you very

9 much.

10 MR MURRAY: Pleasure, Judge.

11 [NO FURTHER QUESTIONS - WITNESS EXCUSED]

12 COMMISSIONER: Yes.

13 MS STEINBERG: Now we call Mr Maphakela.

14 COMMISSIONER: Mr Maphakela is

15 represented by MR MOKHARI SC and I think, I think we should

16 hear what MR MOKHARI SC wishes to say. Yes, good morning.

17 MR MOKHARI SC: Good morning. Thank you

18 very much, Chairperson of the Commission and other

19 commissioners and thank you very much for giving us an

20 audience. The reason why we are here is because of the

21 directive that was issued by the Commissioner to Mr

22 Maphakela dated the 5th of October calling upon him to come

23 to the Commission to give evidence. There's been an

24 interaction thereafter between Mr Maphakela and his law

25 firm and the Commission on what aspects does the Commission

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1 want him to testify about. A letter was sent to Mr

2 Mashiane spelling out three issues which were already

3 contained in the directive which accompanies the letter

4 about the issues that the Commission wants Maphakela to

5 provide clarity on. Whilst the directive did not make any

6 provision for Mr Maphakela to clarify the Commission by way

7 of an affidavit and we don't know the reason why, maybe

8 we'll be told the reason, but our view was that given the

9 fact that Mr Maphakela has cooperative fully with the

10 Commission from as way back as June, albeit in an informal

11 way and from around July on a more formal way the

12 correspondence that emanated between him and the presiding

13 Commissioner was really an indication that the Commission

14 was satisfied with the manner in which Mr Maphakela was

15 cooperating with it. So after the directive identified the

16 three matters that the Commission wanted him to provide

17 clarity he took it upon himself that these are matters that

18 he can clarify to the Commission by way of an affidavit and

19 he provided an affidavit dealing with the three matters

20 identified in the directive. On Friday there were further

21 two matters that were raised by the Commission which he

22 also dealt with by way of supplementary affidavit.

23 [10:39] Our view is that Mr Maphakela as an officer of

24 the court and as a practitioner could simply have been

25 requested to provide an affidavit and only if the

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1 Commissioner is not satisfied with the manner in which he

2 has dealt with matters in the affidavit could it put more

3 questions to him. So we see no need then Mr Maphakela as a

4 practitioner to be subjected to examination orally and to

5 answer questions from the Commission orally.

6 We have taken the liberty to peruse the

7 Commissions Acts as well as the regulations that were

8 promulgated by the President when setting up this

9 Commission, particularly the regulation that the Commission

10 invoked in respect of Mr Maphakela, 11(3), we are here in 6

11 which gives the Commission, the Commissioner a discretion.

12 It does not oblige the Commission to call a person to

13 provide evidence orally and to be examined. But it

14 exercises a discretion to direct a person to submit an

15 affidavit unless if the Commission has formulated a view

16 that an affidavit will serve no purpose.

17 COMMISSIONER: Sorry, is that regarding -

18 are you quoting from the regulations which say that we have

19 to have an affidavit unless that would serve no purpose?

20 MR MOKHARI SC: Yes, indeed. Well, I

21 mean, no, that's my submission but I'm saying that the way

22 I read the regulation, that's six, if chairperson can go to

23 six, is the Commissioner may direct any person to submit an

24 affidavit or a firm declaration or to produce any document

25 in his or her possession or under his or her control. And

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1 then there is comma, and after the comma it says or to

2 appear before the Commission to give evidence.

3 So an affidavit is also one of the mechanisms

4 available to the Commission to obtain evidence from a

5 person but then there should be a reason why the Commission

6 opts for the person to appear to give evidence personally

7 and orally in lieu of an affidavit. And we say by virtue

8 of the cooperation that Mr Maphakela has provided to the

9 Commission all along there should have been no reason for

10 him then to have to be subjected to the most, I mean, to

11 the latter which is to appear and to give evidence orally.

12 But he has nevertheless opted to provide and

13 cooperate with the Commission providing an affidavit unless

14 if the Commission is not satisfied with the Commission and

15 if the Commission is not satisfied with the affidavit Mr

16 Maphakela will be entitled to reasons why the Commission is

17 not satisfied with his affidavit. But also we have also

18 taken note of the directive that was sent to Mr Maphakela

19 was not one that was akin to a Commission that has

20 appreciated the assistance that was provided because it

21 ends by saying that he should be warned that failure to

22 cooperate with the Commission is a criminal offence.

23 So that was also something that in our view was

24 contrary to all the commendations that the Commission has

25 given to Mr Maphakela and thanking him for his cooperation,

1 at some point saying that we will not bother you any
 2 further, an indication that it was satisfied with what he
 3 has done. But as an officer of the court he has
 4 nevertheless continued to cooperate and has filed an
 5 affidavit with the Commission which then we submit that
 6 should be sufficient in order to enable the Commission to
 7 take matters that it has raised further either with other
 8 people or in his own report.
 9 Then of course it can express its own view. It
 10 is entitled to express whatever view it wants to express in
 11 its report about the issues that he has clarified in the
 12 affidavit so it was for that reason that in his affidavit
 13 or both affidavits that he has filed with the Commission
 14 the first one he specifically stated if I can go to his
 15 affidavit, the first affidavit, paragraph 3, where he says
 16 that if you read from the seventh line where he says, "I've
 17 adequately addressed all matters raised in the directive in
 18 this affidavit and I see no need for me to be subjected to
 19 any form of oral examination by the Commission on
 20 22 October 2018 or any other day. As a result I've
 21 employed the services of senior MR MOKHARI SC to be in
 22 attendance with me on the said date to make the necessary
 23 submissions on my behalf. In that regard my rights are
 24 fully reserved."
 25 So all what he is saying here is that I've

1 addressed those matters and I have nothing to add on them
 2 and of course if the Commission from reading the affidavits
 3 that he has submitted to the Commission require further
 4 clarity then the Commission can always then engage him in
 5 writing as it has always done and understand that the
 6 Commission does not operate strictly within the confines of
 7 formalism. As I've heard previously with this witness who
 8 has just left that he was also requested to provide certain
 9 things in writing.
 10 So that is really how the Commission operates and
 11 it's not like Mr Maphakela is closing the door to say that
 12 I'm not going to engage with you but he's simply saying
 13 that on the basis of reasonableness then he finds it not to
 14 be at this stage necessary for him to be hauled before the
 15 Commission and to provide evidence in writing, evidence
 16 orally which he has already provided in writing.
 17 So we'll request the Commission to accept the two
 18 affidavits which Mr Maphakela has submitted albeit not
 19 being part of the directive of 5 October. So it will be
 20 our application to the Commission that the Commission
 21 should accept those two affidavits and to take those
 22 affidavits into consideration when preparing its report and
 23 dealing with matters which it wanted clarity from him and
 24 excuse him from having to provide evidence orally.
 25 As I've referred to 11(6) which gives the

1 Commission a discretion to allow a person to provide an
 2 affidavit or to appear so we are simply asking the
 3 Commission to dispense with the requirement of him having
 4 to provide evidence orally. Insofar as the requirement for
 5 him to attend he has complied with it because he is here
 6 but we are simply requesting that he be excused from the
 7 necessity of him providing evidence orally and those would
 8 be, and our submission is that would be our application.
 9 Thank you.
 10 COMMISSIONER: Thank you. Let me just
 11 say that there have been occasions earlier on in this
 12 Commission where I have written to Mr Maphakela to get
 13 clarity on fairly narrow issues and he has responded and
 14 I've written back to say thank you. I've noticed in the
 15 affidavit that there's statements and you've said the same
 16 over here that he has cooperated with the Commission. He's
 17 suggested there that at all times the fact that I replied
 18 to him courteously suggests that I accept what he says. I
 19 don't think you should mistake courtesy for acceptance.
 20 MR MOKHARI SC: Indeed, yes.
 21 COMMISSIONER: There's a long letter that
 22 was written that didn't deserve a courteous reply but it
 23 received a courteous reply nonetheless so please don't
 24 mistake courtesy for acceptance.
 25 MR MOKHARI SC: Yes, indeed.

1 COMMISSIONER: The second thing is you're
 2 quite correct. The regulations give the Commission a
 3 discretion. I don't read the regulations as suggesting
 4 that there is an obligation first to ask for an affidavit
 5 and only if the affidavit is unsatisfactory to call the
 6 witness. It gives a discretion to the Commission to choose
 7 whichever route it considers most convenient and best and
 8 I've noted Mr Maphakela's view that we should accept that
 9 his affidavit is the end of the matter.
 10 I regret to say that that's not the case. He was
 11 given a directive to appear because the Commission
 12 considered that as the most convenient way to deal with a
 13 number of matters. Subsequent to that he submitted the
 14 affidavit you refer to in which he said that should be
 15 enough. Well, thank you, we've considered that but we
 16 don't think it's enough. So if you don't mind we'd like
 17 him to now give evidence.
 18 MR MOKHARI SC: Yes, I have made an
 19 application to the Commission so must we understand that to
 20 be the ruling of the Commission?
 21 COMMISSIONER: That is the ruling of the
 22 Commission that we'd like to hear his evidence orally.
 23 MR MOKHARI SC: My instruction is that if
 24 that is the ruling that obliges him to provide evidence
 25 orally notwithstanding the affidavits that he has filed

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1 where he has dealt with the matters raised by the
 2 Commission he'd like to exercise his right then to
 3 challenge that ruling in court.
 4 COMMISSIONER: Well, he's got every right
 5 to challenge it in court but meanwhile can we carry on and
 6 hear the evidence.
 7 MR MOKHARI SC: No, what -
 8 COMMISSIONER: Sorry?
 9 MR MOKHARI SC: What he would like to do
 10 -
 11 COMMISSIONER: Yes.
 12 MR MOKHARI SC: Is to challenge this
 13 ruling because if he is to participate notwithstanding that
 14 he does not agree with the ruling it would defeat the very
 15 purpose of going to court. So what he's saying is that he
 16 would like to challenge that the Commission is not a court
 17 of law. It is performing a quasi-judicial function of some
 18 sort and its rulings and how it conducts itself is subject
 19 to the court process if a person aggrieved by its ruling
 20 wants to challenge it in court and it would be grossly
 21 unfair for Mr Maphakela that he is to be prevented of
 22 exercising his section 34 right, the right of access to
 23 court
 24 So he would like to exercise his constitutional
 25 right, section 34, to access the court and challenge this

