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

HELD AT

BRIGITTE MABANDLA JUSTICE COLLEGE

10 NOVEMBER 2026

DAY 191

PROCEEDINGS ON 10 NOVEMBER 2026

CHAIRPERSON: Good morning, Ms Sello. Good morning, Ms Van den Heever.

ADV SELLO SC: Morning, Chair.

ADV VAN DEN HEEVER: Good morning, Chair.

CHAIRPERSON: Good morning, Mr Matlala.

MR MATLALA: Good morning, Chairperson.

CHAIRPERSON: Thank you.

ADV SELLO SC: Chairperson, we are ready to proceed, but I must point out that Advocate Van den Heever raised an issue with me before we took our seats, so I do not know if she wants to address the Commission at this juncture about the issues she raised with me before we proceed with Mr Matlala's testimony. Thank you.

CHAIRPERSON: Ms Van den Heever.

ADV VAN DEN HEEVER: Good morning again, Chairperson, Commissioners. Yesterday, after I left, as the devil would have it, for some reason I did something I never do, but I went onto YouTube to follow what was transpiring at the Commission and I then noticed Ms Hassim bringing up the statement deposed to by Mr Dlamini. Now, the issue is the following, and I am asking you to bear with me until I can place the facts correctly on record.

On Sunday, the 23rd of August of this year, an email was sent to the various parties involved in which

there was attached an affidavit of Mr Dlamini, Annexure A, and a confirmatory affidavit. You will recall on the Monday I was not here and my two juniors appeared. I was back on the Tuesday. Tuesday morning, myself and my fellow Counsel approached the Evidence Leaders to deal with this particular affidavit. I am not going to go into the content of our conversation, save to say that the point or the issue I raised was my instructions that the meeting that took place was covered by privilege as it was an off-the-record meeting that took place.

There was a discussion going to and fro, and there was various reasons when the meeting took place that my instructing attorney and the people present said that the meeting needs to be off the record. I then raised it with my learned friends, the Evidence Leaders, and I said to them that if you persist on going ahead, you will force us to do A, B, and C. And I also, when I approached them, said to them, I do this out of courtesy, because I believe ethics is an extremely important part of what we do because we are confronted every day with all these other things, and it is incumbent on us as counsel and attorneys to be ethical in our conduct.

The next morning, a meeting took place between Ms Mahlape, Ms Hassim, and myself in the presence ...[intervenes]

CHAIRPERSON: It is Ms Sello.

ADV VAN DEN HEEVER: Sorry, Ms Sello. I apologize, Ms Sello. In the presence of the juniors as well as the representative of the attorney's office and there was, I do not recall who of the attorneys, the Commission's attorneys was present, and I was then informed, in fact we were all informed, that the issue of Mr Dlamini is not going to be dealt with anymore. They are not going to go ahead and prove the statement because they had a meeting as Evidence Leaders and attorneys and agreed that the meeting that took place was an off-the-record meeting. It was covered by privilege and that the content of that meeting cannot be disclosed. Ms Hassim was present at that point.

Now, it is, let me not express how I feel about this, but what transpired yesterday is wrong. It is, it should not have happened. It is, I do not want to use the word that I should use, but I was quite appalled and shocked to see that. I want to place on record that my client should never have been confronted with what happened off-the-record. What was agreed by this Commission's Evidence Leaders was an off-the-record discussion. Under no circumstances do we do that, because this is what distinguishes us from other people out there and you, Commissioner, Chairperson, I have seen you before, you are quite

strenuous and strict on ethics and that is why I have no alternative.

I really, last night, thought very long and hard about it and I feel compelled to place it on record at this point in time. The damage is being done, but we cannot do that. You, we have got a duty and an obligation as lawyers, and that is not complying or fulfilling our duty and obligation as lawyers, so I am going to object to any further reference to it, and at the end, I will make the relevant submissions, either by submitting an affidavit as to what transpired *viz-à-viz* that and what you should do, I believe, with what transpired yesterday. But I cannot wait until then. I am compelled to place it on record now. Thank you very much.

CHAIRPERSON: Thank you. Thank you for that. Ms Sello.

ADV SELLO SC: Thank you, Chair.

CHAIRPERSON: The issue may not be against you or about you, but do you wish to respond?

ADV SELLO SC: Absolutely, I need to, Chair, and thank you for the opportunity. Unfortunately, Commissioners, I am going to have to spend some time in response, and I do so, I am compelled by the claims advanced by Ms Van den Heever. Issues of ethical misconduct have featured in her submissions, and insofar as practitioners are concerned, that is very serious and very concerning. It is actually

reportable to the LPC and to our respective Bar associations, so I am compelled to address that issue in detail before we can deal with the rest of the issues.

For that purpose, I would like to invite Ms Van den Heever and the Commissioners to correspondence file, correspondence bundle, file 1. Commissioners, to assist, the first document in that file, I think I saw the attorney suggesting that you have a consolidated bundle. It should be ...[intervenes]

CHAIRPERSON: For a strange reason, I have been treated differentially, if not in a discriminatory manner. Mine is file 2, not file 1 as everybody else's. Anyway, let us continue.

ADV SELLO SC: Chair, I apologize for the discrimination, Chair. But it should start with the email of 6th of March 2026.

CHAIRPERSON: You said page? You said page?

ADV SELLO SC: I said the first document in that file should start with an email of the 6th of March 2026, just to check that you have the right file. Thank you, Chair. Now, the Commissioners will recall earlier in the year, yes, earlier in the year, we had the testimonies of Witnesses A, B, and C, and in the course of their respective testimonies, they referenced their interview with Mr Matlala following his arrest and excerpts from his telephones that have been, chats that have been downloaded.

Following that, Mr Matlala's representative, Hlawu Maluleke, addressed communication to the Commission demanding certain documents, and those are not of any moment at the moment, at present. As in the normal course, having heard the evidence of Witnesses A, B, and C and others, we reached out to Mr Maluleke to request an opportunity to consult with his witness, with his client being Mr Matlala. At that juncture, no Rule 3's had been issued. We wanted to consult with him as a witness and to see whether it is possible to obtain a statement from him. So that is just by way of background.

We can then jump to page 29, and that is a letter of the 6th of March 2026, addressed to the Commission's attorneys, where Hlawu Maluleke Attorneys officially placed themselves on record and provide us with their special power of attorney. And then I will invite us to go to page 35. That is the 6th of March, page 35 on the 12th of March. Once again, it is a letter, it is an email from the Commission's attorneys addressed to Mr Matlala's attorneys, advising them that the Evidence Leaders have requested to meet with Mr Matlala, to meet with them, Mr Matlala's representatives, on the 16th of March 2026, and if we go overleaf, with a view to consult with Mr Matlala on the 17th. That is the email of the 13th of March.

That meeting of the 16th of March was held

virtually, and we agreed that the team from the Commission and Mr Matlala's legal representatives will consult with Mr Matlala on a specific date, on the 17th. Now, at that point, when we agreed to meet with Mr Matlala, or at least we agreed that together we'll meet with Mr Matlala, it was for purposes of obtaining a statement from Mr Matlala. As I point out, he did not have a Rule 3 at the time. The persons that are listed in the Investigator's affidavit, Mr Dlamini, at paragraph 4, which was Mr Matlala, Mr Hlawu Maluleke, and the Evidence Leaders, plus the investigator and the Commission's attorneys, attended at Kgosi Mampuru.

Before I say we attended, the original consultation was scheduled for the 17th. That consultation, however, collapsed, and I will send us to page 42, because, and I think this touches somewhat on what Mr Matlala testified to yesterday, for lack of a better word, I will say interference by IDAC. Mr Matlala, at the time, had been at Ebongweni, and he was transferred to Kgosi Mampuru to enable us to have a consultation. This is after we had made a request to the Commissioner of Correctional Services that we need to consult with him. That was facilitated, and he was brought up here. But unfortunately, like I say, IDAC hijacked that consultation, and Mr Matlala ended up in court on the 17th.

As page 42 indicates, because we had requested

two days, he was required to appear again on the 18th, and we could not consult with him on the 17th and the 18th. If we go to page 45, we then had to request a further opportunity. At 45, we issued a communication to Correctional Services, requesting once again that he be availed for purposes of a consultation on the 25th and 27th of March. Now, all this time, the purpose is to obtain a statement from Mr Matlala. And we could run ahead to page 48. So before our requested consultation of the 25th of March, at page 48, we provided Mr Matlala with his first Rule 3's. They are attached from page 48. It is not important to go through them.

I will instead ask the Commissioners to turn to page 56 and this is a communication from Mr Maluleke to us, dated the 19th of March, where he sought assistance from us to retain Mr Matlala at C-Max and not have him transferred to Ebongweni. In the time that he is up here, the attorneys make use of that period for consultation with him, whether it is for purposes of the Commission or the trials that he is facing. We do not have a difficulty with that. Our response is at page 58, correcting Mr Maluleke in some respects, particularly where he seemed to suggest that we had undertaken that he will not be transferred back to Ebongweni and we said, we simply do not have such authority. So in the end, Mr Matlala was transferred to

Ebongweni.

Then we go to page 61, and this is an email from the Commission's attorneys advising Mr Matlala's attorneys that the Commission had made arrangements with Correctional Services to consult Mr Matlala on the 27th of March 2026, that being a Friday, and the Monday. The Commissioners will recall that the affidavit of Investigator, Mr Dlamini references the meeting, the consultation of the 27th of March.

That consultation was indeed held in the presence of Mr Maluleke. Advocate Van den Heever could not attend that consultation. It was an extensive consultation, touching on various issues, as the notes from Mr Dlamini demonstrate. To the extent that we left Kgosi Mampuru after 9 p.m., as you can ...[intervenes]

CHAIRPERSON: From what time?

ADV SELLO SC: From, well, it was scheduled from 10 o'clock in the morning, but there are delays in signing in and everything, so we were there by 10, and we left the Kgosi Mampuru premises after 9 p.m., and we were trying to cover as much ground as possible. We then, I will come back to the 27th of March.

That is then followed by, there had been a request that he not be transferred after the 27th back to Ebongweni to enable us to continue with the consultation on the 30th,

but unfortunately, he was. Over that weekend, he was transferred to Ebongweni. Because we had already locked in the date of the 30th of March to continue with our consultation, the Investigator and Evidence Leaders had to trek down to Ebongweni to go meet with Mr Matlala, and ...[intervenes]

CHAIRPERSON: For the record, Ebongweni being in Kokstad, KwaZulu Natal.

ADV SELLO SC: Very far, Chair, painfully far. And if one has regards to page 67, this is a response by the Commission's attorneys after the meeting at Ebongweni on the 30th, wherein they complained that we met, or we sought to meet with Mr Matlala in their absence. And the issue was, when we parted on the 27th of March, we had indicated that if they do indeed transfer him, all of us will have to go to Ebongweni, we have no choice, because it was in the interest of the Commission that that consultation be finalised.

ADV BALOYI SC: He would have gone on the 30th, for the 30th?

ADV SELLO SC: He would have, the 27th is Friday, he would have gone sometime over the weekend.

ADV BALOYI SC: And your next consultation?

ADV SELLO SC: Was Monday, the 30th.

ADV BALOYI SC: Okay.

ADV SELLO SC: So we had approached Correctional Services to please retain him at C-Max for that weekend so that we can finalise the next scheduled date of the 30th, but unfortunately, he was transferred. We indicated when we parted on the 27th that if, God forbid, because they have not given an undertaking not to transfer him back to Ebongweni, then it leaves us no choice but to go to Ebongweni. They indicated, and I am ...[intervenes]

CHAIRPERSON: And this is in oral discussions?

ADV SELLO SC: In oral discussions.

CHAIRPERSON: Oh.

ADV SELLO SC: Because, Chair, you will recall the last letter I referred you to is the email at page 61, where we are confirming arrangements to consult with Mr Matlala over a two-day period, Friday the 27th and Monday the 30th. So that was agreed. The question was, we really hoped that they would keep him over so that we can have it here in Pretoria, but unfortunately, he was transferred to Ebongweni. We met with Mr Matlala, and I will get to the detail then of the meeting of the 30th.

For the record, it was not a consultation in the strictest sense of the word to obtain any factual material from Mr Matlala because his legal representatives decided not to drive down or fly down to Ebongweni to honour that consultation, so they made themselves wholly unavailable

for that consultation. Much as Mr Matlala was concerned about continuing with the consultation in the absence of his legal representatives, attempts were made to see whether or not a correspondent attorney could be present, but all those efforts came to nothing. So we never consulted with him and we never obtained anything from him and we had to make our way back.

Now, those were the, and correspondence was addressed to the Commission's Evidence Leaders where his legal representatives expressed themselves in very harsh terms about what they suggested was misconduct on our part in meeting with Mr Matlala on the 30th, and it collapsed on the basis that they shall no longer cooperate with the Commission and participate in any interviews. That you will find, Chair, at page 69, reflected in the letter by the Commission's attorneys at paragraph 12, where the Commission's attorneys point out:

> "We note your statement that we hereby, on the instructions of our client, decline to further participate in any further interviews and discussions in this regard. No further consultations were had after the 30th of March based on the position assumed and further Rule 3 notices were issued and Regulation 10.6's to Mr

Matlala calling for statements."

Now, that brief background ...[intervenes]

ADV BALOYI SC: Sorry, Ms Sello, at 65.2, I think you referred to paragraph 4. It seems paragraph 5 is also relevant.

ADV SELLO SC: Please say that again, Commissioner?

ADV BALOYI SC: State 65.2.

ADV SELLO SC: 65.2?

ADV BALOYI SC: Ja, it is a letter from Mr Maluleke.

ADV SELLO SC: Yes.

ADV BALOYI SC: You have referred to paragraph 4. I say my reading of paragraph 5, quick reading, seems to suggest it is also relevant for purposes of your submissions.

ADV SELLO SC: Yes, indeed. This was, you have the point once. This is a letter from Mr Maluleke's office dated the 30th of March. In fact, I think there are two letters of the same date where they were recording their objections. And the paragraph 5 you referenced harkens back to the consultation of Friday. And the only point made is that regarding the interview we had had on Friday, and that we had insisted on proceeding with that interview and refused to postpone because they had not had the opportunity to consider the documents. That is what that paragraph refers to.

So, I give this brief background to pose a rhetorical

question, what would be the purpose of holding two-day consultations with Mr Matlala if we are off the record? Off the record would imply anything that Mr Matlala informs us of, we cannot come present in public. It was clear at all times that we were meeting with Mr Matlala with the purpose of obtaining a statement. So, I take issue with the suggestion that there was ever any agreement that our consultations with Mr Matlala would be off the record. It would serve no purpose, and I can say for a fact that if that was the purpose, we sure would not have trekked all the way to Ebongweni because we would, it would mean that we would not get anything that is beneficial for the Commission and its hearings.

Now, if, on the other hand, it is suggested that during the course of our consultations, properly set up, there were aspects that were off the record, then I invite Ms Van den Heever to indicate which aspects of that engagement were off the record. What she suggests is different, is that our entire engagement with Mr Matlala was off the record. There is no basis for us to do so. We consult with witnesses with a view to obtain a statement.

Now, having said that, I will refer the Commissioners to a document, an email. I will not necessarily go into the detail of that email. This email is dated the 28th. It is at page 65. It is the 28th. That would

be the Saturday. Having consulted with Mr Matlala on the 27th, a document was produced such as reflected at page 65, and a draft was forwarded to his attorneys. This is the Saturday. No further steps were taken in regard to that draft, because by the 30th the whole engagement had collapsed, and when we were advised that their client will no longer be participating in any interviews with us. So ...[intervenes]

ADV KHUMALO SC: This has been Mr Matlala's draft affidavit, or the Investigator's affidavit?

ADV SELLO SC: No, no, it is not the Investigator's affidavit.

ADV KHUMALO SC: This is Mr Matlala's draft affidavit?

ADV SELLO SC: Yes, yes, it is.

ADV KHUMALO SC: Based on the interview ...[intervenes]

ADV SELLO SC: We had, but it does not cover all aspects of that interview.

ADV KHUMALO SC: Ja.

ADV SELLO SC: So during the course of the 27th, in our consultation, it became necessary to draft an affidavit, which we undertook to do, and we provided a copy on the 28th for their consideration. They were present at the consultation, but like I say, this is Saturday the 28th and by the 30th the whole engagement had fallen apart, because as their letter indicates, they had by then been instructed to

decline any further participation in interviews with us.

Now, Ms Van den Heever suggests that between myself, Advocate Hassim, and herself, we agreed that those consultations were off the record. We could never. We did not and we indeed could never, because if they were off the record, there would have been no necessity for the Investigator to be present in those consultations. It would have been off-the-record discussions between legal representatives and perhaps with the witness. Both consultations were attended by the Investigator, and it is because they were consultations aimed at obtaining a statement from Mr Matlala on various aspects.

The note that Advocate Hassim referenced yesterday by the Investigator, Mr Bongani, accords in large part ...[intervenes]

CHAIRPERSON: Mr Dlamini.

ADV SELLO SC: Mr Dlamini, because I saw the name, Mr Bongani Dlamini, then if I must say Bongani. Thank you, Chair. It accords with our respective contemporaneous notes that we made in the course of that consultation. So it is wholly inaccurate. Firstly, Advocate Van den Heever was not present on the 27th of March at that consultation at Kgosi Mampuru and it would be interesting to find out from her on what basis she contends that that consultation was off-camera, was off-the-record.

There is nothing that was stated in that consultation from start to finish at 9 p.m., that everything discussed there is off-the-record. If she was advised that some aspects were off-the-record, then the least she can do is indicate which aspects and I will confirm, I, who was present in that consultation, what exactly it was determined was off-the-record. So I must ...[intervenes]

CHAIRPERSON: Does that mean you accept that there may well have been some parts that were off-the-record?

ADV SELLO SC: No, I do not. What I will accept, and I do not want to go into the content of that consultation, there were certain issues of discomfort and necessitating us to think of how best to facilitate delivery of that testimony to the Commission. That is not off-the-record. But I do not want to go into the detail. Off-the-record, as I understand it, is that what is disclosed during the course of that meeting can never be used, whether in open hearing or in-camera, and I suggest at no juncture did we ever plan to have a consultation such as I described, or that there will be any off-the-record discussions with Mr Matlala. Thank you, Chair.

CHAIRPERSON: Thank you. Thank you, Ms Sello.

ADV SELLO SC: Chair, if I may, with your indulgence, before I switch off my mic, I understood Advocate Van den Heever to suggest that and this discussion she said she had

with myself and Advocate Hassim, one of us, I do not remember now who she said it was, suggested that the Evidence Leader team had met and decided that the consultations were off-the-record. I think she said something to that effect. And to the extent that I heard her correctly, firstly, the Evidence Leader team is big and I do not know if it suggests that the entire Evidence Leader team met to determine whether or not it was off-the-record or she is referencing the Evidence Leaders that were present in the consultation. But whichever she chooses, that has never been the position of the Evidence Leader team.

CHAIRPERSON: And the Evidence Leaders that were there were you, Ms Hassim ...[intervenes]

ADV SELLO SC: Hassim, and Advocate Pooe.

CHAIRPERSON: Oh, the three of you.

ADV SELLO SC: The three of us.

CHAIRPERSON: All right, thank you.

ADV SELLO SC: And we never took a decision that that 27th of March consultation was off-the-record. Thank you, Chair.

CHAIRPERSON: Thank you.

ADV VAN DEN HEEVER: Chairperson ...[intervenes]

ADV BALOYI SC: Before you, Ms Van den Heever. Ms Sello, I understood on this point, Ms Van den Heever to, and she will correct me if I am wrong, to say that is what

was communicated to her or to her team that the Evidence Leaders have agreed that that consultation was off-the-record and therefore will no longer be relying on Mr Dlamini's affidavit. That is what I understood her to convey. I see she is nodding. Do you want to respond to that?

ADV SELLO SC: So basically, Advocate Van den Heever references what was communicated to her team by somebody.

ADV BALOYI SC: By somebody communicated that the Evidence Leader team agrees that it was off-the-record and will no longer be using Mr Dlamini's affidavit.

ADV SELLO SC: Oh. Then I think there are two issues, distinct issues there. Firstly, whether or not the Evidence Leader team has determined in the manner that Commissioner Baloyi states, that all conversations and engagements with Mr Matlala were off-the-record. I confirm that that did not happen. Maybe Advocate Van den Heever will be in a position to clarify who communicated on behalf of the Evidence Leader team to who in her legal team to understand what exactly the communication was, by whom on our part and to see whether there was any miscommunication. But I can confirm for the record it has never been the position of the Evidence Leaders themselves who met with Mr Matlala that this was an off-the-record engagement.

ADV VAN DEN HEEVER: Chairperson, let me go back to what I said.

CHAIRPERSON: I think, Ms Van den Heever, no, no, no, I will allow you to do that, but I think the starting point and which I think is most crucial is who did you get your information from because you were not at the consultation and what exactly did that person convey and did that person also indicate what would have informed the decision that this consultation would be off-the-record, especially bearing in mind that this appears to have been a thoroughgoing process, thoroughgoing in the sense that it was a consultation that was scheduled for a whole two days, full day on the 27th, full day on the 30th. So, I want to understand what could have informed a decision that, despite it being that thoroughgoing, it is an off-the-record process. So, one, who informed you, and then all the other questions I have raised.

ADV VAN DEN HEEVER: So, Chairperson, it is extremely important that we get the dates clear. I again place on record, on the 23rd, Sunday, 23rd of August, an email comes through. I have indicated, I will hand the email up and I am going to ask that it form part of the record. I have indicated to the Commission what is the content. For the first time, I learn of this affidavit that Mr Dlamini has now deposed to, where there is a draft attached to, et cetera.

I then take instructions from my attorney, Mr Maluleke, who is present in court. I ask him about this, because I read what the content is. I am not here Monday the 24th. The Tuesