JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY, POLITICAL INTERFERENCE AND CORRUPTION IN THE CRIMINAL JUSTICE SYSTEM

HELD AT

BRIGITTE MABANDLA JUSTICE COLLEGE

29 SEPTEMBER 2026

DAY 180

PROCEEDINGS HELD ON 29 SEPTEMBER 2026

CHAIRPERSON: Good morning, Mr Chaskalson. Good morning, Ms Qofa and good morning, Mr Sibanyoni.

MR SIBANYONI: Top of the morning, Chair.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: Morning, Chair. Morning, Mr Sibanyoni.

CHAIRPERSON: You are still under your oath, Mr Sibanyoni.

MR SIBANYONI: Thank you.

CHAIRPERSON: Thank you.

JOE SIBANYONI: (still under oath)

CHAIRPERSON: Which files do we draw close?

ADV CHASKALSON SC: It is a tricky question, Chair. We have reached an agreement that we will not refer to File 5, so I can tell you not to draw File 5 close. I think Files 1 and 2 should be to hand and the statement file, I need to just check that the hardcopy files are ordered the way my electronic copies are ordered.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Chair, I think the original statement file and the supplementary statement file we will dip in and out of. Mr Sibanyoni, I want to start with your original statement file. I do not think it is necessary to go there yet ...[intervenes].

ADV QOFA: Chair, if I may? Apologies, Mr Chaskalson, and good morning, Chair and Evidence Leaders. Chair, I have been specifically requested by Mr Sibanyoni this morning to, for purposes of ensuring that his statement and evidence is interrupted as little as possible, to place just a few things on record. Of course, these are issues that are consistent with his primary statement and his supplementary statement. But he has requested, through the indulgence of Chair and Commissioners, that we place and specifically flag certain issues for the record so that ...[intervenes].

CHAIRPERSON: How long will that take?

ADV QOFA: Chair, this should simply take five minutes at best.

CHAIRPERSON: And Mr Sibanyoni will do that himself or will you lead him in that regard?

ADV QOFA: I will simply lead it because it is issues which we consider as legal arguments, but which are particularly based on the questions that have been raised. So ...[intervenes].

CHAIRPERSON: Let me just establish if he is not able to articulate them himself.

ADV QOFA: Thank you, Chair.

CHAIRPERSON: Mr Sibanyoni, are you able to do that?

MR SIBANYONI: No, I think she can just take the lead.

Can she do it on my behalf? Thank you, Chair.

CHAIRPERSON: You see, we have Evidence Leaders here to avoid that sort of situation, to have other people also leading evidence. But maybe to you, in the interest of time, Mr Chaskalson, perhaps?

ADV CHASKALSON SC: I mean, I certainly do not have an objection.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: I suspect it may even save time because we are going to bang into some of these debates quite quickly.

CHAIRPERSON: Yes, yes. Thank you. Yes, Ms Qofa, if you may please.

ADV QOFA: Thank you very much, Chair. Chair, I need to specify that this is a special request requested by Mr Sibanyoni and he has requested us to deal principally with three issues. First and foremost, he has requested us to deal with the issue of the Kwaggafontein case docket that has been placed before the Commission.

Mr Sibanyoni specifically requests that we address the issue of this docket because he is fearful of the motive and purpose for which it has been flighted. He raises the concern that he has a pending criminal case. He raises the concern that the Court that will be sitting to adjudicate this case is most likely to be seeing these proceedings or will

see these proceedings at a later stage.

His concern is that if the issues in this case docket are flighted and discussed in this forum, this will have a direct consequence of teleporting a message and/or an inference to that Court, thereby throwing a negative inference when in fact he has a right to remain silent and treat the issues that he ought to before that Court.

The second issue, Chair, will relate particularly to – and, Chair, you will note that we have made references to cases to back Mr Sibanyoni's concern. We have raised the issue of the case of *Ferreira and Levine*. We have raised the issue of *Pikoli and Minister of Justice and Constitutional Development*, which deal with this issue squarely.

Chair, most critically, Mr Sibanyoni has requested further to address the fact that he has – and I am thankful to Mr Chaskalson, who has indeed indicated that the second issue, which is the bundle, the 355 pages we received yesterday, will not be addressed today. And we say this because Mr Sibanyoni had been travelling, as we had requested indulgence with the Commission previously, and as he was on the way yesterday and we were all doing other things that we ought to do, we received this bundle, albeit, of course, at 15:48 in the afternoon, as a result of which we have not been in a position to consider the contents thereof, and we request the Commission that such

information either be pended and not be dealt with, to allow Mr Sibanyoni to look at them at a later stage.

Noting the concern, indeed, Chair, that Mr Sibanyoni raises very, very strongly, he is not abound with means to keep paying for legal representation, to keep looking at information piecemeal and he truly raises this as an issue of concern.

Chair, finally, as far as the criminal case is concerned, Mr Sibanyoni has requested us to deal frontally with the proposition that was made by Mr Chaskalson at the beginning of his appearance here. The proposition that Mr Chaskalson had made was that because Mr Sibanyoni has pleaded innocence in the criminal case before Kwaggafontein, he ought reasonably, as the proposition goes, to deal with the issues here.

Chairperson, we have raised the concerns as far as that proposition is concerned. At no point has Mr Sibanyoni waived his right, first, to innocence, and secondly, to remain silent. And, as a matter of fact, to be tried by a competent Court where he has not purposefully or intentionally implicated himself or the co-accused with whom he is charged.

He therefore requests that these three issues be considered very strongly, and that, as a result, any of these issues that are addressed, as far as they relate to this

case, and secondly, the case of Mr Cat Matlala, for which he was a victim, he would like that these issues not be raised with him, but with respect, he will only deal with them as far as he has done so in his statement, and nothing more. Chair, this is a request that we place before the Commission with respect. As the Chair pleases.

CHAIRPERSON: On that point about Mr Cat Matlala's case, what legal principle are you relying on?

ADV QOFA: Chair, he is a witness in that case. He was a victim of the targeted attack on his life and Mr Sibanyoni feels that ...[intervenes].

CHAIRPERSON: If I may lead you? The Act, for example, the Commission's Act says that a witness may raise whatever privilege they would be entitled to, say, for example, in a criminal process. So in this instance, what exactly is reliance placed on?

ADV QOFA: Well, Chair, I think in truth for Mr Sibanyoni, it is just the decision to say I am yet to testify in that criminal case, and I do not intend to air whatever testimony I aim to air before that Court.

CHAIRPERSON: Legal principle?

ADV CHASKALSON SC: Chair, no, I am not talking about a legal principle at all.

CHAIRPERSON: You must, you have to, you have to.

ADV QOFA: Indeed, Chair, indeed. Chair, look, I am

simply raising these issues because I do not want to be seen to have not raised the issues that have bent Mr Sibanyoni ...[intervenes].

CHAIRPERSON: That is exactly what counsel should never do. You do not make a proposition just because your client wants you to. If it means you must be fired because you tell client that I cannot in law and in all honesty raise such a legal point, sobeit.

ADV QOFA: My life, Chair.

CHAIRPERSON: You do not raise an issue just because a client wants you to.

ADV QOFA: Indeed, as I say, Chair, story of my life. But, Chair, I will only take it as far as I have. I have at least made sure that the concerns that Mr Sibanyoni raised are addressed.

CHAIRPERSON: So at least Mr Sibanyoni has heard that you tried.

ADV QOFA: Indeed, Chair.

CHAIRPERSON: Thank you. Any further submissions, Ms Qofa?

ADV QOFA: Chair, forgive me?

CHAIRPERSON: Any further submissions?

ADV QOFA: No further submissions, Chair. I am indebted.

CHAIRPERSON: Thank you, thank you.

ADV QOFA: Thank you, Chair.

CHAIRPERSON: Yes, Mr Chaskalson?

ADV CHASKALSON SC: Chair, I do have a concern that we need to resolve this issue, or at least one of the issues. The issue in relation to questions which overlap with the Kwaggafontein prosecution because those are questions that I intend to ask. And my own submission is that I am entitled to ask and that Mr Sibanyoni has a privilege against self-incrimination. He can decline to answer them if by so answering he would expose himself to a risk of incriminating himself, but he has to assert that privilege, and that privilege has to be asserted in good faith.

Now, I had in fact intended to start at this point. So I am not sure how to proceed, whether we need to debate this out in full, get a ruling, whether I should ask my first question and then get the ruling thereafter.

CHAIRPERSON: Well, we have had a similar situation. A witness that is facing criminal charges, Mr Matlala in fact, to be specific. In his case, we went ahead and the Evidence Leader did ask questions that relate to the charges that Mr Matlala is facing and what Mr Matlala would do would be to raise or to plead his entitlement to the privilege.

In respect of some questions, we would engage with it and want to know how exactly the privilege is implicated in those particular circumstances, and an

appropriate ruling would then be made in each instance. So the privilege in our view was that it has to be raised in respect of each question. In some cases, and I think it was the preponderance of those cases or instances where the privilege was raised, we allowed him to raise it, but in some instances not.

I do not know, but after Mr Chaskalson is done, you may respond, Mr Qofa, but I do not think it is proper to just in a broad, generalised manner to say there is a Kwaggafontein case and therefore no questions whatsoever should be asked insofar as the Kwaggafontein case is concerned. If it means that in respect of each question Mr Sibanyoni says privilege and we agree, sobeit. Mr Chaskalson, do you have any further submissions? Because I want to give Ms Qofa an opportunity to respond. Anything else to say?

ADV CHASKALSON SC: No, I am happy to take question by question.

CHAIRPERSON: Ms Qofa?

ADV QOFA: Chair, I pause to probably add that the only reason we raised this at the beginning, we have indeed in our principal statement flagged the areas. What we just did not want to do truly for the decency that the Commission deserves is to cut in on questions that are asked at every time. We have highlighted those areas that Mr Sibanyoni

has decided he will not address and Chair, I think we will leave it at that, in the Chair's hands and the Commissioners' hands. Thank you, Chair.

CHAIRPERSON: Yes. As I said previously, Counsel did not even have to come in. The witnesses themselves, and it has not been Mr Matlala only, there have been one or two others. The witnesses themselves have just raised the privilege and I have heard Mr Sibanyoni speak and I trust that he will be able to identify where he is entitled to raise the privilege. Mr Sibanyoni, do you agree?

MR SIBANYONI: I concur, Chair.

CHAIRPERSON: Thank you very much. Let us start then, Mr Chaskalson.

ADV CHASKALSON SC: All right, Chair. Mr Sibanyoni, I was going to take you to your first statement and in paragraph 78 of that statement, you say the following:

> "I deny emphatically and absolutely that I am…" ...[intervenes].

MR SIBANYONI: Where can I refer here? On my witness bundle? I need to ...[intervenes].

ADV CHASKALSON SC: Sure. There should be a file called statement file, first statement file.

MR SIBANYONI: Ja.

CHAIRPERSON: Not the one written supplementary. There is one written statement only.

MR SIBANYONI: Okay. Here we go. On page?

ADV CHASKALSON SC: Page 30 of that bundle.

MR SIBANYONI: Okay.

ADV CHASKALSON SC: You have it, paragraph 78?

MR SIBANYONI: Correct.

ADV CHASKALSON SC:

> "I deny emphatically and absolutely that I am or have ever been a member of any criminal organisation, cartel, syndicate or grouping. I have never directed, financed, commissioned or participated in any unlawful activity. I have never been tried and/or even convicted of any criminal offence. The Delmas charges are charges which I deny and I intend to contest fully."

Now, do you stand by that statement?

MR SIBANYONI: Correct.

ADV CHASKALSON SC: And in particular, are you happy to say under oath to this Commission that you have never directed, financed, commissioned or participated in any unlawful activity?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: I then want to move to the Kwaggafontein statement of Doctor Ntuli. That is in a

separate file. That is File 1 of the evidence bundle, page 475. Now, do you know Doctor Ntuli?

MR SIBANYONI: Yes, I do know him.

ADV CHASKALSON SC: How do you know him?

MR SIBANYONI: Like I have mentioned, it is Mr Ntuli who wanted to see me. That is the first step as to how did I finally met him. He is the one who tried to have a meeting with me on three occasions up until he arrived at my house. That is where we started knowing each other.

ADV CHASKALSON SC: And when was this?

MR SIBANYONI: I am not quite certain about those dates, but in the middle of 2020 and 2024.

ADV CHASKALSON SC: So sometime between 2020 and 2024?

MR SIBANYONI: Sure, yes.

ADV CHASKALSON SC: Why did he want to see you?

MR SIBANYONI: Mr Ntuli, to start with, is from Middelburg. So, for some reasons, he did not have a local content to qualify for a certain percentage when dealing with the matters of the Moloto Road. So therefore, he wanted someone who can do partnership with him so that at the end of the day, he qualifies for the matter that he has got a quarry. So for him having me within his space qualifies him to have a local content.

ADV CHASKALSON SC: Now, he had a quarry and he had

a mining right or a mining permit in relation to this quarry.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: What did he need to be qualified for?

MR SIBANYONI: I am not sure if you understand very well, Mr Chaskalson, when I am talking about the local content.

ADV CHASKALSON SC: I want to hear your understanding.

MR SIBANYONI: My understanding is if you were to operate in my area for some reasons, it is clear that there is a certain percentage that you give to the locals, which is allocated as 30%. So if you are not from that surrounding, for sure you do not qualify for that. It is a written rule. So Mr Ntuli never qualifies for that, for the mere fact that he is from Middelburg. So here we are dealing about the Kwaggafontein and I am from Kwaggafontein.

ADV CHASKALSON SC: And where is this rule written?

MR SIBANYONI: In the PLO meetings or CLO meetings.

ADV CHASKALSON SC: Sorry, in?

MR SIBANYONI: There is this thing of PLO or CLO, public licencing officers, it is there in their rules.

ADV CHASKALSON SC: But in whose rules? I am trying to understand the origins of this rule.

MR SIBANYONI: I cannot take you to a specific rule in terms of, this is the rule on page 45. The common

understanding that is there, one needs to give 30% as a local content.

CHAIRPERSON: Let me come in here, Mr Sibanyoni. Let us take a tender, for example. It may be specified in the tender document itself that there must be X percentage of local people.

MR SIBANYONI: Correct, ja.

CHAIRPERSON: In this instance you are talking about a licence for a quarry.

MR SIBANYONI: Okay.

CHAIRPERSON: So similarly or analogously, one would expect that it should be specified that for anyone to be given the licence, there must be X percentage of local people that are with that person in the venture. It may be, I am not saying it must be specified, it may be specified. And I use similar language even with respect to the tender.

MR SIBANYONI: Okay.

CHAIRPERSON: Are you talking about something that had been specified in that manner with regard to this licence, or are you saying, regardless of what was specified, there is this overarching rule that always applies, regardless of whether or not the tender invitation, if it is a tender, or whatever it was in respect of the quarry, regardless of that or regardless of what that document specified or did not specify, there is this overarching rule that must always be

complied with. Which one of the two are you saying? Is it something specified, are you talking about something specified in the relevant document, or are you talking about some overarching rule despite what is actually specified?

MR SIBANYONI: Ja, the second one, Chair.

CHAIRPERSON: Some overarching rule despite what is...

MR SIBANYONI: Yes.

CHAIRPERSON: Then in that case, between you and Ms Qofa, we will insist that we should be shown or given that rule, where exactly that rule comes from. Ms Qofa?

ADV QOFA: Chair, I think, in fairness, there is an A1 statement filed by Mr Ntuli, which the Chair will find at page 483 of the bundle, which talks about Mr Ntuli himself indicating why he needed to meet Mr Sibanyoni and why he needed to qualify for the 30% local content. So I think that on its own should be able to give the answer. It is not Mr Sibanyoni's answer, it is the context that is placed on record by Mr Ntuli himself. Thank you, Chair.

CHAIRPERSON: Well, it is Mr Sibanyoni's answer, but thank you for referring us to this. We are engaging him based on his answer. Thank you. Yes, Mr Chaskalson?

ADV CHASKALSON SC: But 483 does not refer to any rule or 30% requirement. 483, if I can read it:

> "I was approached by a known African male to me as Mvimbi Masilela. He told

> me I left them behind when I was negotiating the contract for tonnage stones concrete. Furthermore, he requested a meeting with me in his office in Pretoria in order for me to discuss with him to give them a portion of a certain amount of each tonnage I supply. I replied to him that if he wants a portion, he must negotiate direct with Edwin Construction. Mvimbi Masilela told me that he will arrange a cell phone conference himself, myself and Edwin Construction to meet..."

And on it goes. So that, so 483 relates to an approach to Doctor Ntuli from Mr Masilela ...[intervenes].

ADV QOFA: Forgive me, Chair, it is 475. My absolute apologies.

ADV CHASKALSON SC: Sorry, 475.

ADV QOFA: It is 475, paragraph 3. My apologies.

ADV CHASKALSON SC:

> "The first thing he says which came to mind was the involvement of the community through the correct structure. I was informed that Mr Makhaya Msiza, he is the community liaison officer of the

project."

That would be King Civil's community liaison. Mr Sibanyoni, is that correct? Would Mr Makhaya Msiza be the community liaison officer who is working with King Civil's, who are the primary contractor?

MR SIBANYONI: Yes.

ADV CHASKALSON SC:

> "I did consult with him regarding the involvement of the community. Mr Makhaya Msiza told me we need to go to see the Chairperson of the local business forum, Mr Mvimbi Masilela."

So he goes to Mr Mvimbi Masilela. And then in paragraph 4, he says:

> "Our meeting was scheduled around June 2021 at KwaMhlanga by a place called Etjanini, which is a drinking place. They further told me that we need to go to Pretoria where they are going to introduce me to their boss, Mr Joe Sibanyoni, the taxi boss known as the President."

So do you understand yourself to be the boss of Mr Masilela?

MR SIBANYONI: Not at all.

ADV CHASKALSON SC: So why would Mr Masilela tell Doctor Ntuli that he needs to introduce Doctor Ntuli to you?

MR SIBANYONI: I do not know.

ADV CHASKALSON SC: What did Doctor Ntuli say when he made an approach to be introduced to you? Why did he want to meet you?

MR SIBANYONI: All I can say, when he was introduced to me, Mr Ntuli, this is Mr Sibanyoni, then they gave him a platform to engage me. He was so thankful that he ultimately with me and to come and discuss some business proposal that he has. And he has heard my name and now finally that the name into the picture makes perfect sense for him, he would like to have this proposal for the mere fact that he is from Middelburg and he does not qualify local content and we are talking about a quarry here that needs someone who has got strong pockets who can at some point assist him and make it possible that the quarry gets more stabilised.

ADV CHASKALSON SC: So he was wanting to bring you in as a business partner who would advance money into the project.

MR SIBANYONI: Yes, and local content.

ADV CHASKALSON SC: But how do you qualify for local content? He lives in Middelburg, you live in Pretoria. This is a road in Kwaggafontein.

MR SIBANYONI: Yes, my founding affidavit states clearly that I stay in Kwaggafontein.

ADV CHASKALSON SC: So you ...[intervenes].

MR SIBANYONI: Basically, my home is Kwaggafontein.

ADV CHASKALSON SC: So you moved between Pretoria and Kwaggafontein?

MR SIBANYONI: Correct, yes.

ADV CHASKALSON SC: And would you consider yourself qualified for local content in a contract in Pretoria?

MR SIBANYONI: We are talking Kwaggafontein.

ADV CHASKALSON SC: No, no, I am putting a different proposition to you. Would you consider yourself qualified for local content if you were to contract, for instance, with the Tshwane Municipality?

MR SIBANYONI: I have never dealt with Tshwane matters. So my understanding when we deal business, please put me in Kwaggafontein because my entire life, ever since from the age of five I have been a Kwaggafontein person.

ADV CHASKALSON SC: So he was going to address two concerns of his, according to you. The one was his need for a financial partner, is that correct?

MR SIBANYONI: Correct, yes.

ADV CHASKALSON SC: And the other was a need for local content.

MR SIBANYONI: Sure.

ADV CHASKALSON SC: What did you negotiate with him?

MR SIBANYONI: So the understanding was me and him were of a different age, 60 plus. Therefore, when we are talking to each other, it is not a matter of we are laughing or fooling each other. It is a matter of adults are talking, adults are agreeing on the matter. And for the mere fact that I am assisting, I am coming into the picture as the way he has requested.

So there was no further communication as to what is it that we must do. Me being a partner with him, it is a matter of he knows the business better than I do. Where there are problems, we will engage as we did. And what I was more interested was the end result as to when it comes to the financials, what are we going to do? Then the matter was we are going to split. That was his proposal. We are going to split on the profit.

He will run the business. On the profit basis, we will get 5%/50% share. Then my responding to his proposal was, no, let us make it 60/40 because you are the one on the ground and I will rely on you. I will rely on you. Nothing to write about. I will rely on you. If the profit is R100 today, for this month you take 60 cents, I take 40 cents. Then we agreed on that, and it was a simple agreement.

ADV CHASKALSON SC: But I am still not understanding

what your contribution to this agreement was, to this arrangement was. What were you going to put into this business?

MR SIBANYONI: I put money.

ADV CHASKALSON SC: You put money?

MR SIBANYONI: Yes, I did put money.

ADV CHASKALSON SC: When did you put money?

MR SIBANYONI: In the middle of the process.

ADV CHASKALSON SC: Sorry, in the middle of the process?

MR SIBANYONI: Yes, like in three months' time after we started.

ADV CHASKALSON SC: Three months after the quarrying started?

MR SIBANYONI: Yes, ja.

ADV CHASKALSON SC: How much money did you put in?

MR SIBANYONI: R900 000.

ADV CHASKALSON SC: R900 000?

MR SIBANYONI: Sure.

ADV CHASKALSON SC: And have you got any proof of that R900 000 that you put in?

MR SIBANYONI: Come again?

ADV CHASKALSON SC: Have you got any proof?

MR SIBANYONI: No.

ADV CHASKALSON SC: Can you refer us to bank

statements or documents that reflect this?

MR SIBANYONI: I gave Mr Ntuli R900 000 in three pieces and then ...[intervenes].

CHAIRPERSON: Sorry, can we just slow down? You are saying in three pieces?

MR SIBANYONI: Yes, ja.

CHAIRPERSON: Over what – can you give us approximate dates?

MR SIBANYONI: In three months, yes.

ADV CHASKALSON SC: No, I understand it is three different payments, but can you give us approximate dates?

MR SIBANYONI: Can I give you what?

ADV CHASKALSON SC: Approximate dates. When did you pay these amounts?

MR SIBANYONI: Yes, for sure, I do not have specific dates. Remember, this thing is almost five years ago now.

ADV CHASKALSON SC: Yes, but I imagine you have been researching it quite closely now because you are facing criminal charges on it.

MR SIBANYONI: No, I did not.

ADV CHASKALSON SC: So you cannot tell us that you paid certain amounts on a particular date. You know that you paid a total of R900 000 over in three different payments.

MR SIBANYONI: Ja, what I have researched, the last

payment was through a bank transfer, but the first two ones were not bank transfers because he will come and give me a call. We talk about it. Then I will give him some time. Okay, Mr Ntuli, could you please come on Monday? I will have such amount of money and hand it over to him.

ADV CHASKALSON SC: Sorry, let us take it one at a time. You said the last one was a bank transfer.

MR SIBANYONI: Yes, it is.

ADV CHASKALSON SC: Do you know how much that was for?

MR SIBANYONI: I am not sure about it, but it is, it reflects.

ADV CHASKALSON SC: And from which of your accounts was it paid?

MR SIBANYONI: That was from the ABSA account.

ADV CHASKALSON SC: No, but you have many companies, you have personal accounts.

MR SIBANYONI: Yes, personal accounts.

ADV CHASKALSON SC: Your personal accounts, your personal ABSA account. And to whom was that money paid?

MR SIBANYONI: To him.

ADV CHASKALSON SC: To him, as opposed to Tengane Mining?

MR SIBANYONI: To Tengane, yes, ja.

ADV CHASKALSON SC: Sorry, to him or to Tengane Mining?

MR SIBANYONI: No, to him.

ADV CHASKALSON SC: To him?

MR SIBANYONI: Yes.

ADV QOFA: Chair, if I may assist, we do have the record of that payment, of the last payment.

CHAIRPERSON: Yes.

ADV QOFA: And ...[intervenes].

CHAIRPERSON: Ms Qofa, you should please, please be careful not to testify from the bar.

ADV QOFA: No, no, no. I was just assisting, so we will be able to provide it as the witness says.

CHAIRPERSON: I am just cautioning. You should be careful. You should be careful.

MR SIBANYONI: Chair, where I am seated with this matter of Mr Ntuli, like we have mentioned it, it is a matter that is sub judice, and it is a very serious charge that sits in Delmas. For us, I am taking it bit by bit. It is a matter that does not make me feel comfort, because it is a very serious offence. It is a very serious case that sits in Delmas.

So, I take it that Mr Chairperson is taking this matter, it is like we are in court, whereby we need to have this amount of money being cleared, and the Delmas Court is listening to this Court. Mr Ntuli is listening to this Court.

So, I find it very strange that we get deep into this matter. I have opened it the first time, whereby my right of being silent was taken out by Mr Chaskalson, because if the matter is sub judice, my understanding is, can we just take this matter outside, because there is a Court that is going to deal with this matter.

So, if Mr Chaskalson is pushing this matter that it must be heard here, it prejudices my rights. Why do we do that? He must just go straight to the matter. Like I have said, I know Mr Ntuli. He came to my house, we started doing business. As to the merits, can you allow the Delmas Court to do that?

That is just my plea, because I am under oath here as well. If I had to give different dates, because he is also insisting that I must have this date, I must have this amount. Under oath, once you said between 10 and 15, and tomorrow he said 16, but you are under oath. Then I do not have a leg to stand.

So, it is my request that this is a matter that is in Delmas. We have got a lot of matters that are outside the court, that I will give you my side of the story. Why do we sit in this matter, whereby this particular matter has got a Magistrate that he is going to deal with it? He cannot be the Magistrate of that court. I know the Magistrate who is dealing with this matter.

So, I request, Chair, and your two Commissioners, that this Delmas matter is a delicate one. If I were to be found guilty, I would blame, Mr Chaskalson, because Ntuli and the Court, they are listening to this Court, to this Commission, and we are here in the Commission just to assist. Now he is trying me out. Get us those three dates. Where did you put the money? Personal or Tengane? Then Mr Ntuli is taking note of this. Come the Delmas matter, I am out of the matter. I am incriminated. I am getting sentenced for things that Mr Chaskalson was not allowed to do, as far as I am concerned here. That is my request, Chair.

CHAIRPERSON: Mr Chaskalson?

ADV CHASKALSON SC: Chair, if Mr Sibanyoni wants to assert a privilege against self-incrimination, he can say that I do not want to answer that question because it may incriminate me, but he does need to assert that privilege and then he also needs to explain how he can assert that privilege when his basic statement is that he denies categorically that he has done anything unlawful in this regard. So I do need to probe these questions. It is one of several topics I want to address, but I would like to address it properly.

CHAIRPERSON: Mr Sibanyoni, you will recall when Ms Qofa, no, I think it was when Mr Chaskalson was speaking

right at the beginning, I said exactly what Mr Chaskalson is saying now,, which is that you cannot in broad, generalised terms, refuse to answer questions. If you are asserting the privilege against self-incrimination, you must do that in respect of specific questions and do it with a measure or level of specificity.

That is in accordance with a judgment of the Constitutional Court. You assert your privilege, you assert it specifically, and you may even have to explain how your privilege is implicated in any specific instance. So, yes, I hear you. I hear what you are saying in general terms, but the question is, are you in respect of the last question, just before you said what you said, are you asserting your privilege in respect of that question, but not in broad terms, in respect of the entire Kwaggafontein matter?

MR SIBANYONI: I get you, Chair.

CHAIRPERSON: Yes.

MR SIBANYONI: I was just raising it up because we are already too deep as far as his line of questioning.

CHAIRPERSON: It is not a question of the depth of the questions. It is a question of you specifically asserting your privilege in respect of each question. And if in respect of each you say I assert my privilege, I assert my privilege, and as the Commission we agree with you, we will engage in that exercise all the way through, and if it means us

doing that all day, we will do so. And in fact, we have actually done so in respect of one witness. Mr Mogotsi, if I may be specific, we actually did that with him.

MR SIBANYONI: So be it, Chair.

CHAIRPERSON: Yes, yes.

MR SIBANYONI: Please repeat your last question, Mr Chaskalson.

ADV CHASKALSON SC: I think that my last question has already been answered, or no, it has not. My last question was the payment that is supported by a bank statement, can you tell us when it was, when that payment was made?

MR SIBANYONI: No, I am not quite certain about the date, but there is a proof to that effect. That will give you the date and time.

ADV CHASKALSON SC: So I understand that there is a specific transaction that you are referring to in this regard. Maybe if your legal team can just, in the tea break, give us a copy of a bank statement, or even just details of that, and then we can move on.

CHAIRPERSON: Sorry, Mr Chaskalson, may I just raise this, please? Your other topics, do you think, of course it is for Mr Sibanyoni to assert the privilege, but do you think your other topics, or any of your other topics are also likely to implicate the privilege? I am asking that to make a suggestion that perhaps you should move on to those topics

that you think are least likely to implicate the privilege, and then perhaps during the tea break, Ms Qofa may consult with Mr Sibanyoni regarding those issues where the privilege may be implicated.

ADV CHASKALSON SC: Well, I can move off the Kwaggafontein case at this stage.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: There will be potential issues of privilege scattered all over the question.

CHAIRPERSON: Yes, yes.

ADV CHASKALSON SC: But I appreciate that the Kwaggafontein case, you know, is a special case, so I could start somewhere else.

CHAIRPERSON: Yes, yes.

ADV CHASKALSON SC: Let me do that.

CHAIRPERSON: Thank you very much, Mr Chaskalson. I am sure you welcome that, Ms Qofa.

ADV QOFA: I am indebted, Chair.

CHAIRPERSON: Thank you. Thank you, Mr Sibanyoni.

ADV CHASKALSON SC: If we can then go to page 819, File 2?

CHAIRPERSON: 890?

ADV CHASKALSON SC: 819.

CHAIRPERSON: 819, thank you.

ADV CHASKALSON SC: Do you have it?

MR SIBANYONI: Got it.

ADV CHASKALSON SC: At the foot of 819, we are looking at a message you sent to Mr Sindane on the 2nd of September 2024 at 07:54 in the morning, and it is four names. It is actually five names. You sent the message, Mandla, Norman, Mshinga, Trinity, and Surprise. You then followed that up with:

> "Mandla got a shot. It is esandleni and entameni and enhloko..."

Which I understand to be in the hand, the neck, and the head:

> "...but none near the bones, so he is okay."

And then you say:

> "Surprise Ushonile."

And there are 10 crying emojis, and that is Surprise is dead. Did you compose this message yourself, or were you forwarding these three messages? Did you compose them, or did you forward them from someone else?

MR SIBANYONI: It is a forwarded message.

ADV CHASKALSON SC: And who sent the message to you?

MR SIBANYONI: I think it was my sister's daughter.

CHAIRPERSON: You seem to be saying message singular. Do you mean messages?

ADV CHASKALSON SC: Messages.

CHAIRPERSON: Yes.

MR SIBANYONI: Messages.

ADV CHASKALSON SC: All three came from the same source?

MR SIBANYONI: Correct, ja.

ADV CHASKALSON SC: You say your sister's daughter.

MR SIBANYONI: Yes, ja.

ADV CHASKALSON SC: And who is your sister, whose daughter it is?

MR SIBANYONI: Come again?

ADV CHASKALSON SC: Which sister?

MR SIBANYONI: My sister.

ADV CHASKALSON SC: You only have one sister?

MR SIBANYONI: No, no, I do not have one sister.

ADV CHASKALSON SC: So which sister was it?

MR SIBANYONI: Her daughter, Mshingi.

ADV CHASKALSON SC: No, no, I understand, but I want to know which sister is the mother of that daughter?

MR SIBANYONI: Pauline.

ADV KHUMALO SC: Is it the same one who works for Gubis?

MR SIBANYONI: No, no.

ADV KHUMALO SC: Not that one?

MR SIBANYONI: No, not that one.

ADV CHASKALSON SC: And the daughter of Pauline?

MR SIBANYONI: Yes, Mshingi, Mshingi, Mshingi.

ADV CHASKALSON SC: And the message says those five names, Mandla, Norman, Mshinga, Trinity and Surprise. Who did they refer to? Who is Mandla?

MR SIBANYONI: Mandla, I have mentioned it, is my cousin.

ADV CHASKALSON SC: Mandla Mtsweni?

MR SIBANYONI: Mandla Mtsweni, yes, ja.

ADV CHASKALSON SC: And I think you said he was your nephew?

MR SIBANYONI: Correct, ja.

ADV CHASKALSON SC: Norman?

MR SIBANYONI: I do not know him.

ADV CHASKALSON SC: You do not know Norman Skosana?

MR SIBANYONI: No.

ADV CHASKALSON SC: Mshinga?

MR SIBANYONI: No.

ADV CHASKALSON SC: Trinity?

MR SIBANYONI: No.

ADV CHASKALSON SC: And Surprise?

MR SIBANYONI: Surprise I can say a little bit because I used to know his father. His father is a taxi business man.

ADV CHASKALSON SC: And what is his surname?

MR SIBANYONI: Ngodela.

ADV CHASKALSON SC: Do you have any idea why your sister's daughter would have sent this message to you?

MR SIBANYONI: Not really.

ADV CHASKALSON SC: But you sent it on to Mr Sindane?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: Why?

MR SIBANYONI: Hence I am saying I do not get it clear why my sister's daughter sent it to me. All I could read in between was maybe because of Mandla, our relative. So even Mr Sindane knows Mandla. So therefore I was just forwarding him, letting him know that one of my family members was involved in a shooting incident.

ADV CHASKALSON SC: And did you find out anything else about that shooting incident?

MR SIBANYONI: As to how?

ADV CHASKALSON SC: As to how Mandla was shot? How Surprise was killed?

MR SIBANYONI: No, there was a video circulating.

ADV CHASKALSON SC: What was the video of?

MR SIBANYONI: The video was circulating, it was at the intersection where the shooting happened. So it was for everyone just to see this is how it happened.

ADV CHASKALSON SC: And when did you see that video?

MR SIBANYONI: Ja, simultaneously. As you are getting

this message, you see the video as well.

ADV CHASKALSON SC: Who sent you the video?

MR SIBANYONI: I think the same daughter.

ADV CHASKALSON SC: And did you forward it to Mr Sindane?

MR SIBANYONI: I do not think so.

ADV CHASKALSON SC: Why not?

MR SIBANYONI: There is no reason for that, Mr Chaskalson.

ADV CHASKALSON SC: But why would you forward the first message?

MR SIBANYONI: Those are the breaking news on the day.

ADV CHASKALSON SC: Sorry, you forwarded the first message because it was breaking news on the day.

MR SIBANYONI: Yes, so therefore the message sent. The video was a duplication of what is happening.

ADV CHASKALSON SC: And what did the video describe? What did you see in the video?

MR SIBANYONI: I have seen the police vehicle, I have seen Mandla's car, I have seen the police approaching them. From there, there was a shooting.

CHAIRPERSON: Just to make sure I understand about Surprise. With regard to Mandla, you say that you shared the text because Mr Sindane knows ...[intervenes].

MR SIBANYONI: Mandla.

CHAIRPERSON: Mandla, your relative. And about Surprise?

MR SIBANYONI: No, I do not think he knows him. I do not think he knows him.

CHAIRPERSON: And why exactly did you share this one?

MR SIBANYONI: No, no, it is ...[intervenes].

CHAIRPERSON: The one about Surprise.

MR SIBANYONI: It is one message that contains all their names.

CHAIRPERSON: No, no, no. The one with all their names is at the foot of page 819 and chat number 7. You have all five names there. Now, I am talking about chat number 2 at the top of page 820. Surprise, Ushonile, and there is several crying emojis. So I am saying you have an explanation for sharing the one about Mandla. And the one about Surprise, why did you share that one ...[intervenes].

MR SIBANYONI: It was just to follow ...[intervenes].

CHAIRPERSON: You say Mr Sindane does not know Surprise, so why did you share that one?

MR SIBANYONI: Ja, I am saying I am not sure whether he knows him. But as to why did I share, I was just forwarding all the messages that were forwarded to me, specific to this incident.

CHAIRPERSON: All right, thank you.

ADV CHASKALSON SC: If we then go down to page 825.

ADV BALOYI SC: Mr Sibanyoni, before you forwarded these messages to Mr Sindane, did you have any discussion with him about this incident?

MR SIBANYONI: Before?

ADV BALOYI SC: Yes.

MR SIBANYONI: No.

ADV BALOYI SC: And after? Immediately after?

MR SIBANYONI: Not immediately after, just maybe after hours, after, because these messages were morning messages.

ADV BALOYI SC: Yes.

MR SIBANYONI: As I was jogging in the morning, those are the messages that I happened to – the message that I got. And I just forwarded it, whilst jogging.

ADV BALOYI SC: Now, these messages on their face, the three messages, they have no context to a reader. What did you think or expect that Mr Sindane would make of them if you have not had a conversation with him about the incident?

MR SIBANYONI: All I am trying to say, Commissioner, because they were morning messages, as you get them, you forward them. Then it was like after your morning exercises that you give a call maybe and make contact as to what was happening and even after me getting more information. What I did, firstly, after getting this message, I contacted

the very same young girl who gave me the message as to, I must be clear as to what is happening, why, where were they coming from. Then I had to get all that information before, maybe later in the afternoon, I would engage Mr Sindane.

ADV BALOYI SC: It does make sense to me that you say you received these messages and then you contacted this person to understand.

MR SIBANYONI: Correct, ja.

ADV BALOYI SC: My question is, but when you forward them on to Mr Sindane, if there has not been any prior discussion with him and all you do is send these messages, what did you expect he would make of them if you had not had a prior conversation with him?

MR SIBANYONI: It is just a human element, Commissioner, as news are getting circulated. Because this thing was just already on the news, if I can say it, Kwaggafontein news on the radio. So we are just keeping each other for one to know as to what is happening at home because even Mr Sindane is from home. So once you get the sensitive matter that is from home, immediately, he is not the only one that I have shared this message to. He is not the only one, to be precise, as if it was for this particular matter that I shared with Sindane. Everyone that I know knows these people and I will share them. I will

share the message with them.

Then later in the day we will discuss as to why, how do you see this, what was happening. Then you get to understand as to, oh okay, this happened because of this. And ultimately I had to understand they were from Shebeen, it was a nightclub thing, hence they fought with the police. Then you get to understand what is happening.

ADV BALOYI SC: Yes. Let me ask lastly, when you sent this, did you expect that Mr Sindane would know what this relates to? Because you are just sending him names and you are telling him somebody has been shot and you are forwarding these messages. They are speaking about people being shot and one of them being killed. Did you expect that Mr Sindane would know what these are about?

MR SIBANYONI: He will know about Mandla, that one I was for sure.

ADV BALOYI SC: No, my question is different. Did you expect that he would know what this shooting incident relates to, these names that you are giving, what they relate to, what incident they are about?

MR SIBANYONI: No.

ADV BALOYI SC: Okay, thank you.

ADV CHASKALSON SC: And you said you would forward the message to everyone you know who knows these people. Who else did you forward it to?

MR SIBANYONI: No, no, people that I know at home that will know them.

ADV CHASKALSON SC: Yes.

MR SIBANYONI: Yes, ja.

ADV CHASKALSON SC: People that you know who will know them.

MR SIBANYONI: Ja.

ADV CHASKALSON SC: Who else did you forward it to?

MR SIBANYONI: To my sister, I did.

ADV CHASKALSON SC: And who else?

MR SIBANYONI: Mandla's mom and to his dad.

ADV CHASKALSON SC: Is that the same sister, Pauline?

MR SIBANYONI: No, no, Mandla's mom.

ADV CHASKALSON SC: So Mandla's mom is a different sister?

MR SIBANYONI: Correct, yes.

ADV CHASKALSON SC: And to who else other than Mandla's mom did you forward the message?

MR SIBANYONI: Mandla's dad.

ADV CHASKALSON SC: And anyone else?

MR SIBANYONI: As far as I can remember.

ADV CHASKALSON SC: And now has Mandla subsequently been arrested in connection with the shooting incident?

MR SIBANYONI: No, he was not.

ADV CHASKALSON SC: Are the police looking for him to your knowledge?

MR SIBANYONI: I do not know.

ADV CHASKALSON SC: Can we go to page 825? And there we see that on the 6th of September, Mr Sindane forwards to you an internal police report about that incident, and the police report states:

> "On Monday 2 September 2024, at about 4 a.m., intelligence-led operation was conducted at Kwaggafontein area on group known as Kwagga 20."

Are you familiar with the group known as Kwagga 20?

MR SIBANYONI: I have just heard the name, but I am not familiar with it.

ADV CHASKALSON SC: So you do not know who Kwagga 20 are?

MR SIBANYONI: No.

ADV BALOYI SC: You say you have just heard the name ...[intervenes].

MR SIBANYONI: Ja.

ADV BALOYI SC: In the Commission, or you have previously heard reference to Kwagga 20?

MR SIBANYONI: Yes, previously. Correct.

ADV BALOYI SC: Before the Commission?

MR SIBANYONI: Ja.

ADV CHASKALSON SC: And the report goes on saying:

> "A group known as Kwagga 20 involved in extortion, serial killings, contract mafias, illegal firearms, and taxi-related killings around KwaMhlanga, former cluster Limpopo and Gauteng provinces."

Are you aware of any group involved in extortion, serial killing, construction mafia, illegal firearms and taxi killings around KwaMhlanga? Is this something that you are aware of coming from Kwaggafontein?

MR SIBANYONI: No.

ADV CHASKALSON SC: So, you were not aware that there were taxi-related killings and construction mafia activity?

MR SIBANYONI: No.

ADV CHASKALSON SC: And extortion in the area?

MR SIBANYONI: Not at all.

ADV CHASKALSON SC:

> "The said group was shooting randomly at an event at Kwaggafontein C. Crime Intelligence identified the members and the vehicles of the group involved while attempted chasing the identified vehicles of suspects and suspects shot at the police driving a red Audi A3."

Is the red Audi A3 Mandla's car?

MR SIBANYONI: No.

ADV CHASKALSON SC:

> "A white Polo, grey VW Polo, and black hatchback BMWs between. Two suspects managed to run away and two of whom were injured were arrested. One found shot dead inside the identified vehicle. Two firearms were found inside the vehicle, LCRC and IPID also informed. The deceased suspect is Surprise Ngodela."

You knew Surprise's father?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: How did you know Surprise's father?

MR SIBANYONI: He is a taxi owner.

ADV CHASKALSON SC: And did you know Surprise independently of his father?

MR SIBANYONI: No.

ADV CHASKALSON SC:

> "The arrested suspects, Ben Mabuza from Tweefontein."

Do you know Ben Mabuza from Tweefontein?

MR SIBANYONI: No.

ADV CHASKALSON SC: George Besi Skosana of Thembalethu?

MR SIBANYONI: No.

ADV CHASKALSON SC: You do not know him?

MR SIBANYONI: No.

ADV CHASKALSON SC: Mandla Mtsweni, we know your relationship to Mandla, Norman Skosana you have said you do not know, but your niece apparently knew Norman because she mentioned him in her WhatsApp to you.

MR SIBANYONI: Norman?

ADV CHASKALSON SC: Norman, yes. Norman is one of the names she sent you.

MR SIBANYONI: Norman WhatsAppped me?

ADV CHASKALSON SC: No, no, your niece, when she sent you the WhatsApp, had Norman's name in that WhatsApp.

MR SIBANYONI: Correct.

ADV CHASKALSON SC: And then you have also said you do not know Bongani Oros Simon Mnguni/Mthimunye.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: It then says one Audi A3 with its registration recovered, not yet booked. You are clear that that is Mandla's car, the Audi A3?

MR SIBANYONI: Correct.

ADV CHASKALSON SC: And then there is a list of crimes:

> "Suspects committed the following crimes. Tweefontein SAPS, three murders. Bronkhorstspruit SAPS, five murders. Verena SAPS..."

Where is Verena?

MR SIBANYONI: Verena is almost home as well. It is within a 20 kilometre radius from Kwaggafontein.

ADV CHASKALSON SC: There was a murder there. Another attempted murder in Tweefontein, another murder in Tweefontein, another murder in Tweefontein, there is a case in Moletlane which does not have a detail to it, two more murders in Tweefontein, three more murders in KwaMhlanga, another murder in Tweefontein, four murders in Moletlane, and then some drop-safe bombings in Kwaggafontein. Are you aware of drop-safe bombings in Kwaggafontein?

MR SIBANYONI: That what?

ADV CHASKALSON SC: That there have been safes blown open with explosives in Kwaggafontein, drop-safes.

MR SIBANYONI: No.

ADV CHASKALSON SC: You are not?

MR SIBANYONI: No.

ADV CHASKALSON SC: I am not asking if you have personal knowledge, but are you aware that this has happened in Kwaggafontein?

MR SIBANYONI: No.

ADV CHASKALSON SC: So there are over 20 murders that this group, including your nephew, is wanted for according to this police report. Have you seen your nephew since September 2024?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: And if the police were to ask you about his whereabouts, would you be able to give them his whereabouts?

MR SIBANYONI: They have done that.

ADV CHASKALSON SC: You have given his whereabouts to the police?

MR SIBANYONI: Yes, I have done that.

ADV CHASKALSON SC: When did you do that?

MR SIBANYONI: When I was illegally arrested now in Middelburg, they asked about him. I have told them he is available, to an extent that if they need him, he is a call away and he can come here.

ADV CHASKALSON SC: And who did you make that offer to?

MR SIBANYONI: The police that arrested me in Middelburg.

ADV CHASKALSON SC: Do you have a name? Do you remember a name?

MR SIBANYONI: I think at that police station, the station

commander was there in that discussion. We had a clear discussion about these cases. Then for the mere fact that Mandla is my nephew, I offered my assistance to bring him along.

ADV CHASKALSON SC: And the special commander is?

MR SIBANYONI: No, the station commander.

ADV CHASKALSON SC: The station commander?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: At Middelburg is the person you made that offer to?

MR SIBANYONI: Correct.

ADV CHASKALSON SC: This document that was WhatsApped to you is an internal SAPS document, the success report. Do you know how Mr Sindane got hold of an internal SAPS report?

MR SIBANYONI: No, I do not know.

ADV CHASKALSON SC: Did you ask?

MR SIBANYONI: No, I did not ask.

ADV CHASKALSON SC: Were you not interested?

MR SIBANYONI: No, it was like, this document was just a confirmation of what I sent to him. As to, it is already in the police records.

ADV CHASKALSON SC: Well, it goes beyond what you sent to him. Apart from anything else, it says that Mandla and his associates are wanted for more than 20 murders.

MR SIBANYONI: Ja, the other matters I was not interested with. But as for, because it mentions Mandla, yes. But other matters, those Tweefontein matters, I was not interested.

ADV CHASKALSON SC: Are you not interested in the fact that Mandla might be involved in, or at least a suspect in 20 murders?

MR SIBANYONI: How so, Mr Chaskalson? Mr Chaskalson, we are dealing with matters that is for other people. In bracket, I can say, it is a matter of Kwagga 20 here, and Mandla is my nephew. As to how do you draw me closer, more than Mandla being my nephew, I cannot just understand. You are talking more than 20 murders. You are on record talking about 20 murders, as if I am the one who conducted those murders.

ADV CHASKALSON SC: Mr Sibanyoni, I want you to confine yourself to answering my questions, not to speculate as to what I am trying to do. I asked you if you were not interested in the fact that Mandla was a suspect in more than 20 murders ...[intervenes].

MR SIBANYONI: Well ...[intervenes].

CHAIRPERSON: Sorry, Mr Sibanyoni, do not speak whilst Mr Chaskalson is speaking. We will have problems with the transcript afterwards.

MR SIBANYONI: Okay, thank you.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: My question was, were you not interested in the fact that Mandla was suspected of involvement in more than 20 murders?

MR SIBANYONI: No.

ADV CHASKALSON SC: This was not something that interested you?

MR SIBANYONI: For me?

ADV CHASKALSON SC: No, no. You were not interested in the fact that your nephew was stated by the police to be a suspect in more than 20 murders?

MR SIBANYONI: Yes, I was not.

ADV CHASKALSON SC: You were not?

MR SIBANYONI: Yes.

ADV BALOYI SC: Why would you not be interested? I mean, you were sufficiently interested in the shooting incident that you forwarded those messages to Mr Sindane. That shows some interest in matters involving your nephew. Otherwise, you have to provide an explanation, another explanation why did you send those messages.

Now, on the assumption that you were interested in what happened with your nephew when you forwarded those messages to Mr Sindane, on that assumption, why would you not be similarly interested in information that implicates him or where his name appears in a list of alleged criminal

offences and cases? Why would you not be interested?

MR SIBANYONI: Commissioner, this is a forwarded message from Mr Sindane to me. As to how do I understand it or as to which method do I take it to be of interest to me, it is for me to decide as to, yes, this is the message he sent, then what? If I do not take it upon himself or to whoever, that is me. It cannot be, let me just leave it at that. It is me. If I did not make a follow-up on this matter, I did not.

ADV BALOYI SC: Can I suggest this to you?

MR SIBANYONI: Sure.

ADV BALOYI SC: Mr Sindane would have sent you this list, which contains allegations against Mr Mtsweni because he expects and he knows that you are interested, it is your nephew at the very least and he sends it to you because he knows and expects that you are interested in getting this information.

MR SIBANYONI: That is him.

ADV BALOYI SC: What do you comment to that?

MR SIBANYONI: Yes, I can say that that is him.

ADV BALOYI SC: Yes.

MR SIBANYONI: But that is for me taking it further, that is me.

ADV BALOYI SC: No, I am not saying you should take it further, you should have taken it further.

MR SIBANYONI: Okay.

ADV BALOYI SC: I am saying it is inconceivable that you were not interested or you would not be interested in these serious allegations of criminal offence against your nephew. You were sufficiently interested to be given messages that say he has been shot, not close to the bone. You were sufficiently interested to forward that message to Mr Sindane and you say you forwarded it because he knows Mr Mtsweni.

MR SIBANYONI: Yes.

ADV BALOYI SC: That is the explanation you give us. And what I am putting to you is it is inconceivable that you would not be interested in what this police report says about your nephew. And Mr Sindane would have sent it to you, I want to suggest, he would have sent it to you because he knows and expects that you are interested in what Mandla is alleged to have done or to have been involved with.

That is what I am suggesting to you. And so, saying to you much more directly that I find it unbelievable that you were not interested in the information contained herein as it relates at least to your nephew. It cannot be, it is impossible that you would not be interested in that. You can comment if you want to, I do not mean to ...[intervenes].

MR SIBANYONI: No, I do not have a comment.

ADV BALOYI SC: Thank you.

ADV CHASKALSON SC: Now, you said you were not aware of Kwagga 20, a group called Kwagga 20 at the time. When did you first become aware of Kwagga 20?

MR SIBANYONI: It cannot be like I have started to hear about Kwagga 20 in June or June 2020 or something like that, but it is a well-known thing. You will get calls or people telling that it is Kwagga 20. It is a normal course when you live in the area, when you go home, those are the gossips that are going, which if you want to pursue them, you will. If you do not want to, you will not.

ADV CHASKALSON SC: So, through the grapevine you heard about Kwagga 20 and ...[intervenes].

MR SIBANYONI: Ja, ja.

ADV CHASKALSON SC: What was being said on the grapevine about Kwagga 20? What were the allegations against them?

MR SIBANYONI: The allegations were this terrorism of locals, like foreign Pakistan and members of the public.

ADV CHASKALSON SC: So, it is locals and foreigners that Kwagga 20 is allegedly terrorising?

MR SIBANYONI: No, no. You will hear about an issue of foreigners being terrorised within the area. Then the reason will be Kwagga 20.

ADV CHASKALSON SC: So, Kwagga 20 are the ones

accused of terrorising?

MR SIBANYONI: Yes, yes.

ADV CHASKALSON SC: Yes, but not local people?

MR SIBANYONI: No, not local people.

ADV CHASKALSON SC: And when did you start hearing about Kwagga 20? Had you heard about Kwagga 20 when you first got the report about Mandla being shot?

MR SIBANYONI: No, no.

ADV CHASKALSON SC: No?

MR SIBANYONI: No, not that time. Before that, I heard about that.

ADV CHASKALSON SC: Before Mandla had been shot you had already heard about Kwagga 20?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: That was not my understanding of your earlier answer, but the record will speak for itself in that regard. Now, if we go down to page 826, we see that at 826, chat 4, Mr Sindane sends to you on the 7th of September at 18:12 p.m. a message saying:

"Kwagga 20 arrested in Middelburg."

Why would Mr Sindane think you would be interested in the arrest of Kwagga 20 people in Middelburg?

MR SIBANYONI: I do not know.

ADV CHASKALSON SC: Had you discussed Kwagga 20 with Mr Sindane?

MR SIBANYONI: Yes, like the same, I know the issue of Kwagga 20 and he knows it.

ADV CHASKALSON SC: He knows it, but my question is had you discussed it with him?

MR SIBANYONI: Like, I know Kwagga 20 as a local group that is alleged to be doing whatever I have mentioned. He knows about it.

ADV CHASKALSON SC: No, no, but my question is different. Have you and he had a discussion about Kwagga 20?

MR SIBANYONI: It is not a discussion. We talked about these things. It is not a discussion.

ADV CHASKALSON SC: So you say you have talked about it?

MR SIBANYONI: Yes, we have talked about it.

ADV CHASKALSON SC: And what did you talk about?

MR SIBANYONI: As to there is this group that is alleged to be doing this and this at home and people are not feeling well at home about these things. It is a normal talk that we had.

ADV CHASKALSON SC: And were you supportive of Kwagga 20, critical of Kwagga 20? When you were talking about it, what was your attitude to Kwagga 20?

MR SIBANYONI: My attitude towards Kwagga 20?

ADV CHASKALSON SC: Yes.

MR SIBANYONI: What do you mean, Mr Chaskalson?

ADV CHASKALSON SC: You say you were talking with Mr Sindane about what people say this group is doing at home.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: And were you expressing approval or disapproval about what they were doing?

MR SIBANYONI: Obvious disapproval.

ADV CHASKALSON SC: So you were disapproving about what Kwagga 20 was doing?

MR SIBANYONI: What is happening. What is happening.

ADV CHASKALSON SC: What is happening?

MR SIBANYONI: Correct.

ADV CHASKALSON SC: What Kwagga 20 are alleged to be doing?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: Because you have now seen a report which says that your nephew Mandla is part of Kwagga 20. Did you follow that up at all?

MR SIBANYONI: No, I asked him, not like following it up. I mean, he is my nephew. When we are at home, when I see him, I will raise it up on that.

ADV CHASKALSON SC: And when did you raise it with him?

MR SIBANYONI: I am not sure about the date, but for sure I did raise it up with him.

ADV CHASKALSON SC: Before or after he was shot?

MR SIBANYONI: It should be after he was shot, because it is a proof that this is what is happening and one can see.

ADV CHASKALSON SC: One can see what?

MR SIBANYONI: He is there on the video, he has been shot. I see him, he has been shot as a person. These are allegations that the community is alleging to them and the police, then he must give me a brief what is happening.

ADV CHASKALSON SC: And what did he say?

MR SIBANYONI: Then he declined all this. He declined all this. All he mentioned was the incident whereby he was shot as to it had nothing to do with the police. They were from a tavern, from a nightclub. Then, for example, when they come into the intersection, then they were shot. As for him, he does not know anything.

ADV CHASKALSON SC: And did you just accept his answer? Did you probe further?

MR SIBANYONI: I did not. What I advised him is to let him take himself to the police because this is a very serious allegation.

ADV CHASKALSON SC: And did he take up your advice?

MR SIBANYONI: No, he did not.

ADV CHASKALSON SC: And did you take it further or not?

MR SIBANYONI: No, I took it further that if it may happen that I assist him taking him to the police so that he must go

clear his name, he agreed. He agreed to that.

ADV CHASKALSON SC: And what then happened?

MR SIBANYONI: Nothing happened.

ADV KHUMALO SC: Was he part of the 20 that were arrested? We are still on page 2, page 26.

MR SIBANYONI: No, it is not like when it says Kwagga 20 arrested it is a group of people arrested.

ADV KHUMALO SC: Yes, so my question is was he part of the ...[intervenes].

MR SIBANYONI: Allegedly.

ADV KHUMALO SC: That were arrested?

MR SIBANYONI: It is allegedly so.

ADV KHUMALO SC: As far as you know, was he arrested?

MR SIBANYONI: No, he was not arrested.

ADV CHASKALSON SC: And has he been living openly in the Kwaggafontein area since then?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: It is not as though he is on the run.

MR SIBANYONI: Correct.

ADV CHASKALSON SC: Now, Mr Sindane forwarded the same messages to someone called Mr Nkabule Themba. Do you know Mr Themba?

MR SIBANYONI: Yes, I know him.

ADV CHASKALSON SC: Who is Mr Themba?

MR SIBANYONI: He is a homeboy.

ADV CHASKALSON SC: Beyond being a homeboy, who ...[intervenes].

MR SIBANYONI: No, he is a homeboy.

ADV CHASKALSON SC: No, no, but what role does he play in the Kwaggafontein community?

MR SIBANYONI: He is a secretary of a business forum, a local business forum.

ADV CHASKALSON SC: And also to a Mr Moyana. Do you know Mr Moyana?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: And what role does Mr Moyana play in relation to Kwaggafontein?

MR SIBANYONI: No, not to Kwagga, no. I have mentioned earlier on that Mr Moyana is giving me extra security. He has got a security company.

ADV CHASKALSON SC: So he provides security for you?

MR SIBANYONI: Yes, extra security company.

ADV CHASKALSON SC: And he is not a homeboy?

MR SIBANYONI: No, he is not.

ADV CHASKALSON SC: Where does he come from?

MR SIBANYONI: Soshanguve.

ADV CHASKALSON SC: Have you followed what has happened to the Kwagga 20 arrests since this report?

MR SIBANYONI: No.

ADV CHASKALSON SC: So you do not know if people have been convicted or not?

MR SIBANYONI: No, the latest is the one that I have just mentioned to you when I was in Middelburg. That is the latest info I have discussed for the matters of Kwagga 20.

ADV CHASKALSON SC: So when you were arrested in Middelburg was the last time that you discussed matters relating to Kwagga 20?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: And it was at that occasion that you say you offered to the station commander to bring your nephew in if you wanted to speak to him?

MR SIBANYONI: Sure.

ADV CHASKALSON SC: Do you have the name of that station commander?

MR SIBANYONI: I cannot recall it offhand, but I know it.

ADV CHASKALSON SC: You can get it to us?

MR SIBANYONI: Yes, I can get it, ja.

ADV CHASKALSON SC: And to the best of your knowledge, he has never taken you, well, he has never taken you up on that offer?

MR SIBANYONI: After that?

ADV CHASKALSON SC: Yes.

MR SIBANYONI: No, after that I have never spoken to him.

ADV CHASKALSON SC: Did he ask you to bring Mandla Mtsweni in?

MR SIBANYONI: No, I have offered him as the ...[intervenes].

ADV CHASKALSON SC: And what was his response?

MR SIBANYONI: They agreed, I think so. There were many, but he is the only one that I can identify whilst we were engaging about this matter.

ADV CHASKALSON SC: Yes, but I mean, did he say yes, please do bring him in, or did he just not respond at all?

MR SIBANYONI: No, no.

ADV CHASKALSON SC: What did he ...[intervenes].

MR SIBANYONI: It was a matter of okay, noted what you have spoken. They know my numbers. If they need that assistance, I think they will call me.

ADV CHASKALSON SC: I am going to move to a new topic. Chair, I am happy to proceed.

ADV KHUMALO SC: Sorry, before you do that, maybe let me use up your remaining two minutes. Mr Sibanyoni, good morning. I think I did not greet you this morning.

MR SIBANYONI: Top of the morning, Commissioner.

ADV KHUMALO SC: Yes. Tell us about Mr Sindane. You said he is from Kwaggafontein.

MR SIBANYONI: Yes.

ADV KHUMALO SC: So how do you know him or how do

you relate to him? Is he a relative or an associate?

MR SIBANYONI: He was my driver at the beginning when we grew up.

ADV KHUMALO SC: When the relationship started, he was ...[intervenes].

MR SIBANYONI: Yes, he was my driver.

ADV KHUMALO SC: And then over the years how did the relationship develop?

MR SIBANYONI: It developed because he ended up being a taxi owner as well.

ADV KHUMALO SC: He is a taxi owner?

MR SIBANYONI: He is a taxi owner, yes.

ADV KHUMALO SC: So now you are associates in the taxi business?

MR SIBANYONI: Yes.

ADV KHUMALO SC: Are you co-owners?

MR SIBANYONI: Correct.

ADV KHUMALO SC: Yes, and are you members of a grouping where you are a president and he is a deputy president?

MR SIBANYONI: No. They call him Deputy, but it is not a group.

ADV KHUMALO SC: No, he also calls himself Deputy. So what is he a deputy of? Do you know?

MR SIBANYONI: No, he is not a deputy.

ADV KHUMALO SC: He is not?

MR SIBANYONI: Yes. Self-imposed deputy, so I can put it.

ADV KHUMALO SC: But there is no organised group where the two of you are senior officials and you are a president and he is a deputy?

MR SIBANYONI: No, I am a president in official structures.

ADV KHUMALO SC: And he is not a deputy in any of those structures?

MR SIBANYONI: No, he is not.

ADV KHUMALO SC: But a smaller group where the two of you hold leadership positions, is there such a group?

MR SIBANYONI: No.

ADV KHUMALO SC: Because yesterday we went through some WhatsApps where he identifies you as a President ...[intervenes].

MR SIBANYONI: Ja, they call him deputy because of his proximity with me, but not on an official status.

ADV KHUMALO SC: Oh, is that the reason?

MR SIBANYONI: Is that the reason?

ADV KHUMALO SC: Because he is close to you and then people assume he is your deputy?

MR SIBANYONI: Ja, and then the other one will call himself chief of staff because he is associated with me. But other than that, no.

ADV KHUMALO SC: Okay. Mr Chaskalson?

ADV CHASKALSON SC: Just to pick up from that, what is the organisation of which you are the president?

MR SIBANYONI: South African Local and Long-Distance Taxi Organisation.

ADV CHASKALSON SC: So it is just the taxi organisation? When people call you President, they are referring to the taxi ...[intervenes].

MR SIBANYONI: Yes, correct.

ADV KHUMALO SC: Can we just follow up? The Kwaggafontein local business, are you not a president of any of the local business?

MR SIBANYONI: No, no.

ADV KHUMALO SC: [Indistinct]?

MR SIBANYONI: No. Mr Chaskalson, I am the president of South African Local and Long-Distance Taxi Organisation. There are my members, once more.

ADV CHASKALSON SC: No, no. That I heard it the first time, but I was wondering whether there was another organisation of which you are a president as well?

MR SIBANYONI: Okay.

CHAIRPERSON: Let us adjourn and resume at 11:30.

HEARING ADJOURNS

HEARING RESUMES

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: Thank you, Chair. Chair, we will be getting back to the Kwaggafontein allegations of Tengane Mining in the course of this session, but not immediately. Mr Sibanyoni, can I ask you to go to file 2, page 948?

MR SIBANYONI: Yes, I have arrived.

ADV CHASKALSON SC: If you go to the foot of that page, chat number 4, you will see that on the 17th of December 2024, someone sent you a message in the following terms. It says:

> "Judgment on Gwabo and Marius.
>
> Gwabo
>
> Charge 1, murder, guilty. Charge 2, unlawful possession of firearm, not guilty.
>
> Charge 3..."

Sorry, let me take a step back. I am assuming someone sent you this message. But let me put it differently. You sent a message to Mr Sindane in these terms.

> "Judgment on Gwabo and Marius.
>
> Gwabo: Charge 1, murder guilty. Charge 2, unlawful possession of firearm, not guilty. Charge 3, unlawful possession of ammunition, not guilty.
>
> Marius: Charge 1, murder not guilty. Charge 2, firearm not guilty. Charge 3,

ammunition not guilty."

So my first question is, is that a message that you composed or that you forwarded?

MR SIBANYONI: It has been forwarded.

ADV CHASKALSON SC: And who sent the original message to you?

MR SIBANYONI: I am not certain who sent it.

ADV CHASKALSON SC: Who is Gwabo?

MR SIBANYONI: Gwabo, I happen to know him. I happen to know his dad. He is late now.

ADV CHASKALSON SC: Was he still alive at that time?

MR SIBANYONI: No.

CHAIRPERSON: Who is late, Gwabo or his father?

MR SIBANYONI: His father.

ADV CHASKALSON SC: And what was your relationship with Gwabo's late father?

MR SIBANYONI: He was a taxi owner.

ADV CHASKALSON SC: And is Gwabo Mahlangu?

MR SIBANYONI: Correct.

ADV CHASKALSON SC: And who is Marius?

MR SIBANYONI: I do not know Marius.

ADV CHASKALSON SC: If I say he is Marius Mahlangu, would you be able to confirm or deny that?

MR SIBANYONI: No.

ADV CHASKALSON SC: You do not know.

MR SIBANYONI: I cannot say anything.

ADV CHASKALSON SC: Why did you forward this message to Mr Sindane?

MR SIBANYONI: There was this matter that was pending for Gwabo. It is a matter that is known to me, and even Mr Sindane knows the matter, because his family at some point, because of my relation to their father, at some point needed some financial assistance towards the fees of the legal fees. So it was a matter that was ongoing. So this was the result on that particular day.

ADV CHASKALSON SC: So were you paying Gwabo's legal fees?

MR SIBANYONI: No.

ADV CHASKALSON SC: Who was paying Gwabo's legal fees?

MR SIBANYONI: The association where his dad was operating.

ADV CHASKALSON SC: The association where his dad was operating.

MR SIBANYONI: Sure, yes.

ADV CHASKALSON SC: Did you play any role in relation to Gwabo's legal representation?

MR SIBANYONI: Ja, a role was, now that the family has reached to me, has reached out to me, I gave a, how can I put it, I discussed the matter with the association

concerned, as to them helping Gwabo is not a direct assistance, it is an assistance in honour of the late Mr Mahlangu. They must just take it in that fashion. And they did assist to a certain extent.

ADV CHASKALSON SC: Which taxi association is this?

MR SIBANYONI: I am not quite certain, but it operates between Pretoria and Vanderbijl. It should be DORLJOTA, if I am not mistaken.

ADV CHASKALSON SC: Sorry, I did not hear.

MR SIBANYONI: It is abbreviated as DORLJOTA, if I am not mistaken.

ADV CHASKALSON SC: And is that an affiliate association of your association?

MR SIBANYONI: Correct.

ADV CHASKALSON SC: Did Mr Sindane play any role in these discussions with the family and the taxi association, to your knowledge?

MR SIBANYONI: I am not sure about your question. I tasked him to send that message, or to organise that meeting so that they talked about it, so that they assist Gwabo.

ADV CHASKALSON SC: So you tasked him to approach the taxi association to have a meeting.

MR SIBANYONI: To call me the association. Maybe to call the executive of that association. And discuss the matter

so that they can assist. And eventually they assisted.

ADV CHASKALSON SC: And did you play any role in the appointment of an attorney? Did you choose which attorney was going to represent Gwabo?

MR SIBANYONI: No.

ADV CHASKALSON SC: Now if you go to ...[intervenes]

ADV BALOYI SC: Mr Chaskalson, can I just ask? Was Mr Sindane a member of that association?

MR SIBANYONI: No.

ADV BALOYI SC: Why did you ask him then to make arrangements for that association to meet and to look at this matter?

MR SIBANYONI: No, he was assisting me. Like I could ask anyone. But for the mere fact that he is here, I would give him that task to assist me in making sure if I need them on Friday, please arrange me these people, I want to see them. This is the agenda.

ADV BALOYI SC: Okay. I did not hear your answer to the question, why did you send this message to Mr Sindane.

MR SIBANYONI: Yes.

ADV BALOYI SC: I did not hear your answer. What was your answer to that?

MR SIBANYONI: Why did I forward this message?

ADV BALOYI SC: Yes.

MR SIBANYONI: I forwarded this... This was a pending

matter that I know, and Sindane knows, based on the fact that we have been assisting Gwabo about the legal fees via the same taxi association. So those were the breaking news on the day when he was sentenced.

ADV BALOYI SC: Just for information?

MR SIBANYONI: Correct, ja.

ADV BALOYI SC: Thank you.

ADV CHASKALSON SC: So that message actually was not when he was sentenced, it is when he was convicted. He was found guilty of murder.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: And it was a taxi violence murder. It was the killing of a man who was a marshal at a rank. Are you aware of that?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: What is your attitude to people who kill taxi marshals? Do you support that?

MR SIBANYONI: No, I do not. No, I do not at all.

ADV CHASKALSON SC: But in this case you supported Gwabo's legal representation.

MR SIBANYONI: His family, not Gwabo, his family reached out to me. For example, his mother reached out to me. That was the assistance I have made based on that, not based on him personally.

ADV KHUMALO SC: But the assistance was for him. It

was for his legal fees.

MR SIBANYONI: I know that.

ADV KHUMALO SC: Yes. So in that sense, you assisted towards his legal fees in circumstances where he was charged with killing a queue marshal.

MR SIBANYONI: I get that.

ADV KHUMALO SC: Yes.

ADV CHASKALSON SC: He was sentenced to life imprisonment.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: We see that at the press report at page 1383, file 3. You do not need to go there. But then, in May 2025, if you go to page 1094, file 3, you sent another message to Mr Sindane about Gwabo.

MR SIBANYONI: What is the name of the file?

ADV CHASKALSON SC: 1094. You see the message, chat number 1094?

MR SIBANYONI: Correct.

ADV CHASKALSON SC: It reads, is this a message that you forwarded or that you composed yourself?

MR SIBANYONI: No, forwarded.

ADV CHASKALSON SC: And who sent the original message to you?

MR SIBANYONI: The advocate, Ngoato.

ADV CHASKALSON SC: Attorney, Mr Ngoato.

MR SIBANYONI: Sure.

ADV CHASKALSON SC: Yes. What dealings had you had with Attorney Ngoato in relation to the Gwabo case?

MR SIBANYONI: He was aware that the association concerned where Mr Mahlangu the late was operating is responsible for his payments. And to a certain extent, they did make some payments. But at the time when he was sending back this message, it was like there were no more payments coming to him. So he was letting me know that. So hence, it came to me, I forwarded, because in our meeting, I have tasked Mr Bafanas to make sure that the attorney's money are paid by the association.

ADV CHASKALSON SC: Well, let us look at this letter from Mr Ngoato. He says:

> "My broer, good morning. Unfortunately, due to non-payment, I am unable to proceed with the matter of Gwabo. Since our last meeting in December last year, it was agreed that the money paid for Morwa must be used to cover for Gwabo."

Did you meet with Mr Ngoato in December 2024?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: What did you meet with him about?

MR SIBANYONI: To confirm, just to ascertain that the

arrangement that they have agreed upon is going to happen.

ADV CHASKALSON SC: So to confirm the arrangement that his fees for representing Mr Gwabo will be covered.

MR SIBANYONI: Correct.

ADV CHASKALSON SC: And that sentence says:

> "It was agreed that the money paid for Morwa must be used to cover for Gwabo."

Who was Morwa?

MR SIBANYONI: I know Morwa. He used to be my driver at some point.

ADV CHASKALSON SC: And is his name Makofane?

MR SIBANYONI: Yes, ja.

ADV CHASKALSON SC: And he too was convicted of taxi-related murders?

MR SIBANYONI: Sure.

ADV CHASKALSON SC: Were you involved in the payment of Morwa's fees?

MR SIBANYONI: No.

ADV CHASKALSON SC: Well, it seems you were in some respects because Mr Ngoato refers to a meeting where it was agreed that money paid for Morwa must be used to cover for Gwabo.

MR SIBANYONI: Ja, but it was not my instruction on this one. If I read it well, it says:

> "Since our last meeting in December last year, it was agreed that the money paid for Morwa must be used to cover for Gwabo."

It was not me here. Like, you must take money from Morwa, the money that was for Morwa must cover Gwabo. My instructions were just, not my instructions, but my request was just clear. Can you assist towards the funds of Gwabo based on the relationship I had?

ADV CHASKALSON SC: But it says something different. It says it was agreed that the money paid for Morwa must be used to cover for Gwabo. So, whoever was at the meeting agreed that some money had been paid for Morwa and it could now be used, and should be used now, to pay for Gwabo.

MR SIBANYONI: Yes, in their separate meeting. It was not my order. That is why I forwarded this message.

ADV CHASKALSON SC: No, no, but at the meeting in December, this was a meeting with you and Mr Ngoato. Who else was at that meeting?

MR SIBANYONI: The executive of that association.

ADV CHASKALSON SC: And who is the executive of that association?

MR SIBANYONI: Mr Mthimunye here.

ADV CHASKALSON SC: Which Mr Mthimunye?

MR SIBANYONI: The paragraph 3.

ADV CHASKALSON SC: No, no, I understand that, but there are several Mr Mthimunyes who we have encountered. Is this Mr Mthimunye who you referred to in your statement as the one who was being confused with General Botsotso?

MR SIBANYONI: No.

ADV CHASKALSON SC: Not that one?

MR SIBANYONI: No.

ADV CHASKALSON SC: A different one.

MR SIBANYONI: Ja.

ADV CHASKALSON SC: And his name is?

MR SIBANYONI: Mr Mthimunye. I called him by his surname.

ADV CHASKALSON SC: You just called him by Mr Mthimunye?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: And he is the executive, is he the Chair of the local taxi association?

MR SIBANYONI: Yes, he is one of the executives. I do not know his role, his position, but I know he is an elder in the association.

ADV CHASKALSON SC: I see. So he was there, who else was there?

MR SIBANYONI: I cannot know them by name, hence I just know important figures, so that when there is a problem, I

know who to talk to.

ADV KHUMALO SC: So we are clear, this letter, it starts with my broer, good morning. My broer is referring to you?

MR SIBANYONI: Correct, yes.

ADV KHUMALO SC: So that is how you relate with Mr Ngoato?

MR SIBANYONI: No, no, he is just calling me like that. My broer, my broer.

ADV KHUMALO SC: You have a close relationship?

MR SIBANYONI: Ja, we has a close.

ADV KHUMALO SC: Because otherwise he would say Mr President or Mr Sibanyoni.

MR SIBANYONI: Correct, ja.

ADV KHUMALO SC: So I am assuming from reading this that you have a close relationship.

MR SIBANYONI: Yes, we have a close relationship.

ADV KHUMALO SC: And you have worked with him before?

MR SIBANYONI: Yes.

ADV KHUMALO SC: He has done legal work for you?

MR SIBANYONI: No, no.

ADV KHUMALO SC: What have you done with him?

MR SIBANYONI: We socialised together.

ADV KHUMALO SC: You socialised together?

MR SIBANYONI: Ja.

ADV KHUMALO SC: Okay.

ADV CHASKALSON SC: Have you been to his place at Hartbeespoort Dam?

MR SIBANYONI: No.

ADV CHASKALSON SC: So you are present with Mr Ngoato and Mr Mthimunye and possibly some other members of the taxi association. Is the family there?

MR SIBANYONI: No, there was no family there.

ADV CHASKALSON SC: No family?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: So there are no family members there, it is just yourself, Mr Ngoato and the taxi association...

MR SIBANYONI: Yes.

ADV CHASKALSON SC: ...executives, one of whom is Mr Mthimunye. And at that meeting it is agreed that money that was put up for the defence of Morwa, Mr Makofane, is now going to be used to deal with the appeal of Mr Gwabo, Mr Gwabo Mahlangu.

MR SIBANYONI: That is what they have agreed upon.

ADV CHASKALSON SC: You say they have agreed upon, but you were part of the meeting?

MR SIBANYONI: No, no. I am trying to explain that. How do I arrange meetings? In most cases I do not want to implicate myself in the agreement of them. I just coordinate

the meeting, then when they are settled, my request will be pure. Just make sure that in this meeting you make sure that the legal fees of Gwabo are being paid. Find a way, as to how you are going to do it, it is upon yourself. So as to the nitty-gritties of their negotiations, I am not involved.

ADV CHASKALSON SC: But at the meeting that you attended, Mr Ngoato says there was an agreement that money paid for Morwa must be used to cover for Gwabo. So were you not part of the meeting when that agreement was reached?

MR SIBANYONI: I am not a part of the meeting, but I organised the meeting and leave it to them.

ADV BALOYI SC: When you say you were not part of the meeting, are you saying you were not at this meeting that Mr Ngoato is referring to?

MR SIBANYONI: Correct, ja.

ADV CHASKALSON SC: So you were not at the meeting?

MR SIBANYONI: Ja, I will organise the meeting.

ADV CHASKALSON SC: So you will just tell people to get together and meet and then...

MR SIBANYONI: Yes, and then from there I will put my request. Guys, you are here today based on my request. What I want to see happening is to make sure that Gwabo's legal fees are getting paid, based on the relationship that both of us we know. So this is the matter that I need you to

discuss with. There is your advocate, there is yourself, then Ngoato is... The matter is about Gwabo. They will talk about that. Then maybe at the end, maybe when they are finished, they will give me that feedback that they have agreed.

CHAIRPERSON: So I just want to make sure I understand. As you say all of this, you are at the meeting.

MR SIBANYONI: My opening remarks.

CHAIRPERSON: And then what happens to you?

MR SIBANYONI: I leave them.

CHAIRPERSON: You leave?

MR SIBANYONI: Yes.

CHAIRPERSON: All right.

ADV CHASKALSON SC: Did anyone report to you what the outcome of the meeting was?

MR SIBANYONI: Yes, they did report to me.

ADV CHASKALSON SC: And what was reported to you?

MR SIBANYONI: We will make sure as per your request, President.

ADV CHASKALSON SC: And who reported that?

MR SIBANYONI: Mr Mthimunye reported to me.

ADV CHASKALSON SC: So Mr Mthimunye said to you after this meeting, we will ensure that Mr Gwabo, sorry, Mr Mahlangu's legal costs are covered.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: Let us continue. Mr Ngoato then says:

> "Mr Mthimunye has since changed and told me that he is not bound by such arrangements. He has also stopped paying for Morwa."

Now, who made the arrangement in December? At the December meeting.

MR SIBANYONI: I made the arrangement. I called the meeting.

ADV CHASKALSON SC: You called the meeting?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: Who made the agreement that Gwabo's legal fees would be paid for out of Morwa's money?

MR SIBANYONI: Up to that far, I am not clued up.

ADV CHASKALSON SC: But Mr Mthimunye reported to you that an agreement had been reached along these lines.

MR SIBANYONI: About Mr Mahlangu, Gwabo. Not about Morwa.

ADV CHASKALSON SC: That Mr Mahlangu would be paid.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: So he reported to you that we will ensure that Mr Mahlangu will be paid.

MR SIBANYONI: Correct, yes.

ADV CHASKALSON SC: But he then told Mr Ngoato that he is not bound by this arrangement, this agreement.

MR SIBANYONI: As per this message.

ADV CHASKALSON SC: As per, yes.

MR SIBANYONI: Correct, ja.

ADV CHASKALSON SC: And he has also stopped paying for Morwa, according to Mr Ngoato. Did you take this up with Mr Mthimunye?

MR SIBANYONI: Yes, I did.

ADV CHASKALSON SC: And what did he say?

MR SIBANYONI: There are some disagreements, I think, going forward. Maybe you will get... That is what he told me. He was complaining about the invoices of huge amounts. That does not make sense to him. I convened another meeting again, so that we clear this thing, because I cannot be sitting with one matter up and down for the whole year. I convened another meeting, then they agreed.

ADV CHASKALSON SC: Sorry, can I just catch up there? You convened another meeting, so this is now after December.

MR SIBANYONI: After December, yes.

ADV CHASKALSON SC: In fact, it is probably after February as well, because you have only been alerted to the problem in February in this letter. The 5th of February.

MR SIBANYONI: What date was this?

ADV CHASKALSON SC: Sorry, it is the 2nd of May.

MR SIBANYONI: Which year?

ADV CHASKALSON SC: Sorry, it is the wrong letter.

MR SIBANYONI: Which year?

ADV CHASKALSON SC: 2025.

MR SIBANYONI: Oh, okay.

ADV CHASKALSON SC: So you get this letter on the 2nd of May 2025, and did you convene your next meeting after this letter?

MR SIBANYONI: Yes, ja.

ADV CHASKALSON SC: And who was at the next meeting?

MR SIBANYONI: It was Bafanas, myself, Mr Mthimunye. No Ngoato was not there, but I had some telephone conversation.

ADV CHASKALSON SC: So it was just you, Mr Sindane, and Mr Mthimunye?

MR SIBANYONI: Yes, ja.

ADV CHASKALSON SC: Just the three of you?

MR SIBANYONI: Correct.

ADV CHASKALSON SC: And what was decided at that meeting?

MR SIBANYONI: They complained about what I am putting to you now. Then, for some reason, I called Mr Ngoato so that he would agree on a compromised amount of money.

Then he agreed upon that, and then they continued paying him.

ADV CHASKALSON SC: So you agreed on a compromised amount of money?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: And do you recall what that compromised amount was?

MR SIBANYONI: It should be 250.

ADV CHASKALSON SC: That certainly checks out with what Mr Sindane and Mr Ngoato exchanged in their texts. So if you go to page 2021 in file 4, you will see Mr Ngoato writing a message on the 19th of May.

ADV KHUMALO SC: Let us wait for him, Mr Chaskalson.

ADV CHASKALSON SC: And you will see Mr Ngoato writes in chat 4 on the 19th of May, this time it is to Mr Sindane:

> "My broer, I have just spoken to Solly now, and he is told me that you guys are meeting today. I still have not received money as promised more than a week ago. This impacts heavily on my operations. I normally do not deal with fee collection from my office, I have a team that handles that. I have taken this account out due to our relationship and our confidentiality. I

> cannot be following up for so long, guys. Please, can I have the 250K as promised? I have given a huge discount on the understanding that I will be paid immediately, but to date still no cent has been paid."

So, in your follow-up meeting with Mr Mthimunye and Mr Sindane, you agreed with them that a compromise amount of 250,000 would be paid to Mr Ngoato. That was communicated to Mr Ngoato.

MR SIBANYONI: Sure.

ADV CHASKALSON SC: Let us go back to that letter on page 1094 before we follow the 250,000.

MR SIBANYONI: Page?

ADV CHASKALSON SC: 1094 in file 3. It is the one we were just looking at. And we got to the point where Mr Ngoato had reported that Mr Mthimunye had stopped paying for Morwa:

> "Which therefore means, ever since we met, no cent has been paid for Gwabo."

So, between December and this is now May, nothing has been paid for Gwabo, he is complaining.

> "Mthimunye has also threatened me that if I do not proceed with Morwa, he needs all his money back or else."

Did you raise this with Morwa in your meeting with him?

MR SIBANYONI: With Morwa?

ADV CHASKALSON SC: Sorry, with Mthimunye.

MR SIBANYONI: Yes, I did raise it. And what did he say in relation to that? Because Mr Ngoato was saying that Mr Mthimunye says if I do not continue with Morwa's case, he needs all of his money back or else. Did you discuss that with Mr Mthimunye?

MR SIBANYONI: No, no, no. Not that else thing.

ADV CHASKALSON SC: Okay.

MR SIBANYONI: Because I am a mediator in this. As to their politics, I do not get into that. All I just wanted to ascertain, at least if Mr Ngoato has agreed to a discount, can they just set him off?

ADV CHASKALSON SC: And the discount was in relation to what? In relation to Morwa or in relation to Gwabo?

MR SIBANYONI: No, no. I am sitting with Gwabo here.

ADV CHASKALSON SC: Just in relation to Gwabo?

MR SIBANYONI: Ja.

ADV CHASKALSON SC: So the 250,000 that you were going to ultimately arrange by way of compromise was for Gwabo?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: I see. Let us keep reading.

"Last month when he stopped payment, I

asked him why. He said he will only pay once a date for Morwa is out."

MR SIBANYONI: Where are we reading now?

ADV CHASKALSON SC: We are still on the same message on page 1094. After 'or else'.

"Last month when he stopped payment, I asked him why. He said he will only pay once a date for Morwa is out. I sent him proof of date allocated for Morwa and he promised to pay for this month. This month he has now flatly refused."

Had you explained to Mr Ngoato that you were not interested in Morwa, you were only interested in Gwabo?

MR SIBANYONI: No, he knows.

ADV CHASKALSON SC: Then why is he telling you about all of his dealings in relation to Morwa?

MR SIBANYONI: I do not know, but he knows where my interest lies.

ADV CHASKALSON SC: Your interest only lies in relation to Gwabo?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: Not to Morwa?

MR SIBANYONI: Ja.

ADV CHASKALSON SC:

"I have brought the matter to Solly's

attention last month."

Who is Solly?

MR SIBANYONI: Solly used to be a treasurer of Mr Mthimunye, Treasurer of the association.

ADV CHASKALSON SC: Is that Solly Masilela?

MR SIBANYONI: No, no. I do not know his surname.

ADV CHASKALSON SC: But it is not Solly Masilela?

MR SIBANYONI: Who is Masilela?

ADV CHASKALSON SC: Solly, it is not Solly Masilela.

MR SIBANYONI: I do not know this particular Solly's surname. I do not know even if he is Masilela.

ADV CHASKALSON SC: So he may be, he may not be, you just do not know.

MR SIBANYONI: Ja, correct, ja.

ADV CHASKALSON SC:

"He requested proof of documents I sent him, but still nothing was done. I brought this to Solly again this month, but nothing is done. So honestly, I cannot run after a client to pay his bill. If he does not, I stopped doing the job. I am now asking for your intervention again, so that you know why I cannot do work you had originally allocated to me."

So he says you allocated that work to him.

MR SIBANYONI: I think he was trying to, the allocation in terms of how he is getting paid, not allocating from the onset.

ADV CHASKALSON SC: Well, that is not what he is saying. He said you originally allocated this work to me.

MR SIBANYONI: No, I deny.

ADV CHASKALSON SC: And then the next sentence:

> "I have always done your work to my best,
> but I cannot without payment."

So he is saying this is your work.

MR SIBANYONI: Which one?

ADV CHASKALSON SC: The Gwabo case.

MR SIBANYONI: I do not know in which context. I am just explaining myself. Him as to from which context he draws that, I do not know. But my primary role in this matter, intervening so that he gets paid. Because if you read his complaining about his funds or his fees, that is the long and the short of this message. Then if I arrange that he gets paid, then all is sorted.

ADV CHASKALSON SC: But that is not what he is saying. He is saying I cannot do work you had originally allocated to me. He says I have always done your work to my best, but I cannot without payment. He is treating this as your work.

MR SIBANYONI: Yes, that is what I am saying, I do not

know from which context he draws this. But my understanding, he was just claiming for his fees.

ADV KHUMALO SC: How did the association get to know about Mr Ngoato? I mean, you have already explained that you and him were friends and you socialised together.

MR SIBANYONI: Yes.

ADV KHUMALO SC: How did the association get to know about him?

MR SIBANYONI: I found them with Mr Ngoato.

ADV KHUMALO SC: You found them with Mr Ngoato?

MR SIBANYONI: Yes.

ADV KHUMALO SC: So you did not refer them to Mr Ngoato?

MR SIBANYONI: No, I did not.

ADV KHUMALO SC: And I had asked you earlier if Mr Ngoato had ever done legal work for you and you said no.

MR SIBANYONI: Yes.

ADV KHUMALO SC: So where he says I have always done your work, let us focus on those words, your work, to my best. What is he referring to?

MR SIBANYONI: To my knowledge, no specific work he has done for me.

ADV KHUMALO SC: No, but what is he referring to when he says he has always done your work?

MR SIBANYONI: I think he can refer to other associations'

matters. Let us say one of the associations get a dispute, I would refer that association to him.

ADV KHUMALO SC: So you have referred clients to him before?

MR SIBANYONI: Yes.

ADV KHUMALO SC: Thank you.

ADV CHASKALSON SC: How often have you referred clients to him?

MR SIBANYONI: No, more than one.

ADV CHASKALSON SC: I appreciate that, but more than 10, more than 5, more than 20?

MR SIBANYONI: No, it cannot be more than 5.

ADV CHASKALSON SC: And has he always reported to you on those cases when you refer clients to him?

MR SIBANYONI: No, but when we meet we will just go past as to your guys are in order, everything is working alright.

ADV CHASKALSON SC: So at any rate, you thought that after this letter and after your meeting with Mr Sindane and Mr Mthimunye, an agreement had been reached that 250,000 would be paid to Mr Ngoato and only for Gwabo's case. Did you convey that to Mr Sindane?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: Did you convey to Mr Sindane that your responsibilities ended with Gwabo's case?

MR SIBANYONI: Sure.

ADV CHASKALSON SC: You see what happened, we have been now to file 4, page 2021, where Mr Ngoato is complaining to Mr Sindane that the 250,000 has not been paid. But if we go down to page 2023, we are now on the 20th of May, file 4, you have it?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: There it says, it is a message from Mr Ngoato to Mr Sindane:

> "Good afternoon Morena, proof of set down, even though you guys have not paid a cent."

Now, that set down will turn out to be the set down of the Morwa case. So why would Mr Sindane be receiving letters from Mr Ngoato accounting to him about the Morwa case, when your instruction to him is he needs to concern himself only with Gwabo's case?

MR SIBANYONI: Who sent this message to who?

ADV CHASKALSON SC: Mr Ngoato sends it to Mr Sindane, he says the case has been set down even though you have not paid me anything. But the case that is being set down is the Morwa case, not the Gwabo case.

MR SIBANYONI: So how do I feature in here?

ADV CHASKALSON SC: Why would Mr Ngoato be accounting to Mr Sindane about the Morwa case, if your

instructions to Mr Sindane are we are interested only in the Gwabo case?

MR SIBANYONI: I really do not know.

ADV CHASKALSON SC: You do not know?

MR SIBANYONI: I do not know.

ADV CHASKALSON SC: If one goes a few chats down, same again, requisition for Morwa to be in Court. Mr Ngoato is accounting to Mr Sindane about Morwa's case. You cannot explain why that was the case?

MR SIBANYONI: No.

ADV CHASKALSON SC: You are saying Mr Sindane had no mandate from you to deal with Morwa's case?

MR SIBANYONI: Ja, not at all.

ADV CHASKALSON SC: 25th of May.

> "Good day. Due to non-payment, I could not join the advocate and candidates in Court on Friday. However, they have reported to me that the Court refused to grant the state a postponement and instead insisted on the matter being argued."

This is still the Morwa matter.

> "The matter was argued for the entire day and judgment has since been reserved. Due to your non-payment, I am unable to

> proceed with Gwabo appeal and the family is outrageous..."

I think he means outraged;

> "... as they want answers. I will inform the family to stop calling me but to refer all their enquiries to you."

Did Mr Sindane convey this message to you, that there had been a payment of the 250,000 that you had arranged and that as a result, Mr Ngoato was not proceeding with the Gwabo appeal?

MR SIBANYONI: I think he is talking about an appeal here.

ADV CHASKALSON SC: Yes.

MR SIBANYONI: Ja. No, no, I am not involved in this.

ADV CHASKALSON SC: You are not involved in the appeal?

MR SIBANYONI: Ja, even in the appeal I have stated here that for the very fact that we assisted in the legal fees during the trial, then even the association could never make it up to carry on with the appeal.

ADV CHASKALSON SC: But that is not consistent with your earlier version. Because your earlier version about meetings with Mr Mthimunye and with Mr Sindane about the Gwabo matter, are meetings after Mr Gwabo Mahlangu has been sentenced to life imprisonment. So they can only

relate to an appeal. If you go to page 1383...

MR SIBANYONI: Yes, we are talking about the legal fees up until when he was sentenced, not the appeal.

ADV CHASKALSON SC: No, but let me take you through the chronology. If you go to page 1383 in file 3, we see that he was sentenced.

MR SIBANYONI: 1383.

ADV CHASKALSON SC: He was sentenced on the 28th of January 2025.

MR SIBANYONI: Okay.

ADV CHASKALSON SC: Now, your meeting, if you then go down to page 1094 in file 3, that is the letter that Mr Ngoato sends to you about non-payment in relation to Gwabo. That is in May 2025. That is four months later. So just over three months later, not four, because it was the end of January, the beginning of May. But three months after his sentence, Mr Ngoato is engaging with you about doing work that you have allocated in relation to Gwabo. And that can only relate to Gwabo's appeal. Unless it relates to Morwa.

MR SIBANYONI: No, no, we are talking Gwabo.

ADV CHASKALSON SC: Yes. But it can only relate to Gwabo's appeal at this stage, because the trial is over.

MR SIBANYONI: Outstanding fees. It was not an ongoing – that is why we ended up having a compromise of – let us say the outstanding fees were 600. Then the arrangement

will be a compromise. Hence it ended up at 250.

ADV CHASKALSON SC: But that is not what Mr Ngoato is writing about. He is writing about ongoing work. He is apologising, he is explaining why he is not doing work you had originally allocated. That can only relate to work that has not been done already. It is work that will be done in the future. Or will not be done in the future in this case.

MR SIBANYONI: Ja, Mr Chaskalson, I think we go past each other here. My understanding is very short and sweet. Straight to Gwabo. The amount is so big that the decision cannot be made. We reached a compromise of 250. Arrangements are getting made and the payment goes, it is stopped. I interfere again, the payments get paid. As to other matters that he is talking to Mr Sindane and you can see those are long chats where I am not involved. And I am clear with my involvement in this matter.

ADV CHASKALSON SC: You see, I am putting to you that your story has changed.

MR SIBANYONI: As to what?

ADV CHASKALSON SC: As to what your involvement was. Because the only plausible explanation of this message that Mr Ngoato sends to you on the 2nd of May, is he is not fighting about fees already incurred in a matter where he is not going to do more work. He is saying, if you want me to pursue the matter with Gwabo, in other words, to take it

further on appeal, you must settle my old fees. I am not going to, I am asking for your intervention again, so that you know why I cannot do work you had originally allocated to me. What work? If it only relates to the work that he had to do at trial. That work has been done. There is no more work to do.

MR SIBANYONI: And to take it a step further, Mr Chaskalson. Paragraph 1 says:

> "I am unable to proceed with the matter of Gwabo."

And that is May. So proceed with the matter can only mean the appeal. Because at this stage he is already been sentenced. So when he says, I am unable to proceed with the matter, he can only be referring to the appeal. Because there is no other matter to proceed with. He is already sentenced in January already.

MR SIBANYONI: Yes, I get your understanding. My instructions to Mr Ngoato, the matter is done. I will not do appeal. The association will never be able to do appeal for that. So I was just making sure that the outstanding money, because the understanding will be he has outsourced some of his work to some junior lawyers that he owns.

ADV KHUMALO SC: Mr Sibanyoni, you must at least be prepared to accept that what he is referring to here is not the trial work. It is the appeal.

MR SIBANYONI: I understand the way he wrote it. But my instructions were clear to him.

ADV CHASKALSON SC: Sorry, your instruction to him was what?

MR SIBANYONI: For him to get paid the outstanding 250,000 as a settlement. And from there we did not do anything. He is getting paid. He got his money.

ADV CHASKALSON SC: Well, when was he paid?

MR SIBANYONI: The arrangement was he was supposed to be paid every month.

ADV CHASKALSON SC: And was he paid?

MR SIBANYONI: Yes, he was paid.

ADV CHASKALSON SC: You see, by the 25th of March he has still not been paid and he says:

> "Due to your non-payment I am unable to proceed with the Gwabo appeal and the family is outraged as they want answers."

Did you explain to the family that you were moving off the matter once the trial was over? You were not going to be involved in any appeal?

MR SIBANYONI: I think he was the one talking more often with the family. Hence he says, he has told the family that they must talk to me. But the family never reached out. But to the previous matter, I take it that I have played my part.

ADV CHASKALSON SC: Can I take you down to page 1320 in file 3? On the 29th of September, you forward to Mr Sindane a letter headed Final Demand and Notice of Intended Complaint at the Legal Practice Council. That letter is in the same file at page 1376. It is a letter from an attorney's firm called Chris Coetzee Inc. to Mr Ngoato's firm making a final demand for payment of correspondent fees in relation to matters in the Mpumalanga Division of the High Court. I am presuming that this letter was sent to you in the first instance by Mr Ngoato.

MR SIBANYONI: Sure.

ADV CHASKALSON SC: Why did he send it to you?

MR SIBANYONI: I think he was trying to ascertain to me that this is a type of funds or this is a type of some attorneys that he outsourced for this particular matter. So therefore, these are the complaints that he is getting from those lawyers as to if not paid, they will take him to the LPC.

ADV CHASKALSON SC: So for this particular matter, you are talking about the Gwabo case?

MR SIBANYONI: I think so.

ADV CHASKALSON SC: So why did you forward that document to Mr Sindane?

MR SIBANYONI: I am not quite certain why, but all I can say is I was sharing this conversation because this is a

matter that is centred around Mr Ngoato all the time. We have been talking about Ngoato all this time, so I shared this information with him.

ADV CHASKALSON SC: Were you asking him to pay the amounts that Mr Ngoato had been unable to pay to the Middleburg attorneys?

MR SIBANYONI: Not him. The association is the one that is paying.

ADV CHASKALSON SC: So the association, you were expecting him to approach the association to settle Mr Ngoato's outstanding debt to the Middleburg attorneys?

MR SIBANYONI: Correct, ja.

ADV BALOYI SC: Can I just ask, why did you not send this to Mr Mthimunye? Because we know from your testimony now that you knew someone that you say holds an executive position.

MR SIBANYONI: Sure.

ADV BALOYI SC: Who was involved in the meeting that discussed arrangements for payment of fees. Why did you not send this to him if it was a simple matter of getting the association to pay?

MR SIBANYONI: Ja, Mr Mthimunye is one of those old citizens. He does not even have a WhatsApp. We cannot send a WhatsApp message to him. So me sending it to Mr Sindane, I know he will contact him and tell him the

contents of this.

ADV BALOYI SC: He does have a phone. Why did you not call him and talk to him about this? Because according to you, the arrangement that you facilitated was for the association to make payments, not Mr Sindane personally.

MR SIBANYONI: Ja.

ADV BALOYI SC: So you do have that connection. You have been in a meeting where agreements were made.

Mr Mthimunye surely does have a telephone. You could have called him. Why did you not call him?

MR SIBANYONI: In most of the times, I do not deal with those things. In most of the times, I do not deal with them personally. If I were to, for example, like I did not send it to Mr Sindane, I know he will call him. Maybe I am busy, I get a WhatsApp, I will forward it to him. He will deal with that matter.

ADV BALOYI SC: Again, you said, what is Mr Sindane's position vis-à-vis your position? Is he the secretary?

MR SIBANYONI: No, no, he does not have any official position.

ADV BALOYI SC: Yes.

MR SIBANYONI: Ja.

ADV BALOYI SC: So he is what, a friend that you refer this to, to deal with?

MR SIBANYONI: Yes.

ADV BALOYI SC: Thank you.

ADV KHUMALO SC: I thought he was your right-hand man.

MR SIBANYONI: It is the same thing. Your friend can be a right-hand man.

ADV KHUMALO SC: For the purposes of conducting business.

MR SIBANYONI: Come again?

ADV KHUMALO SC: For the purposes of conducting business, not for social reasons.

MR SIBANYONI: Which business?

ADV KHUMALO SC: Such as this business where you are referring people to attorneys or you want attorneys to be paid.

MR SIBANYONI: Oh, okay, you can put it like that.

ADV KHUMALO SC: So you go to him for assistance.

MR SIBANYONI: He is assisting me?

ADV KHUMALO SC: Yes.

MR SIBANYONI: Yes, ja.

ADV BALOYI SC: He is your assistant in taxi business affairs?

MR SIBANYONI: Ja. I just choose which one to assist, yes, ja.

ADV BALOYI SC: Thank you.

ADV CHASKALSON SC: Can I then go back to the Kwaggafontein case?

ADV KHUMALO SC: Do we go to file 1?

ADV CHASKALSON SC: It will be file 1, indeed.

MR SIBANYONI: Page?

ADV CHASKALSON SC: Let us pick up where we were before we get to any pages.

ADV BALOYI SC: Mr Chaskalson, the desk is a mess. Which files should we close?

ADV CHASKALSON SC: For the most part, we just need file 1. Now, Mr Ntuli's version...

MR SIBANYONI: We are on page?

ADV CHASKALSON SC: I will start on page 475. So we see Mr Ntuli's version from pages 475 onwards.

MR SIBANYONI: Sure.

ADV CHASKALSON SC: If we go to page 476, he describes his arrangement with you in the following terms at page 476. And he is talking about his first meeting with you in July 2021.

> "During the meeting, I was told in order for me to operate in that area, I have to pay a protection fee, because they are the people who are looking after all the land in Kwaggafontein, they promised me that no one will touch my business operation only if I pay the protection fee to them."

So that is what he says the arrangement was. What is your

response to that?

MR SIBANYONI: Can I raise that privilege in this matter?

ADV CHASKALSON SC: Can you raise that privilege?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: You can only raise that privilege if you think that your answer will incriminate yourself. And you have said elsewhere that you have never committed any unlawful acts in relation to this incident or indeed any other incident. So unless you are willing to withdraw the statement that says you have committed no unlawful acts of any nature, I am going to object to your raising privilege.

MR SIBANYONI: Ja, my question still stays. Can I raise that privilege? If you say no, no. If you say yes, yes. But I wish to raise that privilege.

ADV CHASKALSON SC: Well, if I take you back to page 30 of your first statement, you state under oath that you have never directed, financed, Commissioned or participated in any unlawful activity. Now if that is true, there is nothing that you can say truthfully in answer to my questions that could incriminate you, because your statement is that you have never participated in any unlawful activity.

ADV KHUMALO SC: Do you have it on page 30, Mr Sibanyoni? Paragraph 78.

MR SIBANYONI: I do not see it. Can you please assist

again?

ADV KHUMALO SC: Look at the screen. I think the screen in front of you is flighted.

MR SIBANYONI: Okay. Page 30 is number 78, ja. What do I say?

ADV CHASKALSON SC: The second sentence of paragraph 78 says:

> "I have never directed, financed, Commissioned, or participated in any unlawful activity."

Now if that is true, you have never committed any crime, and then no answer that you give to me in response to those questions can incriminate you, because there is no crime in respect of which you could ever be found guilty.

CHAIRPERSON: Do you follow the logic?

MR SIBANYONI: Yes, I do follow the logic. So me following the logic, it is a question that I have put to him, that can I just raise that privilege? Then he is forcing me to answer, and I have been complaining about him.

CHAIRPERSON: Do you withdraw what 78 says?

MR SIBANYONI: No.

CHAIRPERSON: Do you stand by what 78 says?

MR SIBANYONI: I stand by that.

CHAIRPERSON: So, if you follow the logic, can the two stand together? What you say in 78, and you are setting

the privilege, can the two stand together?

MR SIBANYONI: According to my understanding, they do.

CHAIRPERSON: All right.

ADV CHASKALSON SC: Mr Sibanyoni, in fairness to you, I am prepared to accept that 78 may have overstated it. I think there are very few people who can say they have never participated in any unlawful activity. If you want to withdraw that statement, then you can assert this privilege, but without withdrawing that statement, you cannot assert that privilege, or at any rate, I will ask the Chair to overrule an assertion of that privilege. So the choice is yours. If you stand by paragraph 78, then I am going to ask you to answer all of these questions. You need to make that choice.

MR SIBANYONI: No, I will leave it to the Chair to overrule if that is what you want.

CHAIRPERSON: But if it is not true, you can say it is not true, can you not? If what is it, or rather, ja, in the second paragraph of 476 is not true, then it is not true, and the response that says that is not true cannot implicate you, can it? Or that is not an answer you are prepared to give, that is to say that is not true.

MR SIBANYONI: I do not get you, Chair.

CHAIRPERSON: I am saying a response that says what is said about you in paragraph 2 at page 476, if what is said

about you there is untrue, I do not see why you cannot say so, why you cannot say I never said any such thing to Mr Ntuli or Dr Ntuli, unless you are unable to say that is untrue.

MR SIBANYONI: I do stand by my statement, paragraph number 78, which I can repeat.

> "I deny emphatically and absolutely that I am or have ever been a member of any criminal organisation, cartel, syndicate, or grouping. I have never directed, financed, Commissioned, or participated in any unlawful activity. I have never been tried or even convicted of any criminal offence. The Delmas charges are charges which I deny and intend to contest fully."

So contesting this fully is at the Court, not contesting it at the Commission. That is why I reserve that right. Can you allow me to go and contest this at the Court, so that my defence based on this matter is not outrightly heard in this Commission?

ADV BALOYI SC: I think the difficulty, Mr Sibanyoni, we are looking at Dr Tengane's statement where he makes an allegation about you. Now, it is either that allegation is true or false. And the difficulty is understanding why an answer that says it is false would implicate you. That is the

difficulty. If your answer to paragraph 6 that Mr Chaskalson has read to you was going to be, yes, Dr Tengane is telling the truth, that in that meeting I spoke about a protection fee. If the answer was going to be in the affirmative as in he is telling the truth, then you would be entitled to assert your privilege against self-incrimination. What is difficult to understand is if the answer is he is not telling the truth, and which would be consistent with your paragraph 78, why you would have a difficulty answering that on the basis that it will implicate you.

MR SIBANYONI: I get you, Commissioner.

ADV BALOYI SC: Yes.

MR SIBANYONI: It is a debatable matter. Hence I say, I have taken this matter to the Chair if he overrules that. If he overrules that, I will move it on, I will move with the motion.

ADV BALOYI SC: Yes.

MR SIBANYONI: But me agreeing to Mr Chaskalson, whereas I know the matter is in Delmas, I have difficulties with him. But if the Chair overrules that, I will follow the Commission.

ADV BALOYI SC: Yes.

MR SIBANYONI: Ja.

ADV BALOYI SC: The Chair did say in the morning, and this is not just applicable to you, it is applicable to every

witness who seeks to assert the privilege against self-incrimination, that you are only entitled to assert that privilege per question. There is no blanket protection or cover. You have to wait to be asked a question and then say, that question I refuse to answer, and then explain why you say you will self-incriminate yourself in giving that answer. And that is where we are now. We are at the point where you are being asked to explain why do you say, if you insist, if you persist in that answer, why will an answer to that question that Mr Chaskalson has posed to you, reading paragraph 6, why would that incriminate you?

MR SIBANYONI: Okay, Chair, Commissioners, these two paragraphs, my paragraph and Mr Ntuli's paragraph, it is a bone of contention in our disagreement. For me, it sits at the nerve of the docket.

ADV BALOYI SC: It may be so. It may be according to you.

MR SIBANYONI: Correct.

ADV BALOYI SC: But it does not explain why you say an answer will incriminate you. You will self-incriminate if you give an answer to that. And the Chair has given an example. If your answer is simply this, he is not telling the truth in that paragraph, then you cannot reasonably say that that kind of answer incriminates you in criminal conduct.

MR SIBANYONI: I get you.

ADV BALOYI SC: Yes.

MR SIBANYONI: Ja.

ADV BALOYI SC: So what is your answer to the question? Is that allegation that Dr Tengane makes in paragraph 6, the first sentence, that you said he must pay a protection fee, did you say that? Is that correct?

MR SIBANYONI: No.

ADV BALOYI SC: Did you say that to him?

MR SIBANYONI: No, not at all.

ADV BALOYI SC: Thank you. Thank you, Mr Chaskalson.

ADV KHUMALO SC: And also, top of the page, so we are still on 476.

> "On that day, Joseph Sibanyoni demanded that I pay him an amount of R100,000 in cash before he could further open a channel of communication."

MR SIBANYONI: What is that? What is he implying to?

ADV KHUMALO SC: Is that also not true?

MR SIBANYONI: No, it is not true.

ADV KHUMALO SC: Yes.

ADV CHASKALSON SC: Then in paragraph 6.

MR SIBANYONI: Page which?

ADV CHASKALSON SC: 476. He says that he was advised by you and he refers to Mr Sindane as Bafana Kabini. Sorry, is Kabini a name used by Mr Sindane?

MR SIBANYONI: Yes. Can you please wait for me?

ADV CHASKALSON SC: Sure.

MR SIBANYONI: 476.

ADV CHASKALSON SC: 476, indeed.

MR SIBANYONI: Oh, okay.

ADV CHASKALSON SC: Paragraph 6.

> "I was advised by Mr Joseph Sibanyoni and Mr Bafana Kabini during our meeting that the protection fee for the local structure should be a certain amount of rand to be added to the tonnage price. Mr Bafana Kabini and Mr Joseph Sibanyoni told me that 40 percent share should go to them, the national structure as a protection fee, and 60 percent to them as to my company."

Leave aside the protection fee because you have already said you did not mention a protection fee.

MR SIBANYONI: Sure.

ADV CHASKALSON SC: Did you raise the suggestion that 40 percent should go to you and that 60 percent should go to his company?

ADV CHASKALSON SC: Yes.

MR SIBANYONI: You did?

ADV CHASKALSON SC: Ja, what I was implying here was

the profit share, 60-40 profit share.

MR SIBANYONI: So it is a 60-40 profit share, and if I understood your evidence earlier, you were saying that he initially suggested it would be 50-50.

MR SIBANYONI: Yes, ja.

ADV CHASKALSON SC: And you actually gave him a better deal, 40-60.

MR SIBANYONI: Ja.

CHAIRPERSON: Based on the overarching rule you referred to.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: But that rule, as I understood it, was a 30 percent rule.

MR SIBANYONI: No, we are talking about 100 percent being 30 percent. I do not know if you get me. You set aside that 30 percent of that particular thing, you made it 100. On the profit of that, we split again to 60-40.

ADV CHASKALSON SC: Sorry, I am not with you. Can you explain it to me slowly so that I can follow you? You set aside the 30 percent that is going to the local content.

MR SIBANYONI: Ja. You take that 30 percent, make it 100 on its own. It is a full 100 on its own.

ADV CHASKALSON SC: Okay.

MR SIBANYONI: Then we talk about that. On the profit of that specific 100, we are talking 60-40.

ADV CHASKALSON SC: But how does that... So you are saying that 60-40 of what remains...

MR SIBANYONI: The profit.

ADV CHASKALSON SC: The profit, 60-40 of the profit on the 70 percent.

MR SIBANYONI: On the 30 percent.

ADV CHASKALSON SC: On the 30 percent?

MR SIBANYONI: Ja, which is 100 now.

ADV CHASKALSON SC: No, I am not following the maths here. The 30 percent which is going to be local content...

MR SIBANYONI: Can I...

ADV CHASKALSON SC: Give me an example.

MR SIBANYONI: Can I give you an example?

ADV CHASKALSON SC: Ja.

MR SIBANYONI: You are owning 30 percent of my shares in the tax industry. Like we requested to be a member, right?

ADV CHASKALSON SC: Okay.

MR SIBANYONI: We have got your 30 percent. Your 30 percent on its own in your space is 100. You can have someone within your 30 percent which is your 100. That particular person will own 5 percent in that space. Does it make sense? In your space, that 30 percent, it is your full 100.

ADV CHASKALSON SC: It is my share, it is my... So then

you split that 100, 60-40?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: But whose share is being split 60-40? Is it the 30 percent local share or the 70 percent Tengane Mining share?

MR SIBANYONI: No, no. Me and Tengane were in the 30 percent. We were not in the 70 percent. Me and him, we were in the 30 percent. Which is our 100.

ADV CHASKALSON SC: But Tengane Mining, you previously said, should not really be involved in the 30 percent because they are not local.

MR SIBANYONI: I made it to be a local content. My participation in that space, it becomes a local content.

ADV CHASKALSON SC: At 40 percent? If you have a 40 percent share of the minority shareholder, call it in inverted commas, it suddenly becomes local?

MR SIBANYONI: Ja, because he is directly involved in the everyday running of the mine or the quarry.

ADV CHASKALSON SC: And were you directly involved in the everyday running of the mining?

MR SIBANYONI: No, I am not physically involved there. He is the one who is physically involved, hence I agreed on the 60 percent.

ADV CHASKALSON SC: I will move on.

ADV BALOYI SC: Sorry, before you move on, can I just try

and understand, Mr Sibanyoni? And please correct me.

MR SIBANYONI: Sure.

ADV BALOYI SC: My understanding is Tengane has 100 percent. You say 30 percent of that must be allocated to a local component. Am I misunderstanding you?

MR SIBANYONI: Ja, you have misunderstood me.

ADV BALOYI SC: Yes?

MR SIBANYONI: I will rephrase it again. Me and Mr Tengane, we belong into the local content, which in a broader picture, it is our 100. Me and him, it is our 100. Separately so.

ADV BALOYI SC: So you are 30 percent. You and him are 30 percent.

MR SIBANYONI: Correct, yes.

ADV BALOYI SC: Who has the 70 percent?

MR SIBANYONI: It is the main contractor. There is a main contractor who has been allocated the job.

ADV BALOYI SC: Yes.

MR SIBANYONI: Ja.

ADV BALOYI SC: And the 30, so how do you and him get ownership of 30 percent without involving the main contractor, who from your description is the owner of the 100 percent. They remain with 70 percent. You and Tengane or Mr Ntuli, you share 30. Where is the main contractor as you are having these discussions with Mr Ntuli

about 30 percent of the main contract?

MR SIBANYONI: Mr Ntuli is the one... Remember there was a PLO here. As you can see going down, that is where the four accused, the other one is a PLO. He is the one who communicates whatever local content is. So if it is him and myself and them talking about this, they understand very well what we are talking about. Then from there, Mr Ntuli will be given to supply materials from the quarry based on my involvement for him to get the local content. Then he gets that local content of supplying the quarry. As he does that business, we go to profits. On the profits, because he is the one who is running that quarry, we ended up saying get 60 percent because you are directly involved running the quarry. Give me 40 percent of that on the profit. Then we agreed on that. Hence it moved one month to another. Year after year.

ADV BALOYI SC: You are now sharing from what was originally his 30 percent.

MR SIBANYONI: Yes.

ADV BALOYI SC: So he had 30 percent of the main contract.

MR SIBANYONI: Yes, ja.

ADV BALOYI SC: And then you come into that.

MR SIBANYONI: In supplying. In supplying.

ADV BALOYI SC: And you come into that.

MR SIBANYONI: I come into that space.

ADV KHUMALO SC: So what entitles you to a portion of this 30 percent? Were you ever a shareholder in Tengane Mining (Pty) Ltd?

MR SIBANYONI: No, I was never.

ADV KHUMALO SC: So Tengane out of the big pie is entitled to 30 percent. And you say that 30 is converted to 100 and Mr Ntuli gets 60 of that, you get 40 of that. What entitles you to that 40 if you are not a shareholder of Tengane?

MR SIBANYONI: It is a local content. There was no way Mr Ntuli could supply concrete or whatever supplying if I was not involved.

ADV KHUMALO SC: But he is already been appointed by the main contractor.

MR SIBANYONI: He was not yet appointed.

ADV KHUMALO SC: It was before.

MR SIBANYONI: Ja, it was before.

ADV KHUMALO SC: But then what entitles you? My question stands. You are not a shareholder at Tengane. So what is it that entitles you to 40 percent of that pie?

MR SIBANYONI: Ja, from... from the initial of this, Mr Ntuli is the one who came to me asking me to be part of him. I should have said, let us go and register that if maybe I wanted to take it professional. And I have mentioned that

Mr Ntuli is as old as myself. If we talk matters on this level. If we agree, do we agree? We simply go on. But I did not take that route.

ADV KHUMALO SC: Sorry to interrupt you. Let me move it forward. But you are saying it was a handshake between you and him.

MR SIBANYONI: Yes.

ADV KHUMALO SC: There is no shareholding. There is no written document.

MR SIBANYONI: Yes.

ADV KHUMALO SC: You and him had a talk and you agreed that you will get 40 percent.

MR SIBANYONI: Yes.

ADV KHUMALO SC: And that is what entitles you to the 40 percent.

MR SIBANYONI: Correct.

ADV KHUMALO SC: The agreement you had with him.

MR SIBANYONI: Correct.

ADV KHUMALO SC: Okay.

ADV QOFA: Chair, I do not want to be... I think truly there is some talking past one another in this aspect, to a large extent, Chair, with respect. And maybe just trying to provide a little bit of clarity. What Mr Sibanyoni is simply saying is, number one, Mr Ntuli could not and was unable to do business in this area because he did not qualify for the

local content that would have allowed him to be a supplier to the main contractor. This is what he is saying.

And he says, absent that, Mr Ntuli would not have been appointed to supply the main contractor. Hence, Mr Ntuli approached him and said, as a local, I would like to talk to you to help me partner, so that I could acquire the 30 percent local content that I am otherwise not entitled to. It was then on this basis that he explains to say, there is a broader contract of the 100 percent. Mr Ntuli wanted to tap into the 30 percent local content.

CHAIRPERSON: I thought you were going to come in on the 70 percent, the 30 percent, the 70, the 30, the 60, the 40. Not the other...

ADV QOFA: That is what I wanted to explain, Chair, having at least made this one clear because I felt there was a misunderstanding.

CHAIRPERSON: I do not think there is any issue with regard to his explanation as to how he got involved and why. What is confusing, based on what he is saying, because my understanding was that he said in the morning, this overarching rule that he refers to is that the local content is 30 percent. So one would understand that to mean that it is 30 percent of the entire profit that Dr Ntuli would make. So you look at that, and it is 30 percent of that, and that 30 percent goes to the locals, if I may call

them that.

ADV QOFA: Absolutely.

CHAIRPERSON: Now he says, you take that 30 percent, and even that 30 percent is then split up. And he says, basically what they get is 40 percent of the 30 percent. And that, to my mind, no longer tallies with the idea of 30 percent of the entire profit that Dr – so I thought you were going to come in on that.

ADV QOFA: That is exactly where I am going, Chair.

CHAIRPERSON: Because now, now, to my mind, it sounds as though Mr Sibanyoni wants to push in the 40 percent for us to understand why at this meeting there would be a discussion about 40 percent. So now he decides to tell us that it is 40 percent of the 30 percent, so that the 40 percent makes sense. Because otherwise it does not make sense if this morning he told us about 30. 30 which we understood to be 30 percent of the entire profit. So it sounds to us as if he is trying to make the 40 make sense. So I thought that is where, as for the rest, we understand fully. And as for the rest, if I may repeat what I said to you this morning ...[intervenes]

ADV QOFA: I understand fully.

CHAIRPERSON: You are coming in to ...[intervenes]

ADV QOFA: To explain that part. Chair...

CHAIRPERSON: You are testifying because I am not sure

that we need any explanation with regard to ...[intervenes]

ADV QOFA: Please allow me, Chair.

CHAIRPERSON: Yes.

ADV QOFA: The one layer which seems to not be understood, is the fact that the business that Mr Ntuli was going for was in fact the 30 percent local content, when in fact there was a contractor who was owning the entire contract and Mr Ntuli was aiming to get 30 percent of that particular portion of the contract.

CHAIRPERSON: No, no, no, no. He was to be a supplier, supplying product from a quarry. That is what he was providing.

ADV QOFA: As a support, Chair.

CHAIRPERSON: Yes, but in Mr Ntuli's hands, that is 100 percent. In Mr Ntuli's hands, that is 100 percent. The main aim of the company is to supply the aggregate stone. Look at the second paragraph, at page 475.

> "The main aim of the company is to supply the aggregate stone..."

And then I do not know whether that is a description of the stone or whatever.

MR SIBANYONI: Yes, it is.

CHAIRPERSON: Those Gs there.

> "...for the construction of the 573 Moloto Road, which has started at Kwaggafontein

as Phase 1."

That is what he is supplying. In his hands, that is 100 percent. In his hands. So if we apply this 30 percent rule, this so-called overarching 30 percent rule, that is 30 percent of what Mr Dr Ntuli would be supplying. It is 30 percent of that. Now to then talk of another 30 percent of that 30 percent out of which you then talk 60 percent and 40 percent does not make sense whatsoever. And that has nothing to do with us not understanding. We actually understand fully.

What does not make sense is Mr Sibanyoni's reference to within that 100 percent in Mr Ntuli's hands, for him to then say, you take out a 30 percent which instead of going as a 30 percent to Mr Sibanyoni and whoever he was with, but you then break it up to 60-40. That 30 percent, you break it down to 60 and 40. That does not make sense. And it is no longer, it is no longer 30 percent of the 100 percent in Mr or in Dr Ntuli's hands. It is no longer 30 percent of that.

ADV QOFA: Chair, that was not the aspect...

CHAIRPERSON: So basically what Mr Sibanyoni said this morning and what he is saying now are not one and the same, subject of course to whatever he may say in explaining. So whatever it is you say, Ms Qofa, it should not proceed on the basis that there is anything we have not

understood. We have understood everything.

ADV QOFA: Chair, I am grateful. I just wanted it to be clear because I thought as the Chair has now correctly clarified, that there is an understanding that there was a bigger contractor in the picture and that there was this aspect of 30 percent.

CHAIRPERSON: You do not even need to bother about the main contract to which Dr Ntuli is subcontracted. We do not need to bother about that.

ADV QOFA: I am happy.

CHAIRPERSON: We do not need to bother about percentages. Percentages have nothing to do with Dr Ntuli's contract. He is supplying I will assume 100 percent of whatever products from a quarry are required for the main contract, that is 100 percent in his hands.

ADV QOFA: In his hands, yes, absolutely, Chair.

CHAIRPERSON: Then according to what Mr Sibanyoni said this morning, 30 percent of that should go to him and whoever else. So the 40 and the 60 of the 30 do not make sense whatsoever.

ADV QOFA: Chair, I will take it no further because I was simply clarifying this aspect. Mr Sibanyoni has indicated why they came to the 40 percent and the contribution that he made to the contract itself. And I will leave it at that, Chair.

CHAIRPERSON: Thank you very much. Mr Sibanyoni, you have heard the debate between your counsel and me.

MR SIBANYONI: Yes.

CHAIRPERSON: Do you wish to comment and tell me why I am talking nonsense perhaps? [Laughter]

MR SIBANYONI: No, Chair, you are not talking nonsense, with due respect. As you have mentioned, Mr Ntuli's supplying of the quarry is 100 percent standing. Then I partner him just in that space of a quarry and a supply. That has got some financial effects to that matter. So in that space of his, the profit margin in that space of his is 60-40.

CHAIRPERSON: So you and him are partners in the supply?

MR SIBANYONI: Correct, ja, only.

CHAIRPERSON: Okay.

MR SIBANYONI: Yes.

CHAIRPERSON: And then where does the 30 percent local content come in? Because if you have partnered with him, that has nothing to do with the 30 percent local content.

MR SIBANYONI: Yes.

CHAIRPERSON: So where does that come in?

MR SIBANYONI: So there are different business people at home. We grouped each other so that we make that 30 percent local content into the main contract. I come with

the quarry, others they come with their trucks, others they come with a lot of things, ja, plus labour. All those things combined, they form 30 percent. So me and Ntuli, we come with the supply of that precious stone.

CHAIRPERSON: So you are not coming in on the basis of the 30 percent local content. You are coming in as a business partner in the entire project.

MR SIBANYONI: Yes. And then it makes us to qualify to be part of the bigger 30 percent within the locals.

CHAIRPERSON: Okay. At this point we must take lunch. Let us adjourn until 2 p.m.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: Thank you, Chair. Mr Sibanyoni, we were going through your responses to Dr Ntuli's statement. The next part of his statement that I wanted to canvas with you starts on page 477 on file 1, and there, at the top of the page, Dr Ntuli says on the 30th of March 2023:

> "I received a WhatsApp from Mr Bafana Kabini saying that he is reminding me that I need to pay the protection fees discussed in the meeting. It should be noted that from all these messages, he

was referring to himself as "The Landlord Growthpoint" in order to disguise himself and not to classify as an extortion dealing."

So my question to you is, were you aware that Mr Sindane was referring to himself as "The Landlord Growthpoint" in these interactions with Dr Ntuli?

MR SIBANYONI: Yes, I was aware.

ADV CHASKALSON SC: And did you query why he called himself "The Landlord Growthpoint"?

MR SIBANYONI: No, that is the terminology that they were using between themselves.

ADV CHASKALSON SC: Between themselves?

MR SIBANYONI: Between Ntuli and Mr Sindane.

ADV CHASKALSON SC: But if this was essentially a joint venture between yourselves and Mr Ntuli's Tengane Mining, where, as I understand it, you were putting up some finance and assisting him to provide a kind of local content quotient, why would Mr Sindane refer to himself as "The Landlord Growthpoint", do you have any idea?

MR SIBANYONI: No, I am saying between him and Mr Tengane, actually, it was *vice versa* when they started talking about that, then that wording changed on its own. Mr Ntuli was the one who was Growthpoint, and as they were used to talk, it ended up the other one being the other

one.

ADV CHASKALSON SC: But it does not ...[intervenes].

MR SIBANYONI: On a lighter note, not on a very serious note.

ADV CHASKALSON SC: No, no, no, but it does seem strange that, I mean, why? Growthpoint is the name of a property company that he is a landlord, are you aware of that?

MR SIBANYONI: Yes, I know that.

ADV CHASKALSON SC: And why would Mr Sindane sign himself off as a landlord in all of these exchanges? What was the joke about, do you know?

MR SIBANYONI: No, it was the other way around when this type of terminology crops in. This word was not owned by Mr Sindane, it was owned by Mr Tengane when it started. But as they were busy engaging, it changed to be the other way around, hence I am saying, it was on a lighter note, not on a lighter note of being a Growthpoint, as you know, Growthpoint is a property. It is Mr Ntuli who owns properties, for your information.

ADV CHASKALSON SC: Yes, but in this situation, he is certainly not operating as a landlord, and he is not operating as a property owner. He is operating as a mining company owner.

MR SIBANYONI: I get you. That is why it was their own

way of talking to each other, not me.

ADV CHASKALSON SC: And did you ever question it, or find out what it was about?

MR SIBANYONI: No, not at all.

ADV CHASKALSON SC: Now, underneath paragraph 11, sorry, before we leave that, what Mr Ntuli says in paragraph 8, is he says that Mr Sindane referred to himself as "The Landlord Growthpoint" in order to disguise himself, in other words, to disguise the fact that what was taking place, according to Mr Ntuli, was an extortion arrangement. What is your response to that?

MR SIBANYONI: You are talking about Mr Ntuli's affidavit?

ADV CHASKALSON SC: Yes, in that same paragraph we have just read.

MR SIBANYONI: Ja, what is your question?

ADV CHASKALSON SC: What is your response to his statement that the reason that Mr Ntuli, Mr Sindane signed himself off as "The Landlord Growthpoint" in all of these WhatsApp chats was to disguise himself so that the WhatsApp record would not make clear that what was taking place was an extortion arrangement?

MR SIBANYONI: I do not have a comment on that.

ADV CHASKALSON SC: You do not have a comment on that?

MR SIBANYONI: No, I do not have a comment on that.

ADV CHASKALSON SC: Now, at the foot of page 11, there is a table of payments.

ADV KHUMALO SC: Paragraph 11.

ADV CHASKALSON SC: Sorry, paragraph 11, page 477, there is a table of payments that ...[intervenes].

MR SIBANYONI: Can someone flight ...[indistinct]. Can they just flight it here on the screen?

CHAIRPERSON: 477. 477, foot of 477, ja.

ADV CHASKALSON SC: Now, there is a table of payments that Dr Ntuli said that he made into the account of your company, MJ & Sons Transport, or that he paid to you in cash. So, let us take it one by one. First, is MJ & Sons Transport your company?

MR SIBANYONI: Correct.

ADV CHASKALSON SC: Now, the payments that are reflected on this table as going into MJ & Sons Transport, the MJ & Sons Transport account at ABSA, save for one of them right at the end on the 8th of November that goes into an FNB account, are those payments that you accept were paid by Dr Ntuli into the MJ & Sons Transport account?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: And there are also a series of cash payments that are reflected on this table. Do you accept that those cash payments were also made to you by Dr Ntuli?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: Now, the first of those cash payments is made in July 2021. Dr Ntuli says that that is a payment that was made from him to you shortly after your first meeting at Waterkloof Golf Estate in July 2021. That is on foot of page 475 running over to 476. Why was Dr Ntuli making a payment of R100,000.00 to you after your first meeting?

MR SIBANYONI: I deny the fact that it was 100,000 for the first meeting. If you can see all the payments are ranging between 50 and 100,000, which is the minimum and the maximum profit we are doing. So, to me, if he gives 100,000, that is the maximum. That is the way we understood each other. If there was no profit, it will not be less than 50, it cannot be more than 100, as we were doing the maths. Therefore, we ended up agreeing on between 50 and 100 and that is the way we used to operate.

ADV CHASKALSON SC: My question is a different one. It is, why was that first payment of R100,000.00 made in July 2021?

MR SIBANYONI: That was our first profit.

ADV CHASKALSON SC: That was your first profit?

MR SIBANYONI: Sure, yes.

ADV CHASKALSON SC: But that was immediately after your first meeting in July 2021.

MR SIBANYONI: Right.

ADV CHASKALSON SC: You met for the first time in July 2021.

MR SIBANYONI: Ja, I am not sure about the dates as to which date that we started meeting, but I take it that the first 100 was our first profit, 50,000 was our second profit, that 100 was ...[indistinct] profit, just like that. That is the chronology of those payments.

ADV CHASKALSON SC: And when did you first put money into this business venture?

MR SIBANYONI: It should be in the beginning of, let us say we are now in December 2022, 2023.

ADV CHASKALSON SC: 2023?

MR SIBANYONI: I think so. I am not sure about the date offhand.

ADV CHASKALSON SC: Because that first R100,000.00 is in July 2021, so that would have been before you put money into the business.

MR SIBANYONI: The first of what?

ADV CHASKALSON SC: The first payment of R100,000.00 was in July 2021.

MR SIBANYONI: Right.

ADV CHASKALSON SC: Which on your evidence a minute ago would have been before you had first put any money into the business.

MR SIBANYONI: All I am saying, I am not just certain about the dates. The first time when I started injecting money to Mr Ntuli was after the first three months me and him starting to do the business.

ADV CHASKALSON SC: Yes, but ...[intervenes].

MR SIBANYONI: I take this one as it is recorded here as the first profit, because by the time when I injected money, there was no profit. It was running at a loss. Then I put my money in that space. So when we start getting profit, I take it this is the time when we started getting profits. We were meeting regularly to discuss the way forward as to how does the business works. So for now that it is dotted here as the first payment, I take it as the first profit.

ADV KHUMALO SC: Mr Sibanyoni, if you go back to paragraph 4 and 5 on 475, which is really Mr Chaskalson's question, he was first introduced to you in July 2021, because paragraph 4 says there was this meeting in June and then they agreed that he was going to be introduced to meet with you. And then he says the meeting was arranged in July 2021.

MR SIBANYONI: Okay.

ADV KHUMALO SC: So the question is that first payment of 100,000 on page 477 must have been paid the very month that you first met him.

MR SIBANYONI: Yes, I get what you are saying. The

difficulties about the dates and the first payment and me understanding or not understanding some of the facts, it is Mr Ntuli's affidavit, of which I still have a problem with it going forward. So if you push me into this happened this way, this happened this way, I take it that it is Mr Ntuli's affidavit in his own version, which where I am sitting ...[indistinct] that this money is registered here, I take it was the first payment.

ADV KHUMALO SC: Yes, you accepted when Mr Chaskalson referred you to the table that those payments were made on those dates, so that is where he started. Then he took you to the July date.

MR SIBANYONI: And I can see.

ADV KHUMALO SC: Yes.

MR SIBANYONI: Ja.

ADV KHUMALO SC: And he wanted you to explain why you would receive the payment in the same month that you met Dr Ntuli.

MR SIBANYONI: Yes, I cannot explain it further, because it is Mr Ntuli's affidavit. That goes forward and that comes back and to my understanding, this affidavit just suits himself for the mere fact that there is a matter that, there is a case that he opened.

ADV CHASKALSON SC: You see, if I understand your description of the partnership between yourself and

Tengane Mining, you were putting up capital and you were going to get initially a 40% share of the profits from Tengane Mining's, well, Tengane Mining's profits but in its provision of the aggregate to, I think it was King Civil, the primary contractors. Is that correct?

MR SIBANYONI: No, not correct.

ADV CHASKALSON SC: It is not correct?

MR SIBANYONI: Not correct.

ADV CHASKALSON SC: You were not putting up capital?

MR SIBANYONI: I put up the capital to assist him because at that time there was no money flowing.

ADV CHASKALSON SC: Okay.

MR SIBANYONI: So then that money came back. It is not like I was buying. No, no, I was assisting the project.

ADV CHASKALSON SC: So what was the nature of your payment to him, was it a loan or was it an investment?

MR SIBANYONI: No, it is a loan.

ADV CHASKALSON SC: So it is a loan?

MR SIBANYONI: To the project.

ADV CHASKALSON SC: To the project ...[intervenes].

MR SIBANYONI: Ja.

ADV CHASKALSON SC: To the project company, Tengane Mining.

MR SIBANYONI: Yes, ja.

ADV CHASKALSON SC: So, and I understood that the

amount was 900,000.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: And so, and you say that you advanced this money when, at a point at which the profits had stopped flowing.

MR SIBANYONI: Yes, there were no profits at the time. It was a ...[indistinct].

ADV CHASKALSON SC: So you advanced the money in advance of Tengane Mining starting to earn profits?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: Okay. But my concern in that regard is why would Tengane Mining be paying you R100,000.00 on 21 July? Had you already advanced money by 21 July that it was now repaying you on 21 July?

MR SIBANYONI: No, I cannot go further in answering that, Mr Chaskalson, because you are solemnly relying on Mr Ntuli's affidavit, so ...[intervenes].

ADV CHASKALSON SC: You see, Mr Sibanyoni, I am not relying exclusively on his affidavit. I asked you, do you accept that these payments were made on those days, you said yes. If you want to change that answer, you should do it, and then I will stop pursuing this line of questioning. But at the moment, you accept that the payments in that table were made on the dates on that table, and then I need to ask you, well, how do we make sense of that first payment

of R100,000.00 in July 2021? Are you now saying it was not paid in July 2021?

MR SIBANYONI: Can I explain once more? As to the dates, and as to taking into notice that he paid this, I was not taking notes in terms of he paid this and paid this and paid this month. I take it now, as you put it to me here, that Ntuli did pay this money this month. And it become so difficult for me to move according to your line of questioning in terms of this payment, because you are solemnly relying on his affidavit. If I were to be given a chance giving you my affidavit, it was going to be a different story, because I was going to consult more about these dates of his, of Mr Ntuli.

ADV CHASKALSON SC: Well, Mr Sibanyoni, you have had the chance to give us your affidavit. You chose not to. But it is, I need to just get clarity here. Are you now saying you cannot really confirm that that R100,000.00 payment was made in July, because you do not have these details available to you?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: How long have you had the docket in the criminal case?

MR SIBANYONI: It took so long. Even after my arrest, it took so long.

ADV CHASKALSON SC: But how long has it been in your

possession?

MR SIBANYONI: I am not sure about that, but it is not that long.

ADV CHASKALSON SC: Are we talking weeks, months?

MR SIBANYONI: Ja, I can put a month, yes, before we went for a postponement.

ADV CHASKALSON SC: And have your attorneys not taken you through the principal allegations of the complainant against you?

MR SIBANYONI: No, not yet.

ADV CHASKALSON SC: Not yet.

MR SIBANYONI: Ja, not yet.

CHAIRPERSON: Were you mistaken when you said, now just after lunch, when you said that the R100,000.00 was paid to you in July of 2021?

MR SIBANYONI: Ja, I am not certain about the date. I am just taking it as it is written here, but I cannot confirm it.

CHAIRPERSON: All right.

MR SIBANYONI: Yes.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: But if I, so, I am still just searching a bit for clarity because on the one hand you are saying that the 900,000 that you advanced at some stage in this process was a loan.

MR SIBANYONI: To the project.

ADV CHASKALSON SC: To the project.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: On the other hand, you are saying that you were entitled to 40% of the profits of the project.

MR SIBANYONI: Not entitled, we agreed.

ADV CHASKALSON SC: No, after the agreement that was your entitlement, because you had an agreement, you say.

MR SIBANYONI: No, being entitled is an agreement, for me it is two different things. In fact ...[intervenes].

ADV CHASKALSON SC: I do not need to get into semantics. In terms of the agreement, Tengane had to pay you 40% of the profits.

MR SIBANYONI: Of the profit, yes.

ADV CHASKALSON SC: But that strikes me as an investment rather than a loan, that you are going to get back 40% of the profits in return for the 900,000 that you have invested in this project, is that correct? Or did it operate differently?

MR SIBANYONI: When we started operating, it was life as normal. Then for the mere fact that there was no money coming in based on the preparations towards delivering that, the overheads of Tengane Mining was suffering, and it is a thing that I had to understand as I was talking to you. Then I offered, actually he requested, I offered 900,000 to

that effect. Taking into consideration that we are partners, why can I not just assist? If the money is going to come back, why do I not assist?

ADV CHASKALSON SC: I am trying to understand the basis of the partnership, because if the original basis of the partnership was not the 900,000 that you put in, what gave you the 40%? I thought the 40% was your *quid pro quo* for the 900,000.

MR SIBANYONI: From the beginning, Ntuli wanted to see me and make business with me so that he qualifies for the 30% content at Kwaggafontein. There was no way he could qualify if I was not party to him. So therefore, my meeting with him, in order to, was for him, for me to make sure that he qualifies if I, the partner to him, no money exchanged into that. That is why the quarry was supposed to run at the end of the day when the quarry has got a profit, in that particular profit it is a 60/40.

ADV CHASKALSON SC: So your 40% was essentially for giving him your local content?

MR SIBANYONI: Correct, ja.

ADV CHASKALSON SC: But why would he choose you for local content as opposed to anybody else in Kwaggafontein? I mean, on your reasoning, anyone in Kwaggafontein who stepped forward could have met that requirement.

MR SIBANYONI: I do not know.

ADV CHASKALSON SC: We will have to ask him.

MR SIBANYONI: Ja, ask him, yes.

ADV BALOYI SC: Maybe the question to ask while we wait to ask him is why would the people that referred him to you do so? In this paragraph 4, he says that he was told that he must come and see their boss after he had spoken to Mr Msiza. He then has this meeting in June, and then that is how he ends up coming to meet you. Then the question is still valid, why would they direct him to you instead of Mr Msiza and others just doing the 30% transaction themselves?

MR SIBANYONI: Okay, in ...[intervenes].

ADV BALOYI SC: Or giving him access, in fact, because they are people from that area.

MR SIBANYONI: In me accepting Mr Ntuli to come see me, the phone call I got at the time, we have got this gentleman from Middelburg, he wants to see you. That is why they drove from where they were coming from into my residence. Him arriving at my residence, in his opening remarks, all he said, I am happy that at the end of the day I happen to meet you, I wanted to meet you. This is the business opportunity I have got that I think we can work together.

ADV BALOYI SC: And this person that calls you, who is that person and what is their relationship to you?

MR SIBANYONI: It is these other guys that we had a meeting with.

ADV BALOYI SC: There is quite a number of people.

MR SIBANYONI: We were four ...[intervenes].

ADV BALOYI SC: There is also Mr Sindane, there is Msiza ...[intervenes].

MR SIBANYONI: No, no.

ADV BALOYI SC: There is ...[intervenes].

MR SIBANYONI: Mr Makaya Msiza. Ja, Mr Makaya Msiza.

ADV BALOYI SC: The CLO.

MR SIBANYONI: Yes.

ADV BALOYI SC: He is the one that called you?

MR SIBANYONI: Who called me that there is this gentleman who wants to see me.

ADV BALOYI SC: And why would he call you and not anybody else to introduce Mr Ntuli?

MR SIBANYONI: I think they have met before.

ADV BALOYI SC: Ja, what I am saying is why did he pick you? Why did Mr ...[intervenes].

MR SIBANYONI: Ntuli.

ADV BALOYI SC: Msiza ...[intervenes].

MR SIBANYONI: No, no.

ADV BALOYI SC: Msiza pick you?

MR SIBANYONI: It is Ntuli who picked me.

ADV BALOYI SC: Oh, so Ntuli said to Msiza, I want to

meet ...[intervenes].

MR SIBANYONI: This guy.

ADV BALOYI SC: I see.

MR SIBANYONI: Yes.

ADV BALOYI SC: Thank you.

ADV CHASKALSON SC: But there is a separate question, which is, if any local Kwaggafontein resident is really going to be able to get 40% of Tengane Mining's profits, why would Mr Mvimbi Masilela who is the Chairperson of the local business forum, and Mr Stanley Msiza not say to Dr Ntuli, well, bring us on board for 40%? Why would they essentially come to you to take a 40% opportunity that, on what you are telling us, was equally open to them?

MR SIBANYONI: That is, I am getting a call that, from Mr Msiza that there is this guy who wants to meet you. I am getting a call. Okay, who is the guy, do you know him? No, we met up before. I think they have met before, somewhere, somewhere. Okay, then if that is the case, come with him, because if Ntuli was alone and wanted to see me, I was not going to allow him.

ADV CHASKALSON SC: Yes, but I am asking a slightly different question, which is, why would Mr Stanley Msiza and Mr Mvimbi Masilela tell Dr Ntuli to come and offer you 40%, when on the reasoning you are putting forward, they could just as easily have met his need by taking the 40%

themselves.

MR SIBANYONI: Ntuli's opening remarks when I met him, Mr Sibanyoni, I am happy, I am glad that finally I met, I wanted to. So I take it that that is a directive that he gave to them. I cannot think over and above that, as to why they could not give. Maybe he insisted that he wants to meet Mr Sibanyoni.

ADV CHASKALSON SC: Well, that is not his version. His version is that they told him there is a local structure and a national structure, and that you and Mr Sindane are the national structure. They are just the local structure, that is why they had to come to see you. That is what his version is.

MR SIBANYONI: Ja, I never mentioned any national structure. I never mentioned that.

ADV CHASKALSON SC: But as far as you are concerned, you were offering him the opportunity of meeting the requirements of the 30% local content by taking you on as a 40% partner.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: We have been through the payments. Do you accept broadly that these amounts were paid to you, even if you do not, if you cannot give me confirmation of the exact dates?

MR SIBANYONI: Correct.

ADV CHASKALSON SC: And these amounts, as I understand it, were the 40% profit share.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: And what happened to the 900,000 loan, how is that going to be repaid?

MR SIBANYONI: He paid it back. On my statements they are showing.

ADV CHASKALSON SC: So that is ...[intervenes].

MR SIBANYONI: When we started paying back.

ADV CHASKALSON SC: Is that separate from the ...[intervenes].

MR SIBANYONI: Ja, separate from this, ja.

ADV CHASKALSON SC: Separate from these?

MR SIBANYONI: Yes, but they are showing, clearly so.

ADV CHASKALSON SC: I see. And were there any written agreements, either in relation to the loan or in relation to the 40% shareholding?

MR SIBANYONI: No, no, it was a gentleman's agreement.

ADV CHASKALSON SC: You see, one of the things that worries me in relation to the gentleman's agreement, leave aside the loan, I mean, you can do a handshake on a loan if you trust someone, it is not usual in business, but I accept it happens, but the purpose of this 40% shareholding, as I understand it, is to qualify Tengane Mining for local content.

MR SIBANYONI: It is a profit sharing.

ADV CHASKALSON SC: Okay, the 40% profit sharing.

MR SIBANYONI: Yes, ja.

ADV CHASKALSON SC: It is to qualify Tengane for local content in relation to its principal contract, or to the principal contractor, who is King Civils at this stage. Is that right?

MR SIBANYONI: No, it is not.

ADV CHASKALSON SC: Well, what is it for then?

MR SIBANYONI: Me and Mr Tengane, we are partners, as per his request, for the mere fact that, as he is directly involved on everyday matters, when we do counting and profits, all those things, I am entitled to 40% of the profit. So, we cannot play with words as to the shareholding. No, no, no, we are talking only 40% profit, that is why sometimes it is 100, sometimes it is R50,000.00.

ADV CHASKALSON SC: I will take back shareholding. I do not want to get diverted into a debate over words, but the point of this arrangement ...[intervenes].

MR SIBANYONI: Yes.

ADV CHASKALSON SC: As far as you have explained it to us, is so that Tengane is now eligible to be a subcontractor to King Civils because it can meet the 30% local content requirement, because your 40% interest or profit share will give it the local flavour that it needs to be a supplier to King

Civil. Is that correct?

MR SIBANYONI: Okay.

ADV CHASKALSON SC: Now, King Civils, in terms of its contract with Sanral, will have to account at some stage for its local content. Sanral will say to it, if there is this requirement, you need to show me that you are providing either subcontracting or in some ways giving 30% of the value of this contract locally.

MR SIBANYONI: Correct.

ADV CHASKALSON SC: Now, how can it account to Sanral if there is not a document that reflects your interest in Tengane? How can King Civil claim Tengane for its 30% requirement if there is not a document that somehow reflects your interest in Tengane?

MR SIBANYONI: I do not know how they are doing it. The CIPC document of Tengane reflects Mr Ntuli. If he is talking under that document, he knows that his other underlying partner it is myself. So as he presents to King Civil the document of Tengane, I am not there, so I do not know as to, they wanted me to be on the CIPC before then so that they, so that when King Civil give final or give evidence to the 30% local content, my name must be there. The fact ...[intervenes].

ADV CHASKALSON SC: Well, your name must be somewhere in a written recordal, I would have thought, for

King Civil to know that when Sanral comes to them and says, where is this 30%, they can say, well, we have given this amount of money to Tengane and Tengane qualifies, because Mr Sibanyoni has a 40% profit share there and we can show that because here are all of these documents that reflect that. But there are no such documents as I understand. So how would King Civil ever account for its 30% obligation that you say is the platform on which your relationship with Tengane is built?

MR SIBANYONI: Ja, I do not know how did they do that.

ADV CHASKALSON SC: Do you not think it would be extremely difficult for them to account for 30% if there is no documentary evidence?

MR SIBANYONI: I do not know.

ADV CHASKALSON SC: Have you done business with organs of state before who have to account for a 30% local share or a 90% subcontracting share?

MR SIBANYONI: No, I have never.

ADV CHASKALSON SC: You have never?

MR SIBANYONI: No.

ADV CHASKALSON SC: You see, what I want to put to you is that if the local share was a requirement of this contract, either under regulation or under the terms of the tender with Sanral, there would have to be some documentary evidence of your interest in Tengane for that

interest to have any value to Tengane and King Civil in relation to that 30%. Without some documentary record, they would never be able to get any value out of it because they would never be able to prove it if it was ever called upon to be proven. What is your response to that?

MR SIBANYONI: It does not lie with me. Where I am seated, my relationship is with Mr Ntuli, giving him the local content. That is why I am involved. Going to King Civil and do those necessary documents is not, it does not lie with me. And I trusted Mr Ntuli as an elderly person that what we are agreeing upon will go that way. So when we are here now, at the same time, everything changes. For me, it is a different story.

ADV CHASKALSON SC: You see, I can understand that there may have been a relationship of trust between you and Mr Ntuli, but the purpose of this transaction, according to what you are telling us, is to meet a requirement that ultimately needs to be verified by Sanral, and if that is the case, it stands to reason that the arrangements that give effect to that requirement would have to be embodied in documentary form that could be provided to Sanral. But in this case, there are no documents. Am I correct, there are no documents?

MR SIBANYONI: I do not know how they do it, Mr Chaskalson. I cannot go to some other matters that I am

not interested on. My interest is solemnly with Mr Ntuli. There is an agreement. There is a profit sharing. I am receiving that. What else should I do? There is nothing I can do over and above that.

ADV CHASKALSON SC: Yes, what I am putting to you is that the absence of documentary proof or documentary evidence would make this arrangement of very little value to Mr Ntuli, of very little value to King Civil, and that if the arrangement was as you say it was, and for the purpose that you say it was, I would expect to see some documentary evidence of it, because they are the parties that would need that documentary evidence. Can you comment on that?

MR SIBANYONI: Then that is you. It is not me.

ADV CHASKALSON SC: I see.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: Can I take you to another issue relating to this contract.

ADV BALOYI SC: Maybe before ...[intervenes].

MR SIBANYONI: Which page?

ADV BALOYI SC: Maybe before you do that, let me ask you a question. Mr Sibanyoni, what did you bring to this transaction in return for the 40%? What was your offering when you had a discussion with Mr Ntuli?

MR SIBANYONI: The local content.

ADV BALOYI SC: What does that mean? What exactly would you do?

MR SIBANYONI: Okay. Ja, there was no way he could qualify to deliver the products of that quarry if he does not have the local content.

ADV BALOYI SC: When you say there was no way he could qualify, what does that mean? Are you, there is a difference between qualifying being approved by Civil ...[intervenes].

MR SIBANYONI: Yes.

ADV BALOYI SC: I think it is called Civil Kings or something.

MR SIBANYONI: Correct.

ADV BALOYI SC: Yes, there is one, that possibility. The other is he could not do the work without your involvement. Which one is it?

MR SIBANYONI: Ja, he was never going to qualify to supply King Civil.

ADV BALOYI SC: According to who?

MR SIBANYONI: According to the 30% content.

ADV BALOYI SC: But you are not sitting in King Civil, so you do not get to make that decision. You are not in Sanral. You do not get to make that decision. How do you come in to say without your involvement he would not have qualified? On what basis do you say that?

MR SIBANYONI: Yes, we have got a PLO that is called PLO or CLO, Community Licensing Officer.

ADV BALOYI SC: Yes.

MR SIBANYONI: Ja, if you submit your tender, if you submit your tender documents, first thing for the 30% it should talk local content. First thing it should talk that. If it is not, it does not even go to, you cannot even qualify to go for a bid.

ADV BALOYI SC: Yes.

MR SIBANYONI: Yes.

ADV BALOYI SC: So are you saying to us that when you met Mr Ntuli and had this conversation, he had not yet contracted with King Civils?

MR SIBANYONI: Yes, correct.

ADV BALOYI SC: He had not yet contracted.

MR SIBANYONI: Correct.

ADV BALOYI SC: And when he went to contract with them, he had you, your name in there to say, I do have local. Is that what you are saying, Mr Sibanyoni?

MR SIBANYONI: In the meeting whereby there was a CLO, as you can see, we are four. There is a CLO there. It is me and Mr Ntuli and the Chairman. I gave my weight that if, for the mere fact that Ntuli is partnering with me, he qualifies for local content.

ADV BALOYI SC: Because he is partnering with you.

MR SIBANYONI: Because he is partnering with me.

ADV BALOYI SC: And the partnership in this case is what? That is exactly what I am trying to understand.

MR SIBANYONI: Yes.

ADV BALOYI SC: Because, like Mr Chaskalson, I had understood your R900,000.00 to be your contribution to the business, but as you have testified, that comes much later.

MR SIBANYONI: Correct.

ADV BALOYI SC: It is not something that you agreed at the beginning. So I am interested, at the beginning, when you are in this meeting, what do you say is your contribution that qualifies Mr Ntuli's company to be awarded business by Civil Kings?

MR SIBANYONI: Him partnering with me qualifies that as number one. Then, as to the nitty-gritties of running the company, the expertise will lie with him.

ADV BALOYI SC: So it is really just having your name.

MR SIBANYONI: Yes.

ADV BALOYI SC: That is all it is.

MR SIBANYONI: You are correct.

ADV BALOYI SC: Which, on the face of it, seems like some kind of fronting, if that is what it was, that you bring nothing to the transaction. You just go, he goes in and says, I am with Mr Sibanyoni in this.

MR SIBANYONI: You are correct, ja.

ADV BALOYI SC: But Mr Sibanyoni does absolutely nothing except to benefit from the profits. Is that what you say the structure was?

MR SIBANYONI: Correct, yes. But do not run away from the local content, because, for me, that local content is the fundamental issue in this matter.

ADV BALOYI SC: As I understand it, and I may be wrong because I do not do these kinds of transactions, local content means the locals must also provide a service.

MR SIBANYONI: Yes.

ADV BALOYI SC: It is not simply giving the money. That is why my question to you, what is it, as the local partner, what is it, do you bring to this transaction for it to be a legitimate transaction which has local content? And I have not heard that so far, other than you had a conversation and then you were going to get 40%. It does not sound like what that 30% local content requirement is about and that it is being satisfied.

MR SIBANYONI: You are right, Commissioner, but that is how verbal agreement goes.

ADV BALOYI SC: That is how it goes. That is what was agreed?

MR SIBANYONI: Yes.

ADV BALOYI SC: Okay, that is fine. Let me ask a different question. The agreement that you will get 40%, we

know that he pays from 100,000, different amounts. How was that R100,000.00 payment determined? There must have been an agreement that he will pay R100,000.00 per period, whatever that period is, and that is my question, how was it arrived at and how is it going to be payable in terms of periods?

MR SIBANYONI: Okay. After that agreement, for the method that we agreed, I relied on him if there was more profit, hence, it is between 50 and 100.

ADV BALOYI SC: So your discussion and agreement on, is an agreement that you make on day one, that you meet with him the first time?

MR SIBANYONI: Correct.

ADV BALOYI SC: Is that what happens?

MR SIBANYONI: Ja.

ADV BALOYI SC: And in that ...[intervenes].

MR SIBANYONI: Let me just rectify it here, Commissioner.

ADV BALOYI SC: Yes.

MR SIBANYONI: Even if it was not on that first day, but as things were just going, because we met more than 10 times, and that is the nature of when you have got a business partner in a certain business. So as we are engaging, things are changing. At the end, after those challenges that we had, at the end we agreed on the 60/40.

ADV BALOYI SC: Yes. I am at this point discussing how

you arrived at the amount. So I must, I think we must accept that by the time he makes the first payment of R100,000.00 that you accept was made, by that point there is an agreement that he will pay R100,000.00.

MR SIBANYONI: Yes.

ADV BALOYI SC: Was that an agreement that that will be his periodic payments?

MR SIBANYONI: Yes.

ADV BALOYI SC: You expected him to pay periodically these amounts?

MR SIBANYONI: Correct, ja.

ADV BALOYI SC: The first question is, on what periods, how periodic were these payments to be made? Was it a monthly payment?

MR SIBANYONI: Every month, ja.

ADV BALOYI SC: He would make it every month. And who determined it would be R100,000.00?

MR SIBANYONI: The discretion lies with him.

ADV BALOYI SC: Yes.

MR SIBANYONI: Between 50, not less than 50, not more than 100.

ADV BALOYI SC: Yes. And how did you determine how 100,000 relates to the profit that he is going to make? When you agreed the R100,000.00, did he, did you see the contract? Did you see the flow of funds, how it was going

to be projected and then you satisfied yourself that the 100,000 is a whatever percentage reflection of the profits? How do you get that?

MR SIBANYONI: Ja, I did not go much deeper. As he was explaining, to cut the matter short, we ended up saying, if there is more money, let it not be more than 100. But I was relying on his version of how to run the quarry. Then if it is less, it should never be less than 50. And we never questioned that.

ADV BALOYI SC: Ja. Did you at any point have sight of the books to see whether you are getting your fair share of the 40% or not?

MR SIBANYONI: No, I did not.

ADV BALOYI SC: You never did?

MR SIBANYONI: No, I did not.

ADV BALOYI SC: Okay, thank you.

ADV CHASKALSON SC: Sir, there are two other statements in the docket that provide a different reason for the payments. If I can take you first to page 329, this is a statement from another director of Tengane, 329.

MR SIBANYONI: Thank you.

ADV CHASKALSON SC: And this director is Bathabile Ntuli, it is not Tengane Ntuli. He is a 56-year-old man. He says, he agrees with the timeline, and then in the ...[intervenes].

ADV KHUMALO SC: Mr Chaskalson, it is a Johanna.

ADV CHASKALSON SC: I thought it was Johanna, but ...[intervenes].

ADV KHUMALO SC: That must be an error.

ADV CHASKALSON SC: It may be Johanna who is the error, and it may be Johannes. I initially thought it was a female, and anyway ...[intervenes].

ADV KHUMALO SC: Is it. Okay.

ADV CHASKALSON SC: Because it says I am a male, aged 56 years, with ID number whatever. Look, whether it is a male or a female, the deponent says, the third paragraph:

> "The timeline of the relevant event is as stated by Dr Tengane Thomas Ntuli in his affidavit. I am also aware there were WhatsApp messages sent to Dr Tengane Thomas Ntuli demanding meetings and payments."

And then:

> "All the payments which were done to Mr Joe Sibanyoni and his team by Tengane Mining (Pty) Ltd were made under duress, as we were fearing for our life, taking into account the bad operation history of Mr Sibanyoni in Kwaggafontein.

It was normal practice that if you do not cooperate with his demands, your life will be in danger."

What is your response to that?

MR SIBANYONI: Is this a male or a female?

ADV CHASKALSON SC: Yes.

MR SIBANYONI: Is it a male or a female?

ADV CHASKALSON SC: Well, I do not know if it is a male or a female. It says it is a male.

MR SIBANYONI: No, but the name Bathabile cannot be a man.

ADV CHASKALSON SC: Well, it may well be a female. It is, the affidavit is then ...[intervenes].

MR SIBANYONI: It is wrong.

ADV CHASKALSON SC: It is wrong in respect of describing the sex.

MR SIBANYONI: We are relying something that is wrong.

ADV CHASKALSON SC: No, but the content of the affidavit remains. The gender of the deponent is not really germane to what the deponent is saying.

MR SIBANYONI: If, if ...[indistinct] if it is a female, then I will take it that that is the wife of Mr Ntuli, if it is a female.

ADV CHASKALSON SC: And then?

MR SIBANYONI: Ja, so they corroborate with whatever they are trying to do, unless otherwise proven. But if it is a

female, that is Mr Ntuli's wife.

ADV CHASKALSON SC: So you would deny that any of their payments were made under duress?

MR SIBANYONI: Yes, I would deny it.

ADV CHASKALSON SC: Can we then go to another statement of Dr Ntuli. This one is on page 234 and this ...[intervenes].

MR SIBANYONI: Hold on ...[indistinct]. Ja.

ADV CHASKALSON SC: There you see in paragraph 2 of that statement, Dr Ntuli says:

> "The security company was imposed to me by Joe Sibanyoni since the inception of the project after my own security were beaten on site and one of the security guards was tied by cable and my weighbridge cable were cut off. This was a process of putting pressure on me to hire the security company of his nephew. The effective date for their security services was 1 February 2022. Payments were done directly to Mnyama Security."

Do you know Mnyama Security?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: And ...[intervenes].

MR SIBANYONI: I just know it. Mnyama is the same

cousin, my nephew, Mandla Mtsweni.

ADV CHASKALSON SC: This is Mandla Mtsweni's company.

MR SIBANYONI: Yes, sir.

ADV CHASKALSON SC: Did you know that before Mandla Mtsweni's company was engaged on site, Dr Tengane's security were beaten up on site and one of the guards was tied with cable ties?

MR SIBANYONI: No.

ADV CHASKALSON SC: Did you know that the weighbridge cable was cut off?

MR SIBANYONI: No, not.

ADV CHASKALSON SC: But he ended up with Mr, with your nephew, Mandla Mtsweni's security company.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: Can we then go to page 352, which is a message from Mr Sindane to Dr Tengane, Dr Ntuli. Do you have it?

MR SIBANYONI: Yes, I have got it. 351?

ADV CHASKALSON SC: 352 is the one that I am looking at.

MR SIBANYONI: Okay.

ADV CHASKALSON SC: It is 2 July 2024, and it reads as follows:

"Good day, bab'Ntuli. I am sad and

disappointed to have to write another message to you to chase for payment. You will remember we have been very lenient towards you regarding the deal that you have and our share in it. We had initially agreed on a 60/40 split between you and the President. This was later reviewed and reduced to a more manageable amount for you. You used to pay us R100 000, but I am now left confused as to why you have reduced the payment yet again. This is not fair at all. Your operation continues to run, yet we are not taken care of in an equitable way. It is as if you are not recognizing our contribution to the project. I demand a response within 48 hours detailing why the operation should not be stopped so that you can come and account."

You see that WhatsApp?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: Was this WhatsApp shared with you before it was sent?

MR SIBANYONI: I cannot recall.

ADV CHASKALSON SC: Let me, let us look at the

response, and maybe you can come back to that answer about whether it was shared or not. The response is:

"Good evening, Bananas."

I think it should mean Bafanas.

"In response to WhatsApp regarding the arrangements as noted, however, the reduction was due to the slow performance of King Civil, which resulted on the income received. During the poor performance of King Civil, I have tried by all means to pay from the little money that I was getting, to pay some money to you, which is fair and the full report and explanation was given."

Over the page.

"For the payment of June ..."

The first paragraph we have just read.

"For the payment of June ..." [intervenes].

MR SIBANYONI: Where are we now?

ADV CHASKALSON SC: Over the page on page 353.

MR SIBANYONI: Okay.

ADV CHASKALSON SC: -:

"For the payment of June, it will be full, R100 000, because the operations for

June have run smoothly and I also expecting July onwards to run smoothly. The slowness of the productions, which was caused by testing of G5 ..."

I think that is a type of gravel.

"... which takes some time to be approved by Sanral inspectors, which resulted to the slow movement of the product to site. This information can be confirmed."

And then on 3 July, Mr Sindane responds:

"Good morning, Mr Ntuli. Feedback is noted. I am hoping you will stick to your promise. Please clarify on when we can expect the 100 000 payment for June."

And the answer is:

"Message noted, June payment next week, Thursday."

Now, if you go to page 705 of file 2, you will see that the very first WhatsApp, in the WhatsApp chains between yourself and Mr Sindane, is that response of Dr Ntuli to Mr Sindane, which Mr Sindane forwarded to you on the 7th, sorry, on the 3rd of July 2024.

"Good evening, Bananas ..."

And on and on it goes. Unfortunately, the

WhatsApp's do not start from before then, but would it be fair to assume that if he forwarded the response from Dr Ntuli, he also would have forwarded the original letter that he sent the day previously to Dr Ntuli on 2 July? Do you think we can infer that, or can you just not remember whether you saw that?

MR SIBANYONI: Ja, I cannot remember.

ADV CHASKALSON SC: Well, let us look at that message on 2 July. Go back to page 352, file 1. Well, Mr Sindane writes to Dr Ntuli complaining about the failure to make a payment for a couple of months. Then he says:

> "This is not fair at all. Your operation continues to run, yet we are not taken care of in an equitable way."

It says:

> "If you are not recognizing our contribution to the project."

What was the contribution that Mr Sindane thought that Dr Ntuli should be recognizing? What was that contribution?

MR SIBANYONI: I think he was trying to explain maybe the local content. I think so.

ADV CHASKALSON SC: Just the local content?

MR SIBANYONI: Yes, sir.

ADV CHASKALSON SC: Then he says:

> "I demand a response within 48 hours detailing why the operation should not be stopped so that you can come and account."

So he is threatening to stop the operation.

MR SIBANYONI: Okay.

ADV CHASKALSON SC: Did he have your authority to threaten to stop the operation?

MR SIBANYONI: No. And at no stage was Mr Ntuli's operation stopped, because if you stop Mr Ntuli, you are stopping me and I will never allow that.

ADV CHASKALSON SC: Have you taken up with Mr Sindane why he made a threat to stop the operation without your authority?

MR SIBANYONI: Not really, but I engaged him and my matter is clear. If I give a directive as to there is, irrespective you can send a lot of messages that you now want to send to Mr Ntuli, but the bottom line is this operation will never stop in my presence, and it did not up until we finished.

ADV CHASKALSON SC: No, but Mr Sindane is threatening to step in and stop it.

MR SIBANYONI: Ja, irrespective, that is why I am saying, irrespective of the message that he sent, Mr Ntuli's operation will never stop.

ADV CHASKALSON SC: No, I do understand that, but the threat was made, was it not?

MR SIBANYONI: Okay, then Mr Bafana will answer it. It is not my threat for me to answer it.

ADV CHASKALSON SC: Yes, it is his, it is a threat that he made that he must answer for.

MR SIBANYONI: Yes, sir.

ADV CHASKALSON SC: Now, if you had a profit share, if that was the nature of the arrangement, stopping the operation would be counterproductive, would it not?

MR SIBANYONI: Would not?

ADV CHASKALSON SC: Would be counterproductive, because if the operation stops ...[intervenes].

MR SIBANYONI: Yes.

ADV CHASKALSON SC: It stops making profit, and then you do not get your interest in the operation.

MR SIBANYONI: Ja, that is why I say it was never stopped.

ADV CHASKALSON SC: Yes, but why would Mr Sindane make that sort of threat if he knew that there was a profit share, and that what he would be doing by executing that sort of threat would be prejudicing you?

MR SIBANYONI: That is why it was never stopped, and as to why did he write it this way, it is not myself.

ADV CHASKALSON SC: We have seen evidence that both

this letter and the follow-up letters were actually drafted by Mr Qwabe of Taxi Choice. Do you know him?

MR SIBANYONI: Yes, I know him.

ADV CHASKALSON SC: What was his relationship with this project?

MR SIBANYONI: Not at all.

ADV CHASKALSON SC: He had no relationship with this?

MR SIBANYONI: No, no.

ADV CHASKALSON SC: Because we have seen that before Mr Sindane sent this letter, he got it in draft form from Mr Qwabe. Were you aware of that?

MR SIBANYONI: No.

ADV CHASKALSON SC: No. And did Taxi Choice have anything to do with the 40% share?

MR SIBANYONI: No.

ADV CHASKALSON SC: Was this the first time you learnt that Mr ...[intervenes].

MR SIBANYONI: Yes.

ADV CHASKALSON SC: [Indistinct]...

MR SIBANYONI: Ja.

ADV CHASKALSON SC: What is your response to that?

MR SIBANYONI: No comment.

ADV CHASKALSON SC: No comment?

MR SIBANYONI: Ja, no comment.

ADV CHASKALSON SC: Did he have any business being

involved here?

MR SIBANYONI: How so?

ADV CHASKALSON SC: I mean, was it appropriate for him to start writing threatening letters for Mr Sindane to send through to Dr Ntuli?

MR SIBANYONI: No, I cannot comment on that.

ADV CHASKALSON SC: You cannot comment on that?

MR SIBANYONI: No, I cannot.

ADV KHUMALO SC: Before you leave this WhatsApp, Mr Chaskalson. Mr Sibanyoni, Mr Sindane refers to the initial arrangement, which was a 60/40 split, and then he says this was later reviewed and reduced to a more manageable amount, and I am assuming that amount is 100,000 a month?

MR SIBANYONI: Yes.

ADV KHUMALO SC: Who made that arrangement?

MR SIBANYONI: It is myself.

ADV KHUMALO SC: Was it you?

MR SIBANYONI: Yes.

ADV KHUMALO SC: So it was no longer a profit share, it was a payment of fixed amounts every month?

MR SIBANYONI: It was just to make things easier so that it is not us going too deep into the books, whether there is profit, whether there is loss, but we ended up agreeing, as business partners you will find a way of agreeing so that we

do not sit for the books every month, let us open the books.

ADV KHUMALO SC: And was it on your instruction that Mr Sindane was writing these WhatsApp's to Mr Ntuli?

MR SIBANYONI: No. It cannot be.

ADV KHUMALO SC: So he was acting on his own?

MR SIBANYONI: Ja, me and Mr Ntuli, we had a very good relationship. At no point I ever sent him any threatening message.

ADV KHUMALO SC: No, no, I am asking about the WhatsApp's themselves.

MR SIBANYONI: No.

ADV KHUMALO SC: On whose instruction was Mr Sindane writing this WhatsApp to Mr Ntuli?

MR SIBANYONI: No, it was not my instruction.

ADV KHUMALO SC: So he was interfering in your business relationship with Mr Ntuli?

MR SIBANYONI: In my space, yes.

ADV KHUMALO SC: Yes, and then the payments were to your transport company. Is it a (Pty) Ltd or a CC?

MR SIBANYONI: It is a CC.

ADV KHUMALO SC: And how did you reflect those payments in your transport company's books?

MR SIBANYONI: How so?

ADV KHUMALO SC: Yes, in your records, what did you reflect them as, as they were coming into the transport

company?

MR SIBANYONI: As an income.

ADV KHUMALO SC: Income to the transport company?

MR SIBANYONI: Yes.

ADV KHUMALO SC: And what was the transport company doing in relation to this project?

MR SIBANYONI: No, the company on its own was not doing anything, but I referred them as an income to my business.

ADV KHUMALO SC: To the transport company?

MR SIBANYONI: Yes, ja.

ADV KHUMALO SC: And when did it stop?

MR SIBANYONI: It stopped 2024. I am not sure about the date, but towards the end of the year when the project was finished. It did not stop because Mr Ntuli stopped. We finished the project.

ADV KHUMALO SC: Because the last payment we have on 469 is on 8 November 2025.

MR SIBANYONI: Okay, that is fine.

ADV KHUMALO SC: And the one before that was on 6 November 2025. I am assuming it is one of the two payments that was reversed, but it is not both of them.

MR SIBANYONI: Okay, well, yes, what happened there, the account was closed at the time.

ADV KHUMALO SC: Yes.

MR SIBANYONI: It was reversed based on that.

ADV KHUMALO SC: Did he continue paying to your private account after this account was closed?

MR SIBANYONI: No, I do not think he did, because that was the last payment of the project when the project came to an end.

ADV KHUMALO SC: So the project stopped?

MR SIBANYONI: It came to an end, yes.

ADV KHUMALO SC: Okay, thank you.

ADV CHASKALSON SC: If I can pick up there, Mr Sibanyoni, because it seems to me that part of the confusion is that there were two separate projects. The first one was King Civil. The second one was Edwin Construction. Does that ring true to you?

MR SIBANYONI: No.

ADV CHASKALSON SC: Because if you see, if you go to page 456, file 1, you will see that is a resolution authorizing a director of Edwin Construction to conclude a surface use agreement with Tengane Mining. And if you go up to page 443, sorry, and that resolution is May 2025. That resolution, if you go up to, sorry, 441, you will see a contract between Tengane Mining and Edwin Construction, which was concluded pursuant to that authorization, we assume.

MR SIBANYONI: Okay.

ADV CHASKALSON SC: Now, that authorization is May 2025. If we go to page 364, we will see a WhatsApp that was sent to you by Dr Ntuli on 23 June 2025, and it says:

> "Morning, President Malambula. As promised, I have made commitment that I will come and brief you regarding the current development after we are done with our own logistic matters of the project. Kindly proposing a meeting with you on the two possible dates if it suits your diary. The suggested dates is the following ..."

And he gives dates in June. Do you recall receiving that WhatsApp?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: And what was he going to brief you about?

MR SIBANYONI: I cannot be quite certain because, as I have already indicated, me and Mr Ntuli, we met more than many times. So he will request a meeting to give me an update, as you can read here, so that I understand as to what is happening now. So this did not materialize.

ADV CHASKALSON SC: Let me take you to the next development.

ADV BALOYI SC: Mr Chaskalson, are you done with 352?

ADV CHASKALSON SC: Well, it is linked to 352.

ADV BALOYI SC: You are still doing the topic, all right.

MR SIBANYONI: So we go to page?

ADV CHASKALSON SC: If you can go to page 716, file 2.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: So just to get the chronology straight while you are going to file 2, the authority for the contract between Edwin Construction and Tengane Mining was 27 May 2025. The WhatsApp to say I want to brief you on current developments was 23 June 2025. And we are now 9 July - sorry, I have got my chronology wrong. I have got my chronology wrong. Forget the chronology, but I still want to go to this page. Do you have 7, in fact, start at 716.

MR SIBANYONI: Yes, I am there.

ADV CHASKALSON SC: At the foot of page 716, 9 July 2024, you send a message to Mr Sindane saying:

"Your guys are here, Baba."

He says:

"Which one now?"

On 717, over the page. And you say:

"Edwin Construction."

Now, what were you meeting Edwin Construction about in July 2024.

MR SIBANYONI: Ja, my message says your guys are here,

not my guys are here. Those were his guys.

ADV CHASKALSON SC: So you are not going to meet Edwin Construction.

MR SIBANYONI: No.

ADV CHASKALSON SC: You are just telling him Edwin Construction have come to meet you.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: And you do not know why Edwin Construction came to meet.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: And where had Edwin Construction come to meet?

MR SIBANYONI: Where?

ADV CHASKALSON SC: Where, yes.

MR SIBANYONI: Centurion.

ADV CHASKALSON SC: Centurion. So Edwin Construction arrived at your premises looking for Mr Sindane, essentially.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: If we now go back to page 480, Dr Tengane's original affidavit ...[intervenes].

ADV BALOYI SC: Maybe before you do that, let me ask my question. At that page 352 still in file 1, Mr Sibanyoni, that message between Mr Sindane and Mr Ntuli.

MR SIBANYONI: Okay.

ADV BALOYI SC: 352. What was the nature of Mr Sindane's involvement in this transaction that you and Mr Ntuli have of the 60/40 split?

MR SIBANYONI: Ja, the nature of this transaction, Mr Sindane used to benefit from it through me.

ADV BALOYI SC: Just explain that, how?

MR SIBANYONI: The nature of this transaction, he used to benefit through me about this transaction.

ADV BALOYI SC: Ja, what does it mean?

MR SIBANYONI: Like when ...[intervenes].

ADV BALOYI SC: What does it mean he used to benefit ...[intervenes].

MR SIBANYONI: [Indistinct]... [cross-talking] 100, maybe I will give Mr Sindane 20,000.

ADV BALOYI SC: So you were sharing with him?

MR SIBANYONI: Ja.

ADV BALOYI SC: You were partners basically?

MR SIBANYONI: Something like that.

ADV BALOYI SC: Yes.

MR SIBANYONI: Ja, but on a very little ...[indistinct] not like your 60/40, no.

ADV BALOYI SC: Ja.

MR SIBANYONI: But he used to get some money from me.

ADV BALOYI SC: And that was the understanding with Mr Ntuli as well?

MR SIBANYONI: Correct.

ADV BALOYI SC: With Dr Ntuli as well.

MR SIBANYONI: Ja.

ADV BALOYI SC: That the two of you, Sindane and you, are going to benefit.

MR SIBANYONI: Yes.

ADV BALOYI SC: And that is how we should understand 352, where he writes to Mr Ntuli, that he actually writes as part of your business arrangement.

MR SIBANYONI: Yes, ja.

ADV BALOYI SC: All right, thank you.

CHAIRPERSON: And was Mr Sindane part of the local content?

MR SIBANYONI: No, he is from home, but he was not part. I was the main guy. Ja, but ...[intervenes].

CHAIRPERSON: But in commercial or in business terms, on what basis was he getting the 20,000?

MR SIBANYONI: Ja, what I normally ...[intervenes].

CHAIRPERSON: Because you, when Commissioner Baloyi asked you about this, you say something like that. I would like in business terms to get specifics.

MR SIBANYONI: Ja, in my business dealings, more especially for things that are not written down, I would invite him to be part of that, so that he understand what I am having, so that in the near future, let us say there is no

money coming in, or we cannot determine our future, for the mere fact that maybe at some point I am no more there, he will know that for the local content that Mr Ntuli was paying, he must still continue doing that. Unlike me doing it alone, if I am no more, there is no one to substantiate that. That is how I normally do things.

CHAIRPERSON: In business terms, how would you explain that? What exactly in business terms was his involvement?

MR SIBANYONI: I cannot put it in business terms. I could say, for your proximity next to me, which I will benefit like that.

CHAIRPERSON: All right, thank you.

ADV KHUMALO SC: I think you were going there, so I am going to leave paragraph 13 of the affidavit, because it deals with this Edwin Construction issue.

ADV CHASKALSON SC: If we start at 13 rather than 14, that is where it starts, yes.

ADV KHUMALO SC: Ja.

ADV CHASKALSON SC: So if we go to page 479, there Dr Ntuli says:

> "Edwin Construction was appointed by Sanral for the continuation of the construction of the R573 Moloto Road. Edwin Construction has therefore entered into a contract with Tengane Mining for

the supply of material for an amount of R50.00 per ton, which was later amended to ...” [intervenes].

ADV KHUMALO SC: Sorry, he is not there yet. Are you there, Mr Sibanyoni?

MR SIBANYONI: Ja, 479.

ADV CHASKALSON SC: Yes, paragraph 30.

MR SIBANYONI: Yes, okay.

ADV CHASKALSON SC: -:

“Edwin Construction was appointed by Sanral for the continuation of the construction of R573 Moloto Road. Edwin Construction has therefore entered into a contract with Tengane Mining for the supply of the material for an amount of R50.00 per ton, which was later amended to R65.00 per ton. The same procedure and the same demand from the previous group with the above-mentioned extortion have applied. The first group, which consists of Mr Joe Sibanyoni and Mr Bafana Kabini, demanded an amount of R120,000.00 each month. The second group, which is led by Mr Mvimbi Masilela, the Chairperson, demanded

R15.00 for each tonnage I had delivered to Edwin Construction."

And then 14:

"During the meeting, which was held at Lombardy Business Park on 26 June 2025, was attended by the following people, Mr Mvimbi Masilela, Mr Stanley Msiza, Mr Makhaya Msiza, Dr Ngoma, and myself. I was instructed in the meeting that I needed to pay them R15.00 per ton of the material delivered to Edwin Construction, which I did not agree to. I advised them the amount of the price I have negotiated with Edwin Construction is for the operation of my company. On 7 November 2025, I received an invoice for an amount of R286,810.00 from Mr Mvimbi Masilela. This amount was calculated from the total tonnages of 19,120,6 tonnes x R15.00 per ton, which was delivered to Edwin Construction. On the same day, 7 November 2025, Mr Mvimbi Masilela phoned me with his phone number 076 ..."

And on it goes.

"... to make follow-up."

Actually, let us continue to 16, where there is a discussion of more exchanges between Mr Msiza and Dr Ntuli. Second sentence:

> "Through frustration, I told them I will meet with them. Mr Mvimbi Masilela, Mr Stanley Msiza, Mr Makhaya Msiza and Mr Ngoma on Friday, 14 November. After a second thought, I realised it is better to report the matter to the police because nobody's above the law. During the month of December 2023, I was also called by the said President demanding bonuses, and I transferred the amount of R50,000.00, which would also reflect on my bank statement with the bonus as reference."

So, leave aside Mr Mvimbi Masilela's exchanges with his group and Dr Ntuli, what is your response to paragraph 13, which says that you and Mr Sindane demanded an amount of 120,000 per month for the Edwin construction contract?

MR SIBANYONI: Where is it here?

ADV CHASKALSON SC: Paragraph 13 on page 479.

MR SIBANYONI: Okay, can you read it again?

ADV CHASKALSON SC: Sure.

MR SIBANYONI: Ja.

ADV CHASKALSON SC: -:

> "Edwin construction was appointed by Sanral for the continuation of the construction of the R573 Moloto Road. Edwin construction has therefore entered into a contract with Tengane Mining with a supply of material for an amount of R50.00 per ton, which was later amended to R65.00 per ton. The same procedure and the same demand from the previous group of the above mentioned extortion have applied. The first group, which consisted of Mr Joe Sibanyoni and Mr Bafana Kabini, demanded an amount of R120,000.00 every month."

Let us leave aside Mr Masilela, who is dealt with in the rest of the paragraph. Have you spoken to Mr Tengane and asked for an amount of 120,000 per month for his contract with Edwin construction?

MR SIBANYONI: Ja, if I do my recollection, the first contract of King Civil came to an end during the time of the month, the time of the year. Then there come again Edwin

construction. Then me and Mr Ntuli agreed again on the very same pattern that we applied on the King Civil. We agreed with that. But it was, I think, amongst our discussion, as you can see, the 120, this 120 was never, we never agreed on the 120. The continuation was simply again, it is going to be a copy and paste. It is a local content. It is 100,000, between 50 and 100,000, if I were to think about it. So there was a conversation about the Edwin Construction contract.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: But it was not for 120,000.

MR SIBANYONI: It never materialized.

ADV CHASKALSON SC: And it never materialized.

MR SIBANYONI: Ja.

ADV CHASKALSON SC: And again, that amount would be a payment for you to give Tengane local content.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: Then if we go down to paragraph 16, page 480.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: Last sentence, and I think there is an error with the year, because it is referring to 2025, not 2023.

> "During the month of December 2025, I was also called by the said President

demanding bonuses, and I transferred the amount of R50,000.00, which will also reflect on my bank statement with the bonus as reference."

Does that ring a bell?

MR SIBANYONI: Yes, it is not about demand. Between, our understanding was between December and January, these are short months whereby they close early, they open late and therefore, there is no profit that is made on those basis. So in our conversation, it will be like, much as there is no money, but we are going for Christmas, can we not have something for Christmas.

ADV CHASKALSON SC: And this 50,000 would be a sort of compromise payment because there is ...[intervenes].

MR SIBANYONI: Ja, for Christmas, ja.

ADV CHASKALSON SC: And would that relate to the Tengane contract or to the, sorry, to the Edwin contract or to the King Civil's contract, or would it just be a request to Tengane generally as a company operating in the area?

MR SIBANYONI: As a company, as Tengane in the company.

ADV CHASKALSON SC: And who were those bonuses to be paid to?

MR SIBANYONI: To myself.

ADV CHASKALSON SC: To yourself?

MR SIBANYONI: Ja. It is not a bonus. We are going to Christmas. As you know, Christmas is a demanding month. It is not a bonus. If it was a bonus, it was going to be 150.

ADV CHASKALSON SC: No, I hear that. I may be wrong. I am assuming that that date should be 2025, not 2023.

ADV KHUMALO SC: Mr Chaskalson, let us leave a question mark on that, and the reason for that is, if you look at the date of the affidavit on 481 ...[intervenes].

ADV CHASKALSON SC: It cannot be December ...[intervenes].

ADV KHUMALO SC: [Indistinct]... [cross-talking] the date is correct.

ADV CHASKALSON SC: Thank you. I take that back, sorry. So this would have been during the lifespan of the King Civil's contract?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: And what has happened in relation to Edwin Construction, has any agreement been reached in respect of Edwin Construction?

MR SIBANYONI: Between who and who?

ADV CHASKALSON SC: Between you and Dr Ntuli.

MR SIBANYONI: Yes, there is, same as King Civil.

ADV CHASKALSON SC: And have any payments been made?

MR SIBANYONI: Ja, I take it, it has been made, but I am

not quite certain, because it was at that particular time that Mr Ntuli opened a case.

ADV CHASKALSON SC: So if we go back to 479, if we look at the payments, they run through fairly regularly to September 2024, and then there is a big break to November 2025, almost more than a year. Do you see that?

MR SIBANYONI: Yes.

ADV CHASKALSON SC: Does that reflect that the King Civil's contract ended sometime after November 2024?

MR SIBANYONI: [Indistinct]...

ADV CHASKALSON SC: And that the 2025, November payment would be an Edwin Construction payment?

MR SIBANYONI: Okay.

ADV CHASKALSON SC: I am asking. I do not know ...[intervenes].

MR SIBANYONI: Ja, I will take it like that, yes.

ADV CHASKALSON SC: So I now need to take you to a related topic, but which is not involving Dr Ntuli, and can I ask you to go to page 978 on file 2. It is your chats with Mr Sindane.

MR SIBANYONI: Hold on ...[indistinct].

ADV CHASKALSON SC: 978. And there at chat number 7 is, you will see, a message that you send to Mr Sindane that reads as follows:

"LOL, I need a meeting. I have a 500

> million deal for Moloto Road. The director who got the contract wants to meet up with you."

And then over the page on 979:

> "He used to report at the farm for all his Soshanguve projects, but he now knows there is a new Sheriff in town."

Now, were these messages, messages that you wrote or that you received and forwarded to Mr Sindane?

MR SIBANYONI: I am the one who sent these messages.

ADV CHASKALSON SC: You sent the messages. Now ...[intervenes].

ADV BALOYI SC: I think you might be speaking at cross purposes. You were asked the question whether did you write this message or is this something that was forwarded to you?

MR SIBANYONI: Ja, I was asking that because I am not sure whether I wrote it or it was forwarded to me. I do not think, I do not think I am the one who wrote this message. It can be a message that was forwarded to me.

ADV CHASKALSON SC: But you then forwarded it on to Mr Sindane?

MR SIBANYONI: Yes, I think so. But it is not my wording.

ADV CHASKALSON SC: So whether you wrote it or received it, it was nonetheless sent to Mr Sindane from you.

MR SIBANYONI: Ja, I never wrote it.

ADV CHASKALSON SC: So you are sure you did not write it?

MR SIBANYONI: Yes, sir.

ADV CHASKALSON SC: Well, do you recall who did write it?

MR SIBANYONI: No ...[indistinct] write it. It is not my way of writing.

ADV CHASKALSON SC: No, no, but do you recall who did, because somebody must have sent you a message for you to forward it on.

MR SIBANYONI: Yes. Yes.

ADV KHUMALO SC: But who is the "you" referred to in the last chat on 978?

"The director who got the contract wants to meet up with you."

Who is that "you" in that chat?

MR SIBANYONI: Hence I am saying I got a forwarded message.

ADV KHUMALO SC: I accept that.

MR SIBANYONI: Yes, ja.

ADV KHUMALO SC: But who is the "you" in that chat? It could have been forwarded to you, but who is the "you" in that chat? Who did the director want to meet with?

MR SIBANYONI: I think for the mere fact that I forwarded

it to ...[indistinct] wanted to meet him, but just for me, I was never involved.

ADV KHUMALO SC: You say the director wanted to meet with Mr Sindane?

MR SIBANYONI: I think so.

ADV KHUMALO SC: But how would you know that the director wants to meet with Mr Sindane?

MR SIBANYONI: Ja, I cannot recall exactly. You know, Commissioner, you get a forwarded message and at that time, maybe it was 2025, I cannot recall exactly. But for the mere fact that I forwarded, my understanding was they want to meet him.

ADV KHUMALO SC: Mr Sibanyoni, I am prepared to accept that it was forwarded to you and you do not remember.

MR SIBANYONI: Yes.

ADV KHUMALO SC: But the content reflects that the director who got the contract wants to meet with someone.

MR SIBANYONI: Yes.

ADV KHUMALO SC: I am interested to know who that someone is. Is it you ...[intervenes].

MR SIBANYONI: No.

ADV KHUMALO SC: Or is it Mr Sindane?

MR SIBANYONI: Mr Sindane.

ADV KHUMALO SC: But why would the director want to

meet with Mr Sindane? He only gets 20% of what you get in this arrangement. So you are the big boss for the purposes of this arrangement.

MR SIBANYONI: Yes, we are talking about big numbers here. I was never involved in a 500 million.

ADV KHUMALO SC: I am not, let us take a step back.

MR SIBANYONI: Yes.

ADV KHUMALO SC: The arrangement you described earlier with Mr Ntuli ...[intervenes].

MR SIBANYONI: Yes.

ADV KHUMALO SC: It started as a 60/40 and then at some point it became a fixed amount of 100,000.

MR SIBANYONI: Ja.

ADV KHUMALO SC: And you testified here that out of that 100,000 you kept the 80 and you would give Mr Sindane the 20,000.

MR SIBANYONI: Yes.

ADV KHUMALO SC: Now proceeding from there, in any arrangement of this sort you would get the bigger share of whatever is paid for local content. So in that context why would a person who got a contract for 500 million want to meet with Mr Sindane and not you?

MR SIBANYONI: Ja, if a local contact came through me I am of a bigger amount, if a local contact came through me. [Indistinct]... came with, if maybe the local content want to

meet Mr Bafanas, the bigger share will go to him.

ADV KHUMALO SC: Are you aware of any local content that came through him?

MR SIBANYONI: No. As for, because we are here, this thing I do not think materialized, because, ja, I do not think it materialized as well.

ADV KHUMALO SC: This is a deal for Moloto Road.

MR SIBANYONI: [Indistinct]...

ADV KHUMALO SC: This is a deal for Moloto Road.

MR SIBANYONI: Yes, ja. So all I am trying to say, this particular deal never materialized.

ADV KHUMALO SC: Which deal, because ...[intervenes].

MR SIBANYONI: The one over 500 million, the one that I forwarded Mr Sindane's message to him.

ADV KHUMALO SC: But the WhatsApp says he got the contract, so he already has the contract and wants to meet with somebody.

MR SIBANYONI: Ja, but it never materialized.

ADV KHUMALO SC: The meeting never materialized?

MR SIBANYONI: Everything. Whether it is the meeting or that contact of whatever it was supposed to happen never materialized.

ADV KHUMALO SC: Okay. Thank you, Mr Chaskalson.

ADV BALOYI SC: Mr Sibanyoni, if that message, the director who got the contract wants to meet up with you and

if that you in that message is Mr Sindane, how would you have known that it was meant for Mr Sindane and not for you?

MR SIBANYONI: Ja, I think there was a phone call before the messages.

ADV BALOYI SC: From somebody?

MR SIBANYONI: Yes, ja.

ADV BALOYI SC: Whoever sent this message?

MR SIBANYONI: Correct.

ADV BALOYI SC: Then you must have some idea about who would have sent this to you. If you are able to even vaguely recall that there was a telephone call before the message was sent, you must have an idea or be able to answer to us who you had the call with ...[intervenes].

MR SIBANYONI: Yes.

ADV BALOYI SC: And that sent that message and what in fact they said to you.

MR SIBANYONI: Chair, I am saying this never materialized.

ADV BALOYI SC: I accept that.

MR SIBANYONI: No meeting happened.

ADV BALOYI SC: Yes.

MR SIBANYONI: Ja, no meeting happened. We had an opportunity or Mr Sindane was going to have an opportunity of meeting the very same person who wanted to meet with

Mr Sindane. So it never happened.

ADV BALOYI SC: I am prepared to accept for purposes of our conversation that the meeting never happened. I am asking a different question. You get that message, it says the director wants to meet with you. You tell us that you is Mr Sindane and my question is but how would you have known. Someone sends you a message, they say the director wants to meet with you, how would you know the you there is not you, but Mr Sindane? Nothing in this, nothing in this stream of WhatsApp messages tells us that this message was intended for Mr Sindane to meet with the director. Why do you say that?

MR SIBANYONI: If I have to recall properly, a phone call happened before the messages. But after the messages as to a meeting and meet this particular person never materialized.

ADV BALOYI SC: And the call was with who?

MR SIBANYONI: Ja, I do not remember very well who called but you will get that random call, hey, Mr Sibanyoni, how are you? Sharp. I am okay. There is this guy that wants to meet with you based on this and this and that.

ADV BALOYI SC: Yes, exactly.

MR SIBANYONI: Ja, you will get that call only to find that even the call you cannot recognize him or you do not know him, then it will be up to that stage when you formally meet,

then you will know oh, okay, this is Mr So and So.

ADV BALOYI SC: Yes. You see, what makes sense from what you have said is you got a call if you did and you were told there is a director who wants to meet with you.

MR SIBANYONI: Yes.

ADV BALOYI SC: That is what you were told and then it follows up with this message. That completely makes sense. There is no Mr Sindane in it. And so it is unlikely, what I am putting to you is it is unlikely that this message was, the you there refers to Mr Sindane. It was a reference to you.

MR SIBANYONI: Okay, let me rephrase it.

ADV BALOYI SC: Yes.

MR SIBANYONI: You will get a call that says Mr Sibanyoni, we want to meet so and so, yes.

ADV BALOYI SC: Why did they not send the message to Mr Sindane if that is ...[intervenes].

MR SIBANYONI: I do not know.

ADV BALOYI SC: No. No, Mr Sibanyoni.

MR SIBANYONI: It happens, Commissioner.

ADV BALOYI SC: Maybe it happens, Mr Sibanyoni ...[intervenes].

MR SIBANYONI: Ja.

ADV BALOYI SC: We are now looking at this page which has a message that tells you there is a R500 million deal to

Moloto Road. It tells you that and it says the director of the contract wants to meet up with you, and I am saying to you it is unlikely that the "you" there was, referred to Mr Sindane, especially if you did have a call with this person you would have said to the person send a message to Sindane or you would have said I got this message, they want to meet with you. This is a forwarded message. It is not your original message.

MR SIBANYONI: It is not ...[indistinct] yes.

ADV BALOYI SC: If you were saying to us this is an original message from you then it would make sense that the you there refers to somebody other than you. This is a message that comes to you and you forwarded it. Whoever sent it to you meant for it to be you that must meet. It is not true or it is not correct for you to say the you there referred to Mr Sindane. That was you.

MR SIBANYONI: Then I get you, ma'am, but then why did I forward it to him then if, if it was ...[intervenes].

ADV BALOYI SC: Because you have told us he is your business partner in these transactions. It makes complete sense. He is your partner in the King Civil transaction. You have accepted that and if, you are forwarding it because precisely for the same reason he is your partner in these transactions. So we do have an explanation why you would forward it to him. The issue that I am taking up with

you is you saying the you there referred to Mr Sindane. It just does not make sense. It does not fit in with the sequence of this correspondence.

MR SIBANYONI: I get you.

ADV BALOYI SC: All right, thank you.

MR SIBANYONI: I get you.

ADV KHUMALO SC: Mr Sibanyoni, the last word from me ...[intervenes].

MR SIBANYONI: It is just that ...[intervenes].

ADV KHUMALO SC: [Indistinct]... [cross-talking].

ADV BALOYI SC: ... finish. Do you want to finish?

MR SIBANYONI: Yes, I get what she is saying. It is just that I cannot recall properly, that is why the chronology sometimes it will go up and down, but I cannot remember clearly.

ADV BALOYI SC: All right, thank you.

ADV KHUMALO SC: I just wanted to point out my observation.

MR SIBANYONI: Okay.

ADV KHUMALO SC: And you will correct me and say that is not correct or that is correct. It seems to me that the Moloto Road contract referred to in 978 where we are now, is the same contract or transaction that Mr Chaskalson took you through when he showed you the contract and also paragraph 13 of the affidavit in file 1, page 479, because

you will see, I think maybe if they just flight it instead of you going there, what the affidavit of Mr Ntuli said is that Edwin Construction was appointed by Sanral for the continuation of the construction on R573 Moloto Road and then he refers to an attempt by you and Mr Sibanyoni to extort 120,000 a month from him. So the transaction referred to in 978 it seems to me is the same transaction that is referred to in the affidavit on 479.

MR SIBANYONI: I beg to differ, Commissioner.

ADV KHUMALO SC: Because the timeline is consistent. If you look here we are in September 2025. He refers to late 2025 in the affidavit.

ADV CHASKALSON SC: Sorry, Commissioner, it is those American dates. It is January 2025.

ADV KHUMALO SC: 2025.

MR SIBANYONI: January 2025. Let me say 2024, the first project where I was ...[indistinct] came to an end. Late 2025 that is the beginning of the new project, and with that one there was no noise about it, because as you can see the payments it tells he make one or two payments then we went to December. So this one is of the following year, if my memory serves me well here. So therefore with this one I am quite certain it did not materialize, because I cannot say there was King Civil, then there was the second one, then if the second one was this one, for the mere fact that I

agree that there is a second one that happened on two month payments, then it is the same one. But specifically this one it did not happen.

ADV KHUMALO SC: Thank you, Mr Chaskalson.

ADV CHASKALSON SC: The one chat that we have not discussed thus far is the one at the top of 979, which says:

> "He used to report at the farm for all his Soshanguve projects but he now knows there is a new Sheriff in town."

Now we know that the farm is Mr Msibi's property. You have referred to it extensively in your statement.

MR SIBANYONI: Okay.

ADV CHASKALSON SC: And you spoke to the Minister about what went on at the farm. But whoever sent this to you says that the director now knows there is a new Sheriff in town. Is the new Sheriff in town more likely to be you or Mr Sindane?

MR SIBANYONI: Commissioner, this is a forwarded message. It is not me writing to Mr Sindane. They forwarded this message as it is. And I am not a Sheriff. I am the President. So mixing me with some nasty words, for me it is like tarnishing my presidency within a bigger picture of things. I cannot accept that I am a Sheriff.

CHAIRPERSON: This is figurative, Mr Sibanyoni.

ADV CHASKALSON SC: What does the phrase "new

Sheriff in town" mean, do you know?

MR SIBANYONI: No, you cannot mix me with that, Mr Chairperson.

ADV CHASKALSON SC: I cannot?

MR SIBANYONI: You cannot mix me with those Sheriff words.

ADV CHASKALSON SC: Well, firstly it was sent to you and secondly you sent it to Mr Sindane.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: Why did you send it on to Mr Sindane if you took offence at it?

MR SIBANYONI: I do not like to mix with these particular things.

ADV CHASKALSON SC: If you did not appreciate this message that called you a new Sheriff in town, why did you send it on to Mr Sindane?

MR SIBANYONI: Let him deal with those things. I cannot involve myself in those things.

ADV CHASKALSON SC: But let us follow the message.

ADV BALOYI SC: The question is properly addressed to you, because you are the one that forwards it.

MR SIBANYONI: Yes.

ADV BALOYI SC: I think Mr Sindane may well be entitled to, if he does come to testify, as we hope he will, he may be well entitled to say, I do not know why Mr Sibanyoni sent it

to me, because it comes from you to him. So you are the one that must explain. Either you say to us that Mr Sindane was the new Sheriff in town, that is why you forwarded it to you, or you were sharing with him, you were just sharing with him how someone is describing you. It is one of the two possibilities. You were passing it on because you know him to be the Sheriff or you were showing him how someone is referring to you.

MR SIBANYONI: Ja, I can take that one of sharing.

ADV BALOYI SC: Sharing with him how someone is referring to you?

MR SIBANYONI: Yes, ja.

ADV BALOYI SC: Okay, thank you.

ADV KHUMALO SC: Did you understand the reference to Sheriff to be a reference to you?

MR SIBANYONI: No.

ADV KHUMALO SC: Who did you understand it to be a reference to?

MR SIBANYONI: People write a lot of things about titles you know, but I will not take a title that can do harm on my name.

ADV KHUMALO SC: Who did you understand it to refer to when it says there is a new Sheriff in town? Accepting for a moment that it was not you, who did you understand it to be?

MR SIBANYONI: No, I cannot speak on their behalf. I cannot.

ADV CHASKALSON SC: Let us look at this message piece by piece. He used to report at the farm for all his Soshanguve projects. Did you understand that to mean that he used to go to Mr Msibi ...[intervenes].

MR SIBANYONI: Yes.

ADV CHASKALSON SC: In relation to all of his Soshanguve projects. Why would he go to, why would someone go to Mr Msibi in relation to Soshanguve projects?

MR SIBANYONI: I do not know.

ADV CHASKALSON SC: You do not know?

MR SIBANYONI: No, I do not know.

ADV CHASKALSON SC: You have said some fairly nasty things about Mr Msibi in your statement. You have described him as a man of extreme violence, a man who is responsible for a series of violent crimes. Is the primary reason not why someone would go to Mr Msibi for a Soshanguve project is to essentially get protection from Mr Msibi and pay tribute to Mr Msibi so that that project can go ahead?

MR SIBANYONI: Ja, you can say that, but it is not me.

ADV CHASKALSON SC: No, no, let us start with Mr Msibi.

MR SIBANYONI: Ja ...[intervenes].

ADV CHASKALSON SC: Would you say that is a fair

understanding of what that message conveys in relation to the late Mr Msibi?

MR SIBANYONI: That is your interpretation. It is not my interpretation.

ADV CHASKALSON SC: What is your interpretation? Why would someone report at the farm for a Soshanguve project?

MR SIBANYONI: My understanding will be people used to report for different reasons and I was not part of those reasons and the reporting. So I cannot take it further as to why was this now and all this. It was going to be better maybe if I happen to meet with this guy. Maybe it was going to be better.

ADV CHASKALSON SC: So if it says he used to report at the farm for all his Soshanguve projects, but he now knows there is a new Sheriff in town, he is presumably now going to report at the new Sheriff. That is what he is saying, is it not?

MR SIBANYONI: Ja, that is what he says.

ADV CHASKALSON SC: And the previous message says the director who got the contract wants to meet up with you. Somebody sent you that message.

MR SIBANYONI: Yes, forwarded that message to me.

ADV CHASKALSON SC: No, no, somebody sent it to you, ja. So somebody says the director who got the contract

wants to meet up with you and that same director used to report at the farm but now knows there is a new Sheriff in town. Is it not saying that that new director, that director regards you as the new Sheriff in town now that Mr Msibi has passed away?

MR SIBANYONI: I cannot confirm that.

ADV CHASKALSON SC: Well, how do you interpret it otherwise?

MR SIBANYONI: Ja, it was going to be easy if maybe eventually I happen to meet with him.

CHAIRPERSON: If we accept that reference to the new Sheriff in town is figurative, who is this more likely to refer to between you and Mr Sindane? Remember, you are at the top of the pile as it were. Who is it more likely to refer to, you or Mr Sindane?

MR SIBANYONI: I can say, maybe I wanted to say myself, but I cannot take titles that ...[intervenes].

CHAIRPERSON: That makes ...[intervenes].

MR SIBANYONI: Ja.

CHAIRPERSON: That makes ...[intervenes].

MR SIBANYONI: Ja, ja, so I cannot take titles that are going to tarnish my name.

CHAIRPERSON: That makes, it makes perfect sense that reference would indeed be to you. You are quite correct. Thank you.

ADV BALOYI SC: Can I just clarify, at this point, were you already President of the ...[intervenes].

MR SIBANYONI: Ja.

ADV BALOYI SC: All right, thank you.

CHAIRPERSON: What exactly is tarnishing if figuratively you are referred to as the new Sheriff in town? Why, what is tarnishing?

MR SIBANYONI: No, that word does not sit well with me. It cannot be.

CHAIRPERSON: All right, thank you.

ADV KHUMALO SC: It simply means the person who is now in power, the person who is now in charge. So it does not mean the Sheriff with badges. Are you prepared to accept if it says the person who is now in charge? So let us remove the sheriff title, the person who is now in charge.

MR SIBANYONI: Commissioner, you know, after I took the presidency of the organization, I have made it clear I took the organization into confidence in a conference. I do not want to get nasty names that talks about my nasty titles. And for that matter, we are in a conference, can I be called the President, not even the boss. I know what comes with those words. So I simply say I am the President of this particular organization. So I am clean about my name. Thank you.

ADV CHASKALSON SC: Let us look at the further travel of

that message. Can we go to page 503, file 2.

MR SIBANYONI: File?

ADV CHASKALSON SC: 503, file 2.

MR SIBANYONI: 503?

ADV CHASKALSON SC: 503.

MR SIBANYONI: Sure.

ADV CHASKALSON SC: And there you see that shortly after receiving that message from you, or those three messages from you, Mr Sindane forwards them to Mr Masilela.

MR SIBANYONI: Okay.

ADV CHASKALSON SC: If you go down to page 504, Mr Masilela receives the message, he used to report at the farm for all his Soshanguve projects, but he now knows there is a new Sheriff in town, chat number 1 at 12:04:25. His response was to send three dancing emojis.

MR SIBANYONI: Oh.

ADV CHASKALSON SC: Mr Masilela. You see those three dancing emojis in chat number 2. So he is conveying that it is a cause for celebration that there is a new Sheriff in town, is he not?

MR SIBANYONI: Okay.

ADV CHASKALSON SC: Now, why would he think it is a cause for celebration that ...[intervenes].

MR SIBANYONI: Ja, that is why I am saying who, then you

say it is Masilela.

ADV CHASKALSON SC: Yes.

MR SIBANYONI: It is not me.

ADV CHASKALSON SC: It is not you?

MR SIBANYONI: Ja, no, it is not me.

ADV CHASKALSON SC: So you did not think it was a cause for celebration?

MR SIBANYONI: No.

ADV CHASKALSON SC: Are you disturbed that Mr Masilela thought it was a cause for celebration?

MR SIBANYONI: I did not see it up until I see it now.

ADV BALOYI SC: Mr Sibanyoni, you said this meeting never happened. How do you know that ...[intervenes].

MR SIBANYONI: Ja, it is ...[intervenes].

ADV BALOYI SC: If you were not part of it.

MR SIBANYONI: Ja ...[indistinct] I was never part of it. It never happened. And there is no any other new contractor that I see when I am going ...[indistinct].

ADV BALOYI SC: Okay. So you know that Mr Bafana, Mr Sindane did not attend a meeting with that person.

MR SIBANYONI: Ja, as far as I am concerned.

ADV BALOYI SC: Thank you.

ADV CHASKALSON SC: Have you been involved in many contracts that involve R500 million deals?

MR SIBANYONI: In my capacity as Mr Sibanyoni?

ADV CHASKALSON SC: In any capacity. In your capacity as Sibanyoni. I accept that SANTACO must have ...[intervenes].

MR SIBANYONI: Ja, with SANTACO, yes, but in my capacity, no.

ADV CHASKALSON SC: So was this not a deal that you would have been particularly interested in? Someone is offering you a piece of a deal for R500 million.

MR SIBANYONI: Ja, I normally get this type of information, sir, but I am not interested in those things. It comes with a lot of disappointments.

ADV CHASKALSON SC: It is a R500 million deal involving the Moloto Road, which is your home territory.

MR SIBANYONI: Ja.

ADV CHASKALSON SC: And you were not interested, you did not pursue it?

MR SIBANYONI: No.

ADV BALOYI SC: Why was this different to the King Civil, not King Civil, to the Ntuli, Tengane Ntuli?

MR SIBANYONI: Yes.

ADV BALOYI SC: Why do you have a different attitude to this versus the other one?

MR SIBANYONI: With Mr Ntuli, it was the partnership of that quarry, whereby Mr Ntuli was the one who reached out for me. He explained the deal. It is not a 500 million. You

can see it is 50,000, 100,000. For me, I am comfortable almost in that level. Then you will get information that one has got a contract for 500 or a billion. It rings, once it rings your mind, you will think you are a billionaire or a multimillionaire. It does not happen like this. So you therefore stick to your lane. This is what I want. More than this, it cannot be myself.

ADV BALOYI SC: But your lane in the Tengane Ntuli contract was that he has to have local content.

MR SIBANYONI: Yes.

ADV BALOYI SC: He could not do it without local content and you were that local content.

MR SIBANYONI: Ja.

ADV BALOYI SC: Why does that not apply? Why did that not apply to this that you are now being invited into? Why were you not considering it in the same way that he needs local content and he can never do this without me? Why was that not applicable here?

MR SIBANYONI: Ja, unless if we have met, I would understand it better. But we never met, never materialized and then it is one of those things.

ADV BALOYI SC: Did not materialize, because you say you were not interested.

MR SIBANYONI: No, no, this contract that, for 500, it never materialized before.

ADV BALOYI SC: I see, I understand.

MR SIBANYONI: Ja, so, yes.

ADV BALOYI SC: If it had materialized, you would have been interested. I would expect you to be interested.

MR SIBANYONI: Yes, with an understanding that we are going with the query as well.

ADV BALOYI SC: Okay, thank you.

ADV CHASKALSON SC: I want briefly to look at, I am very near the end, but I will just touch on a few other contracts that Mr Sindane seems to have been interested in. I just want to find out if you were involved in any of these. Can we go to page 501, and it is file 2, page 501. There is a chat number 7, a reference to Shonisani Rambau Construction and Mr Masilela informs Mr Sindane:

> "It is the same one that is doing the substation in Secunda."

Did you ever partner with Shonisani Rambau Construction?

MR SIBANYONI: No.

ADV CHASKALSON SC: What about on page 520 where Mr Masilela and Mr Sindane exchanged invoices for two companies. One is called Rail Refurbishment and the other one is called Zadan, Z-A-D-A-N.

MR SIBANYONI: 519?

ADV CHASKALSON SC: 520.

MR SIBANYONI: So who is sharing what?

ADV CHASKALSON SC: Mr Masilela is sharing invoices with Mr Sindane relating to two separate companies. One is Rail Refurbishment, chat number 2, Rail Refurb, and the third is Zadan. Are you aware of either of these companies? Have you partnered with either of them?

MR SIBANYONI: Ja, Zadan is Mr Masilela's company, I know it.

ADV CHASKALSON SC: Sorry, Zadan is a company you know?

MR SIBANYONI: I think so. Ja, Zadan.

ADV CHASKALSON SC: Can you tell us about how you know it?

MR SIBANYONI: It is Mr Masilela's company.

ADV CHASKALSON SC: It is his company?

MR SIBANYONI: Yes, sir.

ADV CHASKALSON SC: And Rail Refurbishment?

MR SIBANYONI: No, I do not know this one.

ADV CHASKALSON SC: Page 538, Mr Masilela is sending details of two other companies, MNT Development ...[intervenes].

MR SIBANYONI: Is doing what?

ADV CHASKALSON SC: It is chat number 4 on page 538.

MR SIBANYONI: Okay.

ADV CHASKALSON SC: MNT Development and Down

Touch Investment Road Construction, are you familiar with either of those two companies?

MR SIBANYONI: Which one to be precise, MNT? Which one?

ADV CHASKALSON SC: Chat 4.

MR SIBANYONI: Ja, chat 4 it says MNT Development, Down Town Investment.

ADV CHASKALSON SC: Yes.

MR SIBANYONI: Yes.

ADV CHASKALSON SC: Have you partnered with either of those two companies before?

MR SIBANYONI: No, I do not remember this one.

ADV CHASKALSON SC: Chair, I am about to move to a very substantial topic. I think we should probably call it a day at this point.

CHAIRPERSON: Let us adjourn and resume at 9:30 tomorrow.

HEARING POSTPONED TO 30 SEPTEMBER 2026

HEARING ADJOURNS