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1 ruling that in our submission it is grossly unfair to him
 2 and we have not been provided with any reasons as to why Mr
 3 Maphakela is required to provide evidence orally. And we
 4 have also noted that even the requirements of section 6 of
 5 the Commissions Act have not been complied with. But those
 6 are matters that Mr Maphakela will deal with in his
 7 application to court. So Mr Maphakela would like to state
 8 categorically to this Commission that he's aggrieved by the
 9 ruling and he would like to take it to court and he should
 10 be given that constitutional right which should be vested
 11 on every citizen.
 12 COMMISSIONER: But no, you haven't
 13 mentioned before section 6 of the Commissions Act. You
 14 said that it's irregular for him to be - that it hasn't
 15 been complied with. In what respect do you say that it's
 16 irregular to direct him to appear?
 17 MR MOKHARI SC: No, I said Mr Maphakela
 18 is an officer of the court. He has elected to cooperate
 19 with this Commission and has also given an affidavit albeit
 20 it not entirely dependent on the directive which was
 21 issued. But I'm saying that what we are now confronted
 22 with that Mr Maphakela should be obliged to answer
 23 questions despite him wanting to go to court is also
 24 grossly then unprocedural given the fact that section 6 of
 25 the Commissions Act has not been complied with. I can take

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1 the liberty to read it to the Commission.
 2 COMMISSIONER: Yes.
 3 MR MOKHARI SC: But it's not a matter
 4 that I'm requiring the Commission to make a ruling on. I'm
 5 just saying that it's one of the matters that we'll canvass
 6 in court.
 7 COMMISSIONER: Well, if you say -
 8 MR MOKHARI SC: Section 6.
 9 COMMISSIONER: Sorry.
 10 MR MOKHARI SC: Says offences by
 11 witnesses. "Any person summoned to attend and give
 12 evidence or to produce any book, document or object before
 13 a Commission who without sufficient cause (the onus of
 14 proof whereof shall rest upon him) fails to attend at the
 15 time and place specified in the summons or to remain in
 16 attendance until the conclusion of the inquiry or until he
 17 is excused by the chairman of the Commission from further
 18 attendance or having attended refuses to be sworn or to
 19 make affirmation as a witness after he has been required by
 20 the chairman of the Commission to do so or having been
 21 sworn or having made affirmation fails to answer fully and
 22 satisfactorily any question lawfully put to him or fails to
 23 produce any book, document or object in his possession or
 24 custody or under his control which he has been summoned to
 25 produce shall be guilty of an offence and liable on

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1 conviction to a fine not exceeding £50 or to imprisonment
 2 to a period not exceeding six months or to both such fine
 3 and imprisonment."
 4 So what Mr Maphakela sought to do here when I was
 5 making submissions was to demonstrate to this Commission
 6 that he has provided sufficient cause and which then we
 7 have not been provided with reasons why his submissions do
 8 not constitute good cause. But section 3 which deals with
 9 how a person is to be summoned before the Commission it
 10 states that, that is 3(2), "The summons for the attendance
 11 of a witness or for the production of any book, document or
 12 object before a Commission shall be signed and issued by
 13 the secretary of the Commission in a form prescribed by the
 14 chairman of the Commission and shall be served in the same
 15 manner as a summons for the attendance of a witness at a
 16 criminal trial in a superior court at the place where the
 17 attendance of production is to take place."
 18 So the directive that was issued is not a summons
 19 as contemplated in section 3 but it was a directive that
 20 was issued in terms of regulation 11(6). And the
 21 regulations which were promulgated by the President do not
 22 at all provide as an offence the steps or the posture that
 23 has been taken by Mr Maphakela which is to provide an
 24 affidavit and if the Commission is not satisfied with the
 25 affidavit to compel him to provide evidence. But those are

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1 matters that we will deal with at an appropriate time in
 2 court because a ruling has already been made. So I'm
 3 really then arguing ex post facto the ruling which then
 4 really then does not take the matter any further.

5 COMMISSIONER: No, I understand but you
 6 raised an issue after the ruling had been made and I
 7 thought we should just clarify that so that you can have a
 8 chance to be heard on that and if you don't wish that you
 9 don't have to have it. The Commission doesn't compel
 10 anybody. The directive, whatever the Commissions Act says
 11 the directive was issued under the regulations. I haven't
 12 heard it said it doesn't comply with the regulations.

13 The regulations go on to provide that it's an
 14 offence not to comply with the directive of the Commission
 15 so I don't think the Commissions Act comes into it at all.
 16 The regulations don't say that the Commission may only ask
 17 for oral evidence if it's not available on affidavit as
 18 we've said so I'm not going to change the ruling. The
 19 ruling of the Commission is that he should give oral
 20 evidence because as far as the Commission is concerned it
 21 is the most convenient way to deal with it rather than
 22 going backwards and forwards with correspondence.

23 And we would like to get on with it. If you're
 24 asking for a postponement of this in order to approach a
 25 court I regret that you're not going to be allowed that and

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1 we'll take a short break for you to consult with your
 2 client and then if you don't mind we'd like your client to
 3 assist us by getting on with the matter. I must say I fail
 4 to understand why an admitted attorney as you rightly say
 5 should not be willing to give evidence before a Commission
 6 and I'd like to accept your invitation that you issued
 7 which was that he will, he has and will continue to
 8 cooperate with the Commission and the cooperation we
 9 require at the moment is that he gives evidence.

10 MR MOKHARI SC: On a -
 11 COMMISSIONER: We'll adjourn for a few
 12 minutes.

13 MR MOKHARI SC: I just want to, based on
 14 what you've said, Chair, that I do not understand section 3
 15 read with section 6 of the Commissions Act and as well as
 16 the regulations to empower the Commission to force him to
 17 testify orally even if he has made his submissions clear.
 18 [10:59] I understand section 3, read with section 6.2 say
 19 that without good cause if a person faced with this or
 20 committed an offence the Commission is not the one who is
 21 going to decide that he's committed an offence. The
 22 Commission is not a court of law. The Commission because
 23 becomes a complainant and the Commission will then refer
 24 the matter to the relevant authority to deal with it. That
 25 is how I understand the law. I don't understand the

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1 Commission to be a judge and a complainant at the same
 2 time. So all I'm saying is that the Commission does not
 3 have the power to force him to testify when he has made his
 4 point very clear that he's not going to testify on the
 5 basis that he has provided through my submissions.

6 COMMISSIONER: You're perfectly correct
 7 that I can't force him, there are no cells here. I can't
 8 call in the police, I can't lock him up. You're perfectly
 9 correct. I've said to him my ruling is that he should
 10 continue, you're quite right that it's a matter for
 11 prosecution. If he doesn't continue and you can argue what
 12 you wish at the prosecution if there is one -

13 MR MOKHARI SC: That is what he wants to
 14 do.

15 COMMISSIONER: Can you allow me to
 16 finish? But I am saying to you that the ruling of this
 17 Commission is that he should give evidence orally and if he
 18 chooses not to do so then he will face the prospect of a
 19 prosecution but you're quite right. I can't tie him down
 20 to the desk there and interrogate him under, in some way.

21 MR MOKHARI SC: Indeed. So then that is
 22 what he's saying that he will await the complaint by the
 23 Commission to the prosecution but what he is saying is that
 24 he's going to take the ruling on judicial review that has
 25 been made by the Commission.

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1 COMMISSIONER: He must do that if he
 2 wishes and if he wishes to wait for a prosecution then he
 3 must do so but we're going to take a break. We'll see when
 4 we come back whether Mr Maphakela is going to give evidence
 5 according to the ruling and that's the way we'll continue.

6 MR MOKHARI SC: I've taken instructions
 7 already then, I mean before this proceeding started.

8 COMMISSIONER: Well we would like -
 9 MR MOKHARI SC: Unless if you say I must
 10 then check them again, whether he wants to reconsider then
 11 I can do that.

12 COMMISSIONER: No, well you can do as you
 13 wish. We're going to break for a little while.

14 MR MOKHARI SC: So he's told me that he's
 15 not reconsidering and so then he's actually then standing -

16 COMMISSIONER: That's fine but -
 17 MR MOKHARI SC: - by what I submitted.
 18 COMMISSIONER: - we'll deal with that
 19 afterwards. We're going to break for a while if you don't
 20 mind. Thank you.

21 MR MOKHARI SC: Indeed.
 22 [INQUIRY ADJOURNS INQUIRY RESUMES]
 23 [11:23] COMMISSIONER: Is your client willing to
 24 give evidence?
 25 MR MOKHARI SC: No he stands by the

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1 submissions and the instruction that I've communicated to
 2 the Commission.
 3 COMMISSIONER: Okay we'll get on with the
 4 next witness. But let me make is clear that your client is
 5 not excused from giving evidence and he chooses not to do
 6 so well then he must do so at the risk of facing
 7 prosecution.
 8 MR MOKHARI SC: Yes, he's aware of those
 9 consequences.
 10 COMMISSIONER: Okay, and also by the way
 11 he must accept then that when we weigh the evidence that we
 12 will have to draw whatever inferences we think are
 13 appropriate on the evidence we have and he's chosen not to
 14 fill in the parts that we still wish to answer.
 15 MR MOKHARI SC: Precisely, that is
 16 entirely upon the Commission to do so.
 17 COMMISSIONER: Yes, Ms Steinberg, have we
 18 got the next witness?
 19 MS STEINBERG: Yes, we call Mr Lebelo.
 20 MR MOKHARI SC: So we will be excused
 21 from the sitting here?
 22 COMMISSIONER: You may be excused from
 23 sitting here but you are not excused from giving evidence.
 24 MR MOKHARI SC: No I appreciate that.
 25 But we mean sitting here we are excused. Thanks very much.

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1 [NO FURTHER QUESTIONS - WITNESS EXCUSED]
 2 MS STEINBERG: Is Mr Lebelo here? Judge
 3 I had asked through his attorney for him to be here at 11.
 4 MR KAHLA: Through his attorney?
 5 COMMISSIONER: Is his attorney here?
 6 MS STEINBERG: I think the secretary is
 7 going to -
 8 COMMISSIONER: Is someone attending to,
 9 Mr Siyo, do you want to just pop out and see if there's
 10 anyone.
 11 MS STEINBERG: I think my secretary has
 12 popped out.
 13 COMMISSIONER: Oh, thank you. Yes, good
 14 morning. Are you representing Mr Lebelo?
 15 MR MACHABA: Indeed so, Judge.
 16 COMMISSIONER: I don't think we have met
 17 and I'm not sure what your name is.
 18 MR MACHABA: My name is Thabiso Machaba.
 19 COMMISSIONER: Yes, Mr Machaba, is there
 20 something you want to say before your client gives
 21 evidence?
 22 MR MACHABA: We have had a consultation,
 23 extensive consultations with Mr Lebelo. We were able to
 24 agree as the legal team together with Mr Lebelo that in the
 25 interest of time and in augmentation of the evidence that

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1 he had presented on the 27th of September that an affidavit
 2 be submitted in order to deal fully with whatever evidence
 3 that he had presented and there are three reasons Judge,
 4 that informed the decision. First was the consideration of
 5 time. We have read the transcript of what happened on the
 6 27th and the 28th and we were mindful of the engagement and
 7 examination of Mr Lebelo's evidence which took some time
 8 and in the process did not allow him the opportunity he
 9 needed to refer to various documents in the files that he
 10 presented to the Commission. So that was the main
 11 consideration that in order to get that into the
 12 Commission, the affidavit will be okay. Secondly was the
 13 nature of examination because Mr Lebelo is not legally
 14 trained and at some stage it took a turn that he expressed
 15 on the 28th that he was dissatisfied with the manner in
 16 which the examination went and the advice that we gave was
 17 that in order to avoid that perhaps or even to limit that
 18 perhaps the affidavit, if it's acceptable it will go
 19 through and then if there are any further questions that
 20 arrive from the affidavit then you may then field those
 21 questions. So what we have done Judge is that we had
 22 prepared an affidavit that was emailed to the evidence
 23 leader yesterday and we were then informed on that basis
 24 that we should bring ourselves here around 11 o'clock and
 25 then we were here. The affidavit we submitted and we

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1 request that it be accepted in terms of the regulations as
 2 an augmentation of the evidence that he, Mr Lebelo has
 3 presented to the Commission.
 4 COMMISSIONER: Thank you. Well the
 5 affidavit as you say was not asked for, but you're
 6 perfectly entitled to file the affidavit if you wish. I
 7 think it came last night, did it, what time? Anyway it's
 8 on. Anyway it come yesterday evening sometime I think and
 9 we've seen the affidavit and as I understand it, you're,
 10 just a minute, it's going to fall even more there and as I
 11 understand it, your client is still willing to answer
 12 questions that arise from the affidavit, is that correct?
 13 MR MACHABA: That's correct, Judge. We
 14 have explained the process and he's comfortable to proceed.
 15 COMMISSIONER: Thank you. I just want to
 16 correct one thing on the affidavit if you don't mind. Do
 17 you have it in front of you?
 18 MR MACHABA: Yes, Judge, we do. The
 19 affidavit.
 20 COMMISSIONER: Yes.
 21 MR MACHABA: Okay, yes we do.
 22 COMMISSIONER: If you turn to page 42.
 23 Do you have it?
 24 MR MACHABA: Yes, we do.
 25 COMMISSIONER: The top paragraph and

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1 perhaps you just put your finger on page 65 as well which
 2 is the annexure referred to in that paragraph. You'll see
 3 it says, "after deliberations with Judge Nugent that there
 4 was a lot of information which was not before the
 5 Commission and which I know of, albeit in my memory, to
 6 this end it was agreed that I approach SARS's attorneys who
 7 are responsible for the disciplinary hearings to provide us
 8 with the original files used during the 2015 hearings, I
 9 attached hereto a copy of an emailed dated the 2nd of
 10 August." If you can just turn to that email of the 2nd of
 11 August which is at page 65. You'll find nothing there, I
 12 don't think that says that it was agreed that you will go
 13 to his attorneys. He said he wished to go to his attorney.
 14 What he chooses to do is his own business. Off he went to
 15 the attorneys but as I read this affidavit and Mr
 16 Maphakela's as well it seems to me that they are trying to
 17 shift it onto me to have said that I want these documents.
 18 Let me make it quite clear that it's not correct. Nor did
 19 I suggest so in page 65. It was up to Mr Lebelo to decide
 20 what he wanted to do and if that's what he wanted to do, he
 21 was told go ahead and do it. There was no agreement that
 22 he would go to his attorney and it is not borne out by
 23 that. Be that as it may I just wanted to make that clear.
 24 Mr Lebelo, good morning to you. Do you affirm that the
 25 evidence you give will be the truth, the whole truth and

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1 nothing but the truth? If so will you say I do. Sorry I
 2 didn't hear you.
 3 MR LEBELO: I do.
 4 EVIDENCE OF LEBELO
 5 COMMISSIONER: There's just two documents
 6 I'd like to deal with at the outset. You will recall at
 7 the last occasion there was some difficulty with an opinion
 8 that had given by, or a memorandum that had been written by
 9 Mr Brassey, do you recall that?
 10 MR LEBELO: Yes.
 11 COMMISSIONER: And you said you had not
 12 seen that. Correct?
 13 MR LEBELO: Yes, at the time I didn't.
 14 COMMISSIONER: Yes but there was a
 15 suggestion that Advocate Steinberg had held it back in some
 16 way from you. Let me just get this clear. I think you are
 17 aware from our discussion that the email address used by
 18 the Commission is accessible only to me and the secretary.
 19 Do you know that?
 20 MR LEBELO: Yes.
 21 COMMISSIONER: And so emails sent by you
 22 don't necessarily get to Advocate Steinberg unless I pass
 23 them onto her. On this occasion the email that you had
 24 sent was not passed onto her. So she was not aware of that
 25 email, number 1. Number 2, I had given her that memorandum

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1 that had been sent to the Commission by Mr Brassey, passed
 2 it onto her and she was not aware that it was not in your
 3 possession. Do you accept that? She was not aware that it
 4 was not in your possession. I had passed it onto her.
 5 MR LEBELO: Okay.
 6 COMMISSIONER: She had assumed as I think
 7 we, I had assumed as well that a memorandum that had been
 8 given by MR MOKHARI SC to SARS would be known to you and to
 9 SARS and it came as rather a surprise that it wasn't. So
 10 that's the first thing I just want to clear up. The second
 11 thing is you have now been given the opinion by Advocate
 12 Trengove, is that right?
 13 MR LEBELO: Yes.
 14 COMMISSIONER: And you've read that
 15 opinion?
 16 MR LEBELO: Yes.
 17 COMMISSIONER: And that opinion on the
 18 heading says opinion for the Commissioner of SARS on the
 19 Sikhakhane report, correct?
 20 MR LEBELO: Yes.
 21 COMMISSIONER: And that was given on the
 22 1st of September 2015, correct?
 23 MR LEBELO: Yes.
 24 COMMISSIONER: Let me just find my copy
 25 here and you'll see that in that opinion, do you have it in

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1 front of you?
 2 MR LEBELO: Yes.
 3 COMMISSIONER: The opinion given was that
 4 there was nothing in the National Intelligence Service -
 5 MR LEBELO: Judge, which page?
 6 COMMISSIONER: Let me find it. Paragraph
 7 49 page 24. Do you have it?
 8 MR LEBELO: Yes.
 9 COMMISSIONER: You'll see that comes
 10 after on an analysis of the National Strategic Intelligence
 11 Act and the advocates point out there that the key matter
 12 of the Intelligence Act is the protection and advancement
 13 of national security. It is clear that the purpose for
 14 which SARS collects information is not to protect or
 15 advance national security but to administer and enforce tax
 16 legislation. Do you see that?
 17 MR LEBELO: Yes.
 18 COMMISSIONER: This is the National
 19 Strategic
 20 MR KAHLA: Intelligence Act.
 21 COMMISSIONER: What is it called?
 22 MR KAHLA: National Strategic
 23 Intelligence Act.
 24 COMMISSIONER: National Strategic
 25 Intelligence Act does not prohibit SARS from collecting

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1 information, do you see that?
 2 MR LEBELO: Yes.
 3 COMMISSIONER: It goes on to say, if you
 4 go to, at paragraph 50 on that basis the information
 5 collected and evaluated by SARS for the purpose of
 6 administering and enforcing tax legislation does not
 7 constitute intelligence as defined in the NSIA nor does it
 8 constitute departmental intelligence. Based on the purpose
 9 and the matter of the NSIA we are of the view that SARS's
 10 activities in collecting information of the purpose of
 11 administering and enforcing tax legislation are not
 12 governed by the NSIA nor does the NSIA apply to them. For
 13 that reason SARS activities in this regarded would not
 14 contravene the provisions of the NSIA, do you see that?
 15 MR LEBELO: Yes.
 16 COMMISSIONER: It also in here lists the
 17 kind of activities that the revenue service may engage in.
 18 Do you have it offhand?
 19 MS STEINBERG: Sorry what are you looking
 20 for Judge?
 21 COMMISSIONER: There's one about, let me
 22 go around driving files and watching TV and so forth, yes.
 23 The list, if you look at paragraph 41, the list of special
 24 investigative methods provided to us to consider includes
 25 the following activities and on 42 the general rule is that

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1 SARS may only employ methods authorised by the underlying
 2 statutory authority. It means that both the method and the
 3 purpose for which it is used must be underpinned by
 4 statutory authority. The authority may be express or
 5 implied. SARS has all the powers expressly conferred in it
 6 and all such powers as are necessary and or ancillary to
 7 its express grounds. An important consideration in each
 8 case is also whether it's investigation intrudes upon the
 9 rights of others and particularly their right to privacy.
 10 A court would be less likely to recognise an implied
 11 statutory power if it intrudes upon the rights of others.
 12 The implications for SARS's list of special investigators,
 13 investigative measures are along the following lines. One,
 14 SARS may keep people under surveillance in the public
 15 domain but not in private. SARS may follow a person or
 16 vehicle in the public domain but not in private. SARS may
 17 probably place an electronic tracking device on property to
 18 trace it's movements. It may however not place an
 19 electronic tracking device on a vehicle to follow the
 20 movements of its driver because it impinges on his or her
 21 privacy. SARS may watch a person or property such as
 22 business premises, residences, containers, etcetera but
 23 only in the public domain. SARS may take photographs or
 24 videos of people or property in the public domain but not
 25 in private. SARS may not listen to or record private

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1 conversations unless if a SARS official is a party to the
 2 conversation. SARS may not electronically record third
 3 party conversations by using listening devices. SARS may
 4 record conversations between SARS officials and third
 5 parties. SARS may accept information from informers on the
 6 basis that their identities will not be revealed. SARS may
 7 accept information from a person even if it knows that the
 8 information was unlawfully obtained. It may however not
 9 accept stolen property. SARS may not use other abusive
 10 practices or threats to secure any income. So you'll see
 11 that he lists there the activities that SARS may get up to
 12 and those include what would ordinary be called
 13 surveillance. Provided it is within limits. Do you see
 14 that, that was his opinion?
 15 MR LEBELO: Yes.
 16 COMMISSIONER: Given to the Commission on
 17 the 1st of September 2015. So I think that we've now
 18 cleared up the two documents that were contentious. The
 19 one which you've seen, the Brassey memorandum that was
 20 written on the eve of the disciplinary hearings and we've
 21 been through that. You know its contents and we've seen
 22 that, that Advocate Trengove gave an opinion in September
 23 following upon looking at the Sikhakhane report and he said
 24 surveillance activities are permitted provided you keep
 25 within certain bounds. Is that okay, can we carry on from

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1 there?
 2 [11:43] MR KAHLA: On my side, Judge I think at
 3 the conclusion of the last occasion that Mr Lebelo appeared
 4 before the Commission, he suggested that he had heard
 5 during the lunch time or so after he had been excused from
 6 testifying until he came back on the 27th, he suggested that
 7 he had read these two opinions, both the Brassey opinion
 8 and the Trengove opinions that you made reference to and
 9 suggested that MR MOKHARI SC in her questions may have
 10 misrepresented the actual contents of those opinions. I just
 11 want to understand whether Mr Lebelo still stands by that
 12 assertion and if he does what's the basis of that
 13 submission.
 14 MR LEBELO: And good morning to the
 15 Commission and to the Judge and thank you for taking me
 16 through the two opinions. I think the only points I want
 17 to make on the two opinions, one is that the first one, all
 18 I was raising was that these documents were not put before
 19 me.
 20 COMMISSIONER: Sorry? All you were
 21 raising? I can't hear you so well.
 22 MR LEBELO: Was that the – is it better
 23 now?
 24 COMMISSIONER: Sorry, I couldn't hear you
 25 there.

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1 MR LEBELO: Okay. I was all I was
 2 raising is that the two documents which I was expected to
 3 respond were not put before me and in reading them in the
 4 short period that I read it did not imply what when I was
 5 questioned seemed to have implied in that two things. One
 6 is that the opinion of Advocate Trengove was completely
 7 saying that the unit was not unlawful and when I read it at
 8 the time that I read of course it's written by senior MR
 9 MOKHARI SC. It specified incidents that will be acceptable
 10 and incidents that was not acceptable and it, for me it
 11 meant that it depends on incident that happened but it was
 12 saying SARS can do this, it can't do that, SARS can do
 13 this, it can't do that. So for me it was not saying that
 14 that cannot happen. The second one was that, and that's
 15 why with now that I've received the document, the second
 16 one firstly was not a legal opinion. The second one was a
 17 progress report. So when I received the opinion, I mean
 18 when I received the document I then discovered exactly what
 19 happened in that meeting. So the impression that was
 20 created was that it was an opinion and the second
 21 impression was that Advocate Brassey wanted to remove
 22 certain charges and I instructed him or I kind of insisted
 23 on him to do that. So that is not also true from that
 24 document in my reading.
 25 COMMISSIONER: Sorry, you say it wasn't

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1 true, what Advocate Brassey says is not true?
 2 MR LEBELO: No, I'm saying it's not, from
 3 my reading of the document it was not entirely true that I
 4 said, I mean I pushed that. And if I were to give clarity
 5 on that one, I then discovered that that was a report from
 6 a meeting we held between Advocate Brassey's team, the
 7 attorneys that were briefing him and myself, who was giving
 8 us a brief because they were about to do the charges. The
 9 question there was about the three charges which he was
 10 saying they can't stand together and I was advised
 11 obviously because we're sitting in a meeting, it was not
 12 like I was sent something and I responded. We were sitting
 13 in a meeting and after discussions and with the attorney
 14 advising was that because they can't stand on their own you
 15 can pin them together and Advocate Brassey was happy with
 16 putting them together.
 17 COMMISSIONER: Well the question asked by
 18 Mr Kahla, if we can come back to that first, he said you
 19 suggested that MR MOKHARI SC, what MR MOKHARI SC put to you
 20 was not correct. Do you still maintain that having looked
 21 at the documents and if so what basis do you say it was?
 22 MR LEBELO: Yes. I've said the two
 23 basis, Judge. I'm saying the first basis was that the
 24 impression that was given to me was that it's a legal
 25 opinion and it was not a legal opinion. The second basis

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1 was that Advocate Brassey did not want or Advocate Brassey
 2 did not want to continue with the charges about the rogue
 3 unit and I instructed and that he must not, as if he didn't
 4 want to and I instructed that it was not, and I was
 5 explaining that it was not a legal opinion. Secondly it's
 6 not that I instructed him. It was a meeting that we had
 7 with him and his team and it was the outcome of that
 8 meeting. So it was not me directing him not to follow on
 9 those charges.
 10 COMMISSIONER: Well let's go back and
 11 make sure we've got an answer to the questions. You say
 12 the first one is that the extent to which MR MOKHARI SC you
 13 say misled was to call it an opinion when in fact it was a
 14 memorandum, is that the problem?
 15 MR LEBELO: Yes.
 16 COMMISSIONER: Well if that's what you're
 17 concerned about. The second one is you say and could I
 18 just turn to that memorandum of Mr Brassey's. I don't
 19 think I have it –
 20 MR KAHLA: I can read out the portion
 21 that's with reference to.
 22 COMMISSIONER: And you say that she
 23 misrepresented to you that it said that you had instructed
 24 them that the charges should be proceeded with. Now let me
 25 read the memorandum. "Yesterday we recommended to our

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1 client, SARS, that of the three sets of charges currently
 2 being pressed against Mr Pillay, SARS deputy Commissioner,
 3 the charges concerned with the so called rogue unit should
 4 be held in abeyance. Our advice was premised on the fact
 5 that the evidence so far as we have been able to gather it
 6 is far from conclusive on these charges and that witnesses
 7 who might be called to substantiate the case were proving
 8 to be uncooperative. In response our client, represented
 9 by Mr Luther Lebelo, has instructed us that all three
 10 charges should be pressed together and we happily submit to
 11 such instructions". So he says that you had said
 12 notwithstanding my advice that they should not be proceeded
 13 with you had said proceed with them in any event. That's
 14 what he says, correct?
 15 MR LEBELO: Yes.
 16 COMMISSIONER: And now that's what MR
 17 MOKHARI SC had put to you, that that's what he had said.
 18 So where is the misrepresentation to you by MR MOKHARI SC?
 19 MR LEBELO: I'm saying that the cross-
 20 examination that was put to me was creating an impression
 21 that there were charges that Advocate Brassey didn't want
 22 to proceed with and I overruled him and I'm saying –
 23 COMMISSIONER: This is what this says.
 24 MR LEBELO: Ja, but I'm saying that is
 25 not – there is a difference between what is written and

<p style="text-align: right;">Page 3897</p> <p>1 what happened. I'm saying what happened –</p> <p>2 COMMISSIONER: No, I understand that but</p> <p>3 that's what she put to you –</p> <p>4 MR LEBELO: Yes.</p> <p>5 COMMISSIONER: - from the memorandum.</p> <p>6 MR LEBELO: Yes. I'm saying –</p> <p>7 COMMISSIONER: You're saying well what –</p> <p>8 sorry, let's just get this correct. You're saying that</p> <p>9 what Mr Brassey said is not correct.</p> <p>10 MR LEBELO: No. I'm saying the context,</p> <p>11 after I saw the opinion –</p> <p>12 COMMISSIONER: Yes.</p> <p>13 MR LEBELO: - and at the time that I read</p> <p>14 it –</p> <p>15 COMMISSIONER: Yes.</p> <p>16 MR LEBELO: - and when I reconsidered I</p> <p>17 remembered this was a meeting, it was some kind of a minute</p> <p>18 if you like of saying we had this meeting. This is a</p> <p>19 progress report, we raised this with the client. He</p> <p>20 could've used any language, I'm saying at the time there</p> <p>21 was a discussion and a meeting agreed that it will be</p> <p>22 better if you compress the charges together. It was not me</p> <p>23 saying it –</p> <p>24 COMMISSIONER: Well I want to just –</p> <p>25 MR LEBELO: - but –</p>	<p style="text-align: right;">Page 3899</p> <p>1 COMMISSIONER: No, you're not going to</p> <p>2 give it again. You're going to listen first to my question</p> <p>3 if you don't mind. She put to you what was in the</p> <p>4 memorandum, correct?</p> <p>5 MR LEBELO: No.</p> <p>6 COMMISSIONER: Sorry, she put to you what</p> <p>7 was in the memorandum? Do you agree or don't you agree?</p> <p>8 MR LEBELO: I'm saying the impression</p> <p>9 that was created was that he did not want to proceed with</p> <p>10 the charges and I overruled him and that was the impression</p> <p>11 that was created on the cross-examination and I'm saying</p> <p>12 that impression was incorrect.</p> <p>13 COMMISSIONER: She put to you what was in</p> <p>14 the memorandum, is that correct or is that not correct?</p> <p>15 MR LEBELO: Judge –</p> <p>16 COMMISSIONER: It is yes or no.</p> <p>17 MR LEBELO: She put that on the</p> <p>18 memorandum.</p> <p>19 COMMISSIONER: Yes.</p> <p>20 MR LEBELO: She proceeded to cross-</p> <p>21 examine me –</p> <p>22 COMMISSIONER: Yes.</p> <p>23 MR LEBELO: - and I'm saying the nature</p> <p>24 of the cross-examination and the impression created by the</p> <p>25 cross-examination –</p>
<p style="text-align: right;">Page 3898</p> <p>1 COMMISSIONER: Sorry –</p> <p>2 MR LEBELO: - ja, I'm saying –</p> <p>3 COMMISSIONER: Sorry –</p> <p>4 MR LEBELO: - I'm saying, Judge, because</p> <p>5 I don't want us to really get stuck here. I'm saying</p> <p>6 that's my view that the impression that was created was</p> <p>7 that I stopped the charges, I went back to this opinion. I</p> <p>8 found that it was a meeting which meeting all of us agreed</p> <p>9 that you can compress them together.</p> <p>10 COMMISSIONER: I'm still interested –</p> <p>11 MR LEBELO: It must not be reduced into</p> <p>12 me but that's my view and –</p> <p>13 COMMISSIONER: I'm still interested in</p> <p>14 your answer to Mr Kahla's question. In what respect did MR</p> <p>15 MOKHARI SC misrepresent to you what was contained in this</p> <p>16 memorandum?</p> <p>17 MR LEBELO: Chair, I'm going to explain</p> <p>18 it for the last time –</p> <p>19 COMMISSIONER: No, you don't have to do</p> <p>20 it for the last time, just tell me the answer this time.</p> <p>21 MR LEBELO: I gave you the answer.</p> <p>22 COMMISSIONER: She – sorry, she put to</p> <p>23 you what was in the memorandum.</p> <p>24 MR LEBELO: I gave the answer and I'm</p> <p>25 going to give it again.</p>	<p style="text-align: right;">Page 3900</p> <p>1 COMMISSIONER: Yes.</p> <p>2 MR LEBELO: - created that impression</p> <p>3 which I found that it was incorrect.</p> <p>4 COMMISSIONER: Yes, I –</p> <p>5 MR LEBELO: Because she didn't ask my one</p> <p>6 question, she asked me a question and she made follow-ups</p> <p>7 and she made follow-ups and I'm saying those follow-ups</p> <p>8 created that impression and that is my view. If the</p> <p>9 Commission doesn't agree with the view I think that's fine.</p> <p>10 COMMISSIONER: Well –</p> <p>11 MR LEBELO: But that's my view and those</p> <p>12 are the two answers that I give.</p> <p>13 COMMISSIONER: I see. Okay. Is that</p> <p>14 okay, Ms Steinberg?</p> <p>15 MS STEINBERG: I would just like you to</p> <p>16 clarify, Judge, I don't understand a memorandum to be</p> <p>17 minutes of a meeting. I –</p> <p>18 COMMISSIONER: Well whatever they are –</p> <p>19 MS STEINBERG: Ja.</p> <p>20 COMMISSIONER: - you put to him as far as</p> <p>21 I can remember and you'll find it on the record, you said</p> <p>22 that's what the memorandum said and you put to him what the</p> <p>23 –</p> <p>24 MS STEINBERG: That's what I did, yes.</p> <p>25 COMMISSIONER: - memorandum says.</p>

<p style="text-align: right;">Page 3901</p> <p>1 Whether the memorandum is accurate or not is another 2 matter. I didn't understand you at all to know, say I know 3 more about this than occurred. He put to him the 4 memorandum, we know what the memorandum says and we've 5 heard the explanation which is not that you put anything 6 inaccurate as it was contained in the memorandum. So I 7 think we'll leave it at that if we may. Is that okay with 8 – 9 MR KAHLA: Just I need just some clarity, 10 Mr Lebelo. Are you suggesting that MR MOKHARI SC suggests, 11 that is Brassey, that the charges should be compressed 12 together? Because what I read out of the memorandum is 13 that in relation to the so called rogue unit charge he 14 expresses that it should be held in abeyance and he sets 15 out that the basis for his suggestion that it be held in 16 abeyance and then completes this by saying that you then 17 pressed that they should be, I mean you then instructed 18 that they should be pressed together. So the comprehension 19 together is actually on the submission of, on this 20 memorandum was by yourself not by Advocate Brassey. 21 MR LEBELO: Ja, so if you go further and 22 read the memorandum, if you go further and read the 23 memorandum it also tells a story. It tells a story if you 24 look at 5, paragraph 5.3 it tells the story of Mr Johan De 25 Waal will come and – all I'm saying and this is the</p>	<p style="text-align: right;">Page 3903</p> <p>1 to you to do so? As I understand your affidavit the 2 initial bill you got, account you got for collating the, 3 collecting I think it was those documents, those 2, 4, 5 4 files, was R1 million is that right? And it was - 5 MR LEBELO: That's – can I deal with 6 that? 7 COMMISSIONER: No, just answer the 8 question. Is that correct? I'm – 9 MR LEBELO: Yes. 10 COMMISSIONER: - looking at your 11 affidavit. 12 MR LEBELO: Yes. 13 COMMISSIONER: It was first about a 14 million Rand, is that right? 15 MR LEBELO: Yes. 16 COMMISSIONER: And then you negotiated it 17 down to R759 000 is that correct? 18 MR LEBELO: Yes. 19 COMMISSIONER: And that has not yet been 20 paid by SARS is that correct? 21 MR LEBELO: Yes. 22 COMMISSIONER: And you are still in 23 discussion with the attorney as to whether you're willing 24 to pay that amount, is that correct? 25 MR LEBELO: Yes.</p>
<p style="text-align: right;">Page 3902</p> <p>1 evidence I'm giving, I'm saying when I looked at the 2 memorandum and I considered what happened it's that there 3 was a meeting where were given feedback. I was with my 4 attorney and even the Judge will know that when you're 5 sitting with MR MOKHARI SC your sitting with an attorney 6 talking together. We're planning a case. We talk as a 7 team. It's not like there was an email sent to me and I 8 gave instructions. So that was the discussion that we had 9 and that was the proposal that was put there and Advocate 10 Brassey is even saying here that we happily complied. And 11 I can assure you that Advocate Brassey would not have, will 12 never be instructed by me to continue with the charge that 13 he doesn't believe he's going to do it because he's the one 14 who was going to do it. I took advice of the general 15 meeting that was there and of course because I'm a client 16 that becomes the client's advice and that is how we worked 17 as we briefed MR MOKHARI SC. 18 COMMISSIONER: Yes, I've seen your 19 explanation, it's a bit, it's also contained in your 20 affidavit. The explanation – 21 MR LEBELO: Yes. 22 COMMISSIONER: - you've given now, we've 23 read that. It's fine. We'll deal with that in due course 24 and weigh it up with all the other evidence. May I just 25 clarify one thing as well and I think it's fair to SARS and</p>	<p style="text-align: right;">Page 3904</p> <p>1 COMMISSIONER: Okay, I think we've dealt 2 with that now. Is there anything further you want to deal 3 with? 4 MS STEINBERG: No, Judge. No, the – we 5 accept that Mr Lebelo has now given a full account of the 6 evidence in these files, in this affidavit and – 7 COMMISSIONER: Well he's given an account 8 of how he'd interprets – 9 MS STEINBERG: Of you interpreted, yes 10 and we accept, as you've said many times that on the 11 information given to Mr Brassey at the time he drew up a 12 charge sheet and he was willing to prosecute and we accept 13 that. 14 COMMISSIONER: Yes. Okay, well I think 15 that that – is there anything further that anyone else 16 wants? I don't think so, myself. May I just address your 17 attorney for one moment and that is we have the affidavit. 18 We will evaluate, it doesn't mean that everything in here 19 is relevant to our inquiry. We will evaluate it and take 20 account of whatever we think is relevant to the inquiry. 21 We will look at that together with all the other evidence 22 and weigh what is said there with the other evidence that 23 is relevant to the inquiry and reach our conclusions. Is 24 that in order? Is that in order? 25 MR MACHABA: Yes, it is.</p>

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1 COMMISSIONER: Thank you.
 2 MR MACHELA: Judge, Mr Lebelo would like
 3 to address an issue that's contained in the affidavit and
 4 it relates to yesterday's newspaper article where about
 5 this invoice that we have just spoken about.
 6 COMMISSIONER: Yes, well I don't know –
 7 MR MACHELA: It is the article –
 8 COMMISSIONER: - I don't know what was in
 9 the newspaper myself, I was told there were some reports
 10 but –
 11 MR MACHELA: Yes.
 12 COMMISSIONER: - you say you want to
 13 address –
 14 MR LEBELO: Yes, Chair, Judge and thanks
 15 so much for allowing me. And I must say that is one of
 16 those that I want to address because it was very
 17 unfortunate. So in the evidence on Friday a statement was
 18 made that I have spent R759 000 to come and clear myself
 19 before the Commission on my own cost and all that and it
 20 was ran all over the papers on Friday and Saturday and
 21 Sunday and it has caused so much damage and pain purely
 22 because it is not correct. It has really cast an aspersion
 23 on me, very badly.
 24 Now let me explain it because it's deep and I'm
 25 leaving the issue about the agreement or the non-agreement.

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1 My understanding is that I had a conversation with the
 2 judge a number of times and I realised that the evidence
 3 that we had was not sufficient to converge between what I
 4 thought I heard and what the judge heard and in that
 5 meeting I, and I'm saying this and I'm talking about my own
 6 understanding and without dragging the judge into it, that
 7 I then said the best way is to maybe get the files that
 8 existed at the time of the disciplinary so that I don't say
 9 I know this and then the judge said I was told this and
 10 whatever, whatever. And I left as per the new policy I
 11 filled out the form to the head of legal, Mrs Refiloe
 12 Mokoena, that is how the process work. And as you can see
 13 on the form which is attached here I make it clear this is
 14 for the purposes of the Commission. So I say – I say
 15 there, the short description is that compile a report and
 16 full files on the following matter on which you were
 17 instructed and I mentioned the names of the employees and I
 18 say, I'm just looking for the part, and I say this
 19 compilation of files is for the Commission of inquiry and I
 20 might not be factual here but I remember I even said to Mrs
 21 Refiloe Mokoena that she must check with the Commission
 22 before she approves because it's coming from the
 23 Commission. So at all material times I understood that I
 24 must get this information so that it helps the Commission.
 25 The files were as per the disciplinary action that took

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1 place at the time. So my expectation was that the
 2 disciplinary action was stopped five days before, there
 3 should be files sitting somewhere, somebody must go and
 4 dust them off and give it to the Commission. So that was
 5 my understanding.
 6 COMMISSIONER: Okay.
 7 MR LEBELO: And the file went. When I
 8 was told by the same firm that the files will be ready on
 9 Friday I wrote an email which is in the affidavit. I said
 10 to the Judge, Judge, things, I hope you had a good break
 11 and as per the discussion on that day the files will be
 12 ready on Friday. Can me and you meet so that I can take
 13 you through, I can give you the file, either take you
 14 through or whichever way. So I gave option there and this
 15 continues to show that I never for a moment had any other
 16 aversions but that that is what the Commission needed.
 17 COMMISSIONER: But what did you – it was
 18 what you felt the Commission needed.
 19 MR LEBELO: Yes, I'm continuing –
 20 COMMISSIONER: Yes, carry on.
 21 MR LEBELO: - on that note.
 22 COMMISSIONER: Let's get that perfectly
 23 correct.
 24 MR LEBELO: That at all times –
 25 COMMISSIONER: Don't blame for spending a

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1 million Rand.
 2 MR LEBELO: No. I'm saying at all times
 3 –
 4 COMMISSIONER: Yes.
 5 MR LEBELO: - from the conversation, from
 6 the forms, from everything else is that the files were for
 7 the Commission. I would not have went and filled out the
 8 form and asked for SARS information for myself personally.
 9 It's again the law. I can't do that. I can only do it on
 10 behalf of SARS. When the files came I, the judge remember
 11 I met with him twice taking him through the files the first
 12 day and the second time also we met and I took him through
 13 the files and on the basis of the file he made a decision
 14 that I must come and present at the Commission.
 15 Probably a few days before I appear on the,
 16 before the Commission I received a bill from the same law
 17 firm almost the amount of a million Rand for the files.
 18 And I was shocked because all I thought is that if you're
 19 about to charge people it means you have got files with you
 20 and my instructions were clear, just retrieve the files.
 21 So I thought people would just go and get the files, clean
 22 it up, maybe make two copies and bring it here. So I
 23 didn't even expect it to be so much money. I then wrote a
 24 letter back to the law firm and I said there is something
 25 wrong with this invoice for my expectation. The email is

1 in there, I'm not quoting verbatim, it is in the file. I
 2 mean it's in my affidavit. The law firm responded and say
 3 we apologise, we did a mistake. We didn't do quality
 4 check, they're registered for VAT up to 200, to 759. I
 5 appeared before the Commission, unfortunately I had to
 6 leave for family, for the family event. When my office was
 7 insisting that I must sign it said no.
 8 [12:03] Even though they have reduced it to 759 I still
 9 cannot form, I cannot comprehend that retrieving files that
 10 were ready at the time of the hearing can cost so much
 11 money. When I come back from leave I will then send them a
 12 letter again and say now that you've clarified you have
 13 quality errors clarify for me how can files that are
 14 supposed to be in a cabinet cost you so much money? When I
 15 was on leave the Commission told me that I must appear
 16 today. I asked the Commission whether there is anything
 17 extra. And then I was then presented that I must come and
 18 explain this invoice.
 19 So I knew that today I'm going to come here to
 20 explain the invoice. The important thing about the invoice
 21 is that I didn't sign it because I was lodging a complaint.
 22 I even said to my colleague that this is one of the
 23 invoices that we must even take to the Law Society if you
 24 like but it was said in gest but we need to argue about it.
 25 But unfortunately it was there.

1 I still don't know how can an invoice that was in
 2 my office and my office was locked ended up in the
 3 Commission but I don't want to get into that. The fact is
 4 that it get into the Commission. I was coming here to
 5 respond to it. Unfortunately on Friday a statement was
 6 made which statement cast an aspersion on me but the
 7 important principles are that the invoice was brought to me
 8 from people who were supposed to just retrieve the files
 9 that were existing.
 10 It was exorbitant. I questioned it. They
 11 reduced it. I was going to question it again until I get
 12 to the bottom of the matter. So that invoice is on record.
 13 So I thought let me clarify that because really the
 14 impression that was created and the names that was ran on
 15 Friday was that I personally did the following things.
 16 Now, let me also testify some little thing that appeared
 17 which I thought the Acting Commissioner had also been
 18 confused in the fact where he said I was given legal
 19 representation.
 20 The legal representation that is here is not
 21 Mashiane. The other one is Mashiane. And the reason why
 22 we had to go to Mashiane Moodley for the files is that they
 23 were the attorneys that were instructed to work so we can't
 24 go to any other attorneys. It's only them who can help.
 25 Now, one of the things that the Acting Commissioner raised

1 here was that I was given legal representation.
 2 Indeed it happened. So one day in our
 3 conversation between me and him he told me that some other
 4 senior person has requested for legal representation to
 5 appear before the Commission and I told him that I thought
 6 about it but I don't think I need it. And he said no, no,
 7 no, I think you need it. You send an email to Mr Makungu
 8 Tubule and ask for a legal representation which I did.
 9 It is in the affidavit. And then they responded
 10 and said they are going to give me legal representation as
 11 one of the things that EXCO has given that if an employee
 12 need a legal representation they must ask. I never thought
 13 I need it until I had a conversation. Now, the problem
 14 with that is that they only came to me two days before I
 15 appeared before the Commission the last time.
 16 So I had two options. The one option is that I
 17 ask the Commission to postpone which I didn't think it
 18 would work but the second option is that if you are told
 19 that okay, get lawyers two days before you appear, what
 20 will happen is that by the time you need them you sort a
 21 date and stuff like that. You'll be attending to the
 22 Commission. So I called my colleague as well.
 23 I said look, given that it's only two days, two
 24 full days before this I don't think it will be prudent for
 25 me to use the lawyers. Otherwise I'll pay them for only

1 consultation, the files I mean and on the basis of that let
 2 me go there without the legal representation and I came
 3 before the legal representation. And when I was here I
 4 then said to the Commission that given what happened I
 5 think I need legal representation.
 6 I went back. I sent an email to, as well as
 7 cc'ing the Acting Commissioner and I said look, you know I
 8 came back from the Commission. Now I need, I think I'll
 9 need the legal representation. He told me that no, that's
 10 fine. They'll use the insurance that SARS has with lawyers
 11 and I can choose any lawyer that I want. I even emphasised
 12 to him that please give me the same set of lawyers that you
 13 can give and I was told that you can get an attorney and a
 14 MR MOKHARI SC and I was given an attorney and a MR MOKHARI
 15 SC.
 16 So the lawyers that are actually representing me
 17 here are the lawyers that a decision was made by EXCO and
 18 Acting Commissioner that you can get if you want a legal
 19 representation. The one of Mr Maphakela, the only reason
 20 why the files had to be sought from them is purely because
 21 they run the - so the impression that was created in the
 22 public there in the media is not correct. My intention,
 23 and I'm saying, Chair, that we are going to go to, and I'm
 24 using the word loosely here, we are going to go to war
 25 about that invoice because I still need to get answers as

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1 to how does a file that I expected to be sitting somewhere
 2 in a cabinet turn to cost us so much money and -
 3 PROF KATZ: No, those are the files you
 4 present, five files. Well, that's about R200 000 a file I
 5 suppose. Yes.
 6 MR LEBELO: Ja, I don't know. The other
 7 thing, Judge, that I want to just conclude on and -
 8 PROF KATZ: Let me interrupt you and say
 9 that the fact that you have got MR MOKHARI SC or attorneys
 10 with you today is not an issue. The Commissioner has said
 11 anyone who wanted to be perhaps an attorney or MR MOKHARI
 12 SC with him or her giving evidence, perfectly in order, so
 13 that's not an issue at all. I don't think that there's
 14 anyone suggesting there's anything wrong with that.
 15 MR LEBELO: Okay, I'm just closing that
 16 I'll be submitting, it's not part of the, on the affidavit
 17 but I'll be submitting one or two emails that will sort,
 18 that will answer to the previous one. The first one is
 19 about two/three emails that we sent in 2016 complaining to
 20 the office of the Commissioner at the time, Commissioner
 21 Moyane, about the issue of the invoices.
 22 You'll remember there was a question about why do
 23 you pay invoices that are not within your purview. So I
 24 discovered now that there are a number of emails where I
 25 sent to him and said but this is the problem. There are

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1 emails about a lot of things that we don't know and there
 2 is a problem and then I'm talking about two/three emails
 3 were we complained as far as 2016.
 4 And some he email, he responded to us and said
 5 ja, just pay. So I wanted to answer that other aspect.
 6 The other emails that are here that we'll also submit is to
 7 also demonstrate that as early as 2016 and around those
 8 times we had sent emails in particular but they were only
 9 for Mashiane only to demonstrate that the battle about
 10 fighting for invoice, we have been having that battle since
 11 2016.
 12 My team knows that when an invoice lands they
 13 must go through an invoice. If they are not happy they
 14 must question that. You'll see there that there are areas
 15 where the law firm, in particular Mashiane, had to cut some
 16 of the costs, had to reduce some of the costs and had to
 17 give away some of the costs on the basis of the battle that
 18 we put to them. So I'm doing this so that it shouldn't
 19 create an impression that when things happen in our office
 20 we don't - but that's all I wanted to clear, Judge. Thank
 21 you so much.
 22 COMMISSIONER: Okay, thank you.
 23 MS STEINBERG: Judge, I simply want to
 24 give the basis of the evidence that was put to Mr Kingon on
 25 Friday. There are three documents. The first is merely a

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1 transcript of Mr Lebelo's evidence. Now, the reason that
 2 the impression was created that the files were prepared for
 3 Mr Lebelo's benefit rather than SARS is because on repeated
 4 occasions in his testimony Mr Lebelo said that he had come
 5 to clear his name and I want to read one extract.
 6 I quote Mr Lebelo, "The reason why I'm here, the
 7 major reason why I'm here is that over a couple of years,
 8 and I can say roughly four years, a particular narrative
 9 has been created and if you like ratified which suggests
 10 that either myself, I participate in what is known as a
 11 purge, some of my colleagues whom I worked with for many
 12 years which I had a good relationship with, I was used in
 13 that place to purge my colleagues."
 14 It goes on. "I was quoted as a Moyane hitman.
 15 And if I don't come and tell the truth and the story that I
 16 know, the stigma of being on suspension, hit and being a
 17 purger will continue the rest of my life." And there are
 18 many, many examples where Mr Lebelo said he'd come to clear
 19 his name and that was the basis, one basis of why the
 20 advocates of this Commission had understood that these
 21 files -
 22 COMMISSIONER: Yes.
 23 MS STEINBERG: Were less about SARS and
 24 more about Mr Lebelo.
 25 COMMISSIONER: Yes.

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1 MS STEINBERG: Now, when it comes to the
 2 instruction to Mr Maphakela -
 3 COMMISSIONER: Just a minute, just a
 4 minute, Ms Steinberg. You know, I don't think we should
 5 enter into arguments at this stage and I accept that it was
 6 on the evidence. I'm well aware of that. The evidence you
 7 have read. We will weigh up what he now says against the
 8 evidence that was given and we'll make a decision but I
 9 don't want to enter into argument at this stage if you
 10 don't mind.
 11 MS STEINBERG: I need to be clear. When
 12 there is an accusation that there was a misrepresentation
 13 from MR MOKHARI SC I need to clear that up. I can't -
 14 COMMISSIONER: I understand.
 15 MS STEINBERG: I have to have that on the
 16 record.
 17 COMMISSIONER: Well, you've put it on the
 18 record. I understand. What else is there? We've just
 19 discussed where the misrepresentations are alleged to have
 20 occurred. He's told us. We've dealt with that.
 21 MS STEINBERG: I'd also like to put on
 22 the record that when one looks at the legal instruction Mr
 23 Lebelo gave to Mr Maphakela it's not merely for full files.
 24 It's also for a report.
 25 COMMISSIONER: Yes.

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1 MS STEINBERG: If one looks carefully at
 2 the invoice that goes on for pages but comes to R759
 3 million collating information is merely one aspect of it.
 4 What Mr Maphakela is doing according to his invoice is he
 5 is making a case and he is writing submissions for Mr
 6 Lebelo to come to this Commission and he's asked to link
 7 evidence, to explore evidence, to investigate evidence and
 8 to put it into a report and there are repeated meetings
 9 with Mr Lebelo. So it's simply inaccurate to say that all
 10 Mr Maphakela was asked to do was to put together these
 11 files. That's not the instruction he was given and nor is
 12 it what his invoice reflects.

13 COMMISSIONER: Well let's deal with the
 14 two separately. We recall that in the evidence you have
 15 said on a number of occasions on the last occasion that you
 16 are here to clear your name. Isn't that correct?

17 MR LEBELO: No.

18 COMMISSIONER: Is it not on the evidence?

19 MR LEBELO: No.

20 COMMISSIONER: Well, just a minute,
 21 you've heard the evidence read to you. You don't have a
 22 transcript of the evidence? Do you have a transcript in
 23 front of you?

24 MR LEBELO: No.

25 COMMISSIONER: Well, can we just, can you

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1 give him that section of the evidence please?

2 MR LEBELO: Okay, I'm alive that it is
 3 there.

4 COMMISSIONER: Okay. So that's the point
 5 she's making. Do you accept that you did say you're here
 6 to clear your name?

7 MR LEBELO: Yes.

8 COMMISSIONER: Yes, okay.

9 MR LEBELO: But that is not -

10 COMMISSIONER: It's not correct.

11 MR LEBELO: No. Let me explain that
 12 part.

13 COMMISSIONER: Okay.

14 MR LEBELO: And unfortunately Advocate
 15 Steinberg was not part of the meetings that we had between
 16 myself and the judge.

17 COMMISSIONER: And sorry, between
 18 yourself and?

19 MR LEBELO: And yourself.

20 COMMISSIONER: What's that got to do with
 21 that evidence?

22 MR LEBELO: I'll explain it.

23 COMMISSIONER: No, no, what has it got to
 24 do with that evidence?

25 MR LEBELO: I'm saying that the

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1 conversation about my purpose of coming here, I had that
 2 conversation with you.

3 COMMISSIONER: Well, our conversation is
 4 not in the evidence. She's talking about the -

5 MR LEBELO: I'm not saying that, Judge.
 6 I'm saying -

7 COMMISSIONER: Can you let me finish as
 8 well, Mr Lebelo? Then we'll understand each other. That
 9 evidence has got nothing to do with any conversations with
 10 me. It's got to do with what you said your purpose was and
 11 that's what she's asking you about. You said there I'm
 12 here to clear my name.

13 MR LEBELO: Let me clarify it.

14 COMMISSIONER: Okay.

15 MR LEBELO: In the affidavit I've
 16 attached an email sent to the judge explaining my purpose
 17 of being here. It's in the affidavit. That is number 1.
 18 Number 2 is that on the 28th the judge asked me the same
 19 question here and said, Mr Lebelo, you said you are coming
 20 here to clear your name. I responded here and said no,
 21 Judge, it's not correct. I'm not coming here to clear my,
 22 to clear my name. It's on record that I said on the 28th.
 23 If you look at my submission when I started I
 24 explained my role. I explained my purpose. The issue
 25 about clearing my name it comes together. I was saying

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1 that colleagues who had come to the hearing gave evidence
 2 which evidence included the fact that they were purged.
 3 And I was saying that after hearing that I want to come and
 4 give an alternative view to what the colleagues said as the
 5 head of ER. And consequentially I've been alleged to have
 6 been a hitman who has suspended people.

7 I even said to the judge in the evidence it will
 8 show that I was not even involved in the suspension. But I
 9 think the evidence that has been put here is that all I'm
 10 saying is that I can, I've never had in my head the
 11 impression that I'm coming here solely to clear my name.
 12 I always understood that I'm coming here to share the
 13 information that was in my knowledge at the time of these
 14 activities have been - in the affidavit it's also explained
 15 better in the introduction about that part.
 16 Interpretations can be made but I want to emphasise that
 17 when I said it on the 27th I openly explained why I'm here.
 18 The judge asked me on the 28th and I corrected and I said
 19 no, I'm not here for my personal whatever. I'm here to
 20 share.

21 COMMISSIONER: But whatever you - there's
 22 the evidence. We've had your explanation.

23 MR LEBELO: Yes.

24 COMMISSIONER: We'll weigh it up in due
 25 course.

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1 MR LEBELO: Thank you, Judge.
 2 COMMISSIONER: The second issue you
 3 raised?
 4 MR LEBELO: The second issue, Judge -
 5 COMMISSIONER: Well, let's just clear up
 6 what the second issue is if I may and then we can be quite
 7 clear. You see, it's one thing that one would like to have
 8 asked Mr Maphakela about but he prefers not to be here.
 9 And that is if you look at this, if you look at the - I
 10 think that's the point. If you look at the invoice you'll
 11 find for example - where's the invoice? Do you have that
 12 invoice?
 13 MR LEBELO: Yes.
 14 COMMISSIONER: You see under 2nd of
 15 August, working on notes and submissions to be made by Mr
 16 Lebelo before the Commission. Attempt to prepare for the
 17 presentation to be made to Luther and preparing him for the
 18 appearing at SARS, at the SARS Commission, dealing with the
 19 suspension of Richer, not Richer, linking Richer to the
 20 unit, linking Richer to the recruitment of Van Rensburg,
 21 linking Richer to project Sunday evenings.
 22 You see here what she's talking about is they're
 23 being asked to make an investigation and prepare a case as
 24 it were against people. Drafting submissions and notes for
 25 Mr Lebelo in respect of Richer, compilation of the file in

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1 respect of Ravele, discussion with Mr Lebelo with regards
 2 to the need to hand over the file, discussion with Mr
 3 Lebelo and acquired further clarity seeking questions by
 4 the Honourable Judge Nugent. I certainly didn't pose
 5 questions to him. So and so we go on. And then if we can
 6 go to the letter you'll recall that Mr Maphakela then wrote
 7 a very long letter to you. Remember that letter on the 22nd
 8 of August? Do you have that letter, the letter by Mr
 9 Maphakela to you on the 22nd of August, a very long letter?
 10 MR LEBELO: Yes, I do have it.
 11 COMMISSIONER: And that's the one that he
 12 sent to you that he copied to me. Remember that letter?
 13 MR LEBELO: Yes.
 14 COMMISSIONER: And he copied it to me. I
 15 think his explanation for some of it he says that he took
 16 the opportunity unilaterally he thought, to advise me on
 17 how to conduct the inquiry and not to be biased. Remember
 18 that one? He said as a collegiality he said was - he
 19 thought he better advise me. And in that letter as you see
 20 there is a whole analysis of documents. He's tried to
 21 establish a case against these various people. You see
 22 that? So I think that's what MR MOKHARI SC is saying. He
 23 wasn't merely instructed to collect documents. It seems he
 24 was instructed to extract from those documents a case to be
 25 made against these people. What do you say to that?

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1 MR LEBELO: The difficulty with this
 2 invoice is that it is in dispute there are a lot of things
 3 that I see here that I don't even know.
 4 COMMISSIONER: Yes.
 5 MR LEBELO: But I think the important
 6 thing is the page 9 on the affidavit that talks to the
 7 instruction to say at the time of giving the instruction
 8 which I assigned what was the instruction. And that's why
 9 I am disputing because it must collate with the
 10 instruction. Like the letter that he sent to you, I don't
 11 know how he wants to charge it here because I thought it
 12 was a letter from him to you.
 13 COMMISSIONER: Him to me?
 14 MR LEBELO: Yes.
 15 COMMISSIONER: It was addressed to you.
 16 MR LEBELO: No, no, no, if you remember,
 17 Judge, if you look at the letter he says dear Judge. Then
 18 he goes and tells you a lot of stories.
 19 COMMISSIONER: No, it says Mr Luther
 20 Lebelo, group executive. Dear Sir. 22nd of August. Where
 21 does it say dear Judge?
 22 MR LEBELO: If you look at the letter and
 23 look at it because it was not (inaudible) so look at the
 24 letter. The point I'm making is the instruction that I
 25 gave, and maybe this is an instruction that I must read for

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1 MR MOKHARI SC -
 2 COMMISSIONER: Ja.
 3 MR LEBELO: A request to compile a report
 4 and files on the following matters to be submitted to the
 5 Commission.
 6 COMMISSIONER: Yes.
 7 MR LEBELO: And mentioned the names. So
 8 the intention was that you take the files -
 9 COMMISSIONER: Ja.
 10 MR LEBELO: And then you compile the
 11 report for the benefit so that you don't give raw files.
 12 So you will say this file include the following things and
 13 this was the evidence, exactly what I was trying to do last
 14 time.
 15 [12:23] COMMISSIONER: Well that's an index but
 16 what's the report.
 17 MR LEBELO: No, no not in index. A
 18 report of explaining the files. So you must explain and
 19 say this file is for that, this evidence is for that. That
 20 evidence is for that. It's an index that, in the form of,
 21 that explains the files. So that was the instruction that
 22 they were given to do and then they went, I don't know what
 23 was their response, unfortunately I was, I hoped that they
 24 were going to explain it here today. But I don't know what
 25 is their response. But all I'm saying is that all, there

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1 are a lot of things that are here which I'm disputing and
 2 I'm going to dispute with them because -
 3 COMMISSIONER: Yes.
 4 MR LEBELO: I don't know how they relate
 5 to the instruction that I gave, my instruction was very
 6 clear, you compile that thing, you put a short report that
 7 helps the Commission to understand how the evidence linked
 8 to each other. So that -
 9 COMMISSIONER: So how the evidence does
 10 what? Linked?
 11 MR LEBELO: Link to each other.
 12 COMMISSIONER: But why is he explaining
 13 how, why is he trying to make a case -
 14 MR LEBELO: Not on -
 15 COMMISSIONER: Explaining how the
 16 evidence links to each other, I thought your instruction
 17 was collect the documents, put them in a file and then I
 18 want to present them to the judge, is that the instruction?
 19 MR LEBELO: Yes.
 20 COMMISSIONER: So why was he going about
 21 trying to create a case?
 22 MR LEBELO: That was the part he must
 23 explain.
 24 COMMISSIONER: Well -
 25 MR LEBELO: That was not the instruction

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1 that was given to him.
 2 COMMISSIONER: Was it, do you say your
 3 instruction was simply gather the files and present them?
 4 MR LEBELO: Yes.
 5 COMMISSIONER: And so, his invoice, you
 6 say is not true, when he says I met with Mr Lebelo and we
 7 discussed this and that?
 8 MR LEBELO: He met with me to take me
 9 through.
 10 COMMISSIONER: Take you through the
 11 files?
 12 MR LEBELO: Yes, to explain which file is
 13 whatever, so meeting with him is true. The part that is
 14 not, the part that is a problem because obviously he didn't
 15 just drop the files.
 16 COMMISSIONER: Yes.
 17 MR LEBELO: He spoke to me. The part
 18 that is a problem is he went and ticked, he went and
 19 listened to audio, he went and did the following things.
 20 My understanding was that the hearing was supposed to, was
 21 about to be sitting, you have got a file with evidence you
 22 are ready to prosecute.
 23 COMMISSIONER: Yes.
 24 MR LEBELO: And that is the file that we
 25 wanted. We didn't want reconstruction of the files, that

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1 was not what I understood.
 2 COMMISSIONER: Well he certainly gave
 3 reconstruction of what he said the file contained.
 4 MR LEBELO: Which, which is exactly what
 5 he must explain.
 6 COMMISSIONER: And you say it's not, it's
 7 not your instruction. Do we need to go on?
 8 MS STEINBERG: No.
 9 COMMISSIONER: Thank you very much.
 10 Anything more?
 11 MR KAHLA: Just two things, Judge.
 12 Firstly, Judge, just a quick one around these invoices.
 13 Did I get you right that you said in your, in your evidence
 14 earlier that you've had a history of having issues with
 15 billing by your attorneys? By these particular attorneys?
 16 MR LEBELO: Ja, I only (inaudible) these
 17 attorneys, I don't know whether they are -
 18 MR KAHLA: No, no I'm talking about in
 19 relation to this.
 20 MR LEBELO: Yes.
 21 MR KAHLA: The ones that, the ones who
 22 compiled for you those files.
 23 MR LEBELO: The one that came here this
 24 morning, ja.
 25 MR KAHLA: So this issue you have around

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1 billing in relation to them is not an isolated case?
 2 MR LEBELO: No, no, no and it's not the
 3 first time.
 4 MR KAHLA: Okay. The next point I wanted
 5 to just to understand that, I think it's helpful that you
 6 would be providing us with an email reflecting instances
 7 where you had difficulties around instructions to pay for
 8 matters that you could not connect to SARS. Am I
 9 understanding you that if you're get an instruction from
 10 someone at the top regardless of that instruction being
 11 lawful you'll simply just execute it. So in this instance
 12 if the Commissioner wanted advise on a book in relation to
 13 him and you find that that book has no relevance at all to
 14 his work as a Commissioner and you're required to pay for
 15 that, would you consider that part of your, lawful
 16 responsibilities that you've got to execute that you must
 17 pay that, that invoice.
 18 MR LEBELO: Maybe I'll submit the email.
 19 So you'll see in the emails that we, when we went, we'll
 20 complain and say two things. These invoices were not part
 21 of and you know they are not, it's obvious we are to using
 22 the same language. But complaining that we are not part of
 23 this invoices that are, they are not touching on the issues
 24 that affect us and we are worried about that. Then in one
 25 email then he responded and said just pay, pay and once he

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1 says pay and the accounting authority that becomes an
 2 instruction that he gives us, that he pays, because he paid
 3 from the budget. I think the important thing for us is
 4 that the struggle of us being expected to pay invoices that
 5 are not falling within our purview and or were not part of
 6 the instructions, we've been raising with the office of the
 7 Commissioner and that proof is there. Which I'll submit to
 8 you.

9 MR KAHLA: And you say he responded in
 10 writing that you must pay those invoices that you queried?
 11 MR LEBELO: Yes.

12 COMMISSIONER: Did you query the invoice
 13 within which, to the attorneys, I don't know what they
 14 charged for that one, 30 000, 20 -
 15 MS STEINBERG: Which one?
 16 COMMISSIONER: For reading the book.
 17 MS STEINBERG: I have it.
 18 COMMISSIONER: Did you query that with
 19 Commissioner and say look why are you instructing an
 20 attorney to read a book in order to find what it says about
 21 me the Commissioner?
 22 MR LEBELO: No.
 23 COMMISSIONER: Did you query that?
 24 MR LEBELO: No, not, we don't, we don't
 25 question that.

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1 COMMISSIONER: Sorry. Did you query it,
 2 is the answer yes or no?
 3 MR LEBELO: Judge, I'll have to check.
 4 But what I'm saying is that the context of the query is
 5 that you are asking us to pay for a consultation Mr Ketla
 6 we are not there and it doesn't even look like it's an ER
 7 matter and then he responds. So on that specific one I
 8 don't remember whether I said to him, about the book and
 9 stuff like that.
 10 COMMISSIONER: Well that invoice was
 11 paid?
 12 MR LEBELO: Yes.
 13 COMMISSIONER: And it was paid from your
 14 cost centre?
 15 MR LEBELO: Yes.
 16 COMMISSIONER: Well presumably you
 17 approve payments from your cost centre, you don't just pay
 18 anything.
 19 MR LEBELO: Yes and that's why I'm saying
 20 in the emails it will show in instances where we complained
 21 and we were told that we must pay. That's all I'm saying
 22 in the -
 23 COMMISSIONER: Not complain to the
 24 attorney about the amount, complain to the Commissioner
 25 about -

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1 MR LEBELO: Yes.
 2 COMMISSIONER: Why are we in ER paying
 3 for someone to read a book for you.
 4 MR LEBELO: Ja.
 5 COMMISSIONER: You say there are emails
 6 to that?
 7 MR LEBELO: No, no, not specific, Judge.
 8 COMMISSIONER: Not specifically.
 9 MR LEBELO: All I'm demonstrating is that
 10 there were emails when we complained about this pattern
 11 where we're expected to pay for, for event that we are not
 12 part or event that are not related to ER. I'm
 13 demonstrating that we had that struggle with the office of
 14 the Commissioner and at some point he sent an email that
 15 you must pay and obviously if you send an email that you
 16 must pay you don't ask again. You just say okay, it means
 17 you want us to pay.
 18 COMMISSIONER: Okay.
 19 MR LEBELO: It will come from this
 20 project.
 21 COMMISSIONER: You'll provide us with the
 22 email?
 23 MR LEBELO: With the, yes.
 24 COMMISSIONER: And in particular reading
 25 a book.

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1 MR LEBELO: No, no.
 2 COMMISSIONER: Will you look if there's
 3 an email saying, from you saying please we don't pay in ER
 4 for reading books and can you please tell us why we must
 5 pay for reading a book. You'll look at see if there's -
 6 MR LEBELO: No, no there, ja, I'll look.
 7 COMMISSIONER: Mr Lebelo, you're not
 8 listening. You'll look and see if there's an email about
 9 that as well.
 10 MR LEBELO: Ja.
 11 COMMISSIONER: And you'll give us other
 12 emails where you've said to him we shouldn't be paying
 13 this. This is your personal affairs and we're not paying
 14 for it -
 15 MR LEBELO: Not in the specific language,
 16 Judge.
 17 COMMISSIONER: Sorry.
 18 MR LEBELO: I'm saying not in that
 19 specific language. But the judge will read -
 20 COMMISSIONER: In whatever language it
 21 might be, you'll tell us.
 22 MR LEBELO: Yes.
 23 MS STEINBERG: The cost for reading the
 24 book, Judge, was approximately 120 000 before VAT.
 25 COMMISSIONER: R120 000?

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1 MS STEINBERG: Ja.

2 COMMISSIONER: How long is this book? Is

3 it War and Peace? How long is the book?

4 MS STEINBERG: I haven't read the book,

5 no.

6 COMMISSIONER: Do you know about this

7 book, do you know about this book?

8 MR LEBELO: Well Judge, I explained that

9 I was seeing the invoice about the book for the first time.

10 COMMISSIONER: Ja, okay.

11 MR LEBELO: I was, all I did was to ask -

12 COMMISSIONER: Ja.

13 MR LEBELO: Ja, I didn't know about the

14 book.

15 COMMISSIONER: But you would have

16 approved that you say?

17 MR LEBELO: Yes, after I asked whether

18 the work had been done.

19 COMMISSIONER: Yes. Well you'll show us

20 where you -

21 PROF KATZ: Just one very quick question.

22 Advocate Steinberg read to you a long invoice, lots of

23 notations. Is your contention that in doing that work the

24 attorney exceeded his mandate, he wasn't asked to do the

25 work or he didn't do the work and charged you for it?

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1 Which is the two?

2 MR LEBELO: I think he over, he did to

3 much more than the instruction asked him to do.

4 PROF KATZ: So he exceeded his mandate

5 quite significantly?

6 MR LEBELO: Yes.

7 COMMISSIONER: So where he says here

8 drafting case for Mr Lebelo -

9 MR LEBELO: I'm advised that I must say

10 possibly.

11 COMMISSIONER: You say possibly.

12 MR LEBELO: Well I can't -

13 COMMISSIONER: Well I don't think that

14 you can say possibly, it either happened or it didn't

15 happen.

16 MR LEBELO: Okay.

17 COMMISSIONER: So let's just listen, so

18 that we don't get confused and I think that your attorney

19 shouldn't tell you what evidence to give, he should tell

20 you what you may not answer. That's different. But I

21 don't think he should tell you what evidence to give.

22 Where it says for example continuous drafting of the

23 submissions, you say that if he in fact was drafting

24 submissions that was contrary to his instructions? Is that

25 correct?

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1 MR LEBELO: Ja, Judge, I need to go, all

2 I'm saying is I need to go through the invoice. If I were

3 to answer the question from, is that in my looking of the

4 instructions.

5 COMMISSIONER: Ja.

6 MR LEBELO: And all the other things that

7 have been done he exceeded -

8 COMMISSIONER: Yes.

9 MR LEBELO: His, the mandate of the

10 instructions, my expectations is that if you are to be

11 charging a person in a week's time you have got a file that

12 is ready with everything. All I was asking is that go to

13 your cabinet if you may, get us those files from the

14 cabinet and don't, it shouldn't listen to tapes and all

15 those things.

16 COMMISSIONER: Yes. Will you go through

17 the invoice and mark those which you say he exceeded his

18 instructions for us, could you do that?

19 MR LEBELO: Ja, when I get to the office

20 I'll do that.

21 COMMISSIONER: No, no, indeed not now

22 obviously.

23 MR LEBELO: Ja. Okay.

24 COMMISSIONER: And then will you also

25 just tell me when he wrote this long letter analysing the

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1 documents and saying it proves this, it proves that, you

2 remember this letter that we've just been through.

3 MR LEBELO: Yes, I will.

4 COMMISSIONER: When you go that on the

5 22nd of August did you go back to Mr Maphakela and say what

6 on earth are you doing producing this report, this analysis

7 and trying to show why the documents proved a case against

8 these people when that was not your instruction, did you go

9 back to him on that?

10 MR LEBELO: I, I didn't -

11 COMMISSIONER: Sorry, did you or not?

12 MR LEBELO: No I spoke to him on the

13 phone.

14 COMMISSIONER: Did you say to him why are

15 you sending me this report?

16 MR LEBELO: Can I say what I said,

17 because it's difficult to say did you say this.

18 COMMISSIONER: Ja, okay. Let's hear, but

19 provided I get an answer.

20 MR LEBELO: Only two, yes, the only two,

21 the only part that I raised with him was that the, my

22 understanding was to answer whether the opinion is the last

23 one or there's another one.

24 COMMISSIONER: Yes.

25 MR LEBELO: If there's another one he

1 must give me the next one.
 2 COMMISSIONER: right.
 3 MR LEBELO: I was just and I'm saying
 4 this without prejudice because I was -
 5 COMMISSIONER: Well you can't say, you
 6 can't talk without prejudice under oath.
 7 MR LEBELO: Ja, I was talking to him on
 8 the phone and I said I thought you went little bit where
 9 you're not supposed to go. But my understanding and it's
 10 another contention, my understanding was that he
 11 volunteered to give the judge's views. It was not an
 12 instruction. Mine was a simple question of whether the
 13 opinion, there is another opinion that is there just send
 14 it to the judge.
 15 COMMISSIONER: Yes.
 16 MR LEBELO: I think he went little bit
 17 more and it was not an instruction, and if he's going to
 18 charge us for that, it's something that I'm going to
 19 contest because I thought he was giving you a free -
 20 COMMISSIONER: A free advice?
 21 MR LEBELO: Free advice, ja.
 22 COMMISSIONER: Ja, well thank you.
 23 Thanks. Ms Steinberg, I think you know my own view is that
 24 these are important things but quite frankly we're involved
 25 in rather more important things, do you agree?

1 MS STEINBERG: I agree.
 2 COMMISSIONER: And that is the running of
 3 SARS, this major institution and how, what should happen in
 4 the future. So thank you very much Mr Lebelo and I hope
 5 that you don't have any more consultations.
 6 MR LEBELO: Thank you.
 7 [NO FURTHER QUESTIONS - WITNESS EXCUSED]
 8 COMMISSIONER: We're adjourned.
 9 MS STEINBERG: Judge, we resume at 9
 10 tomorrow morning.
 11 COMMISSIONER: Thank you.
 12 [INQUIRY ADJOURNED]
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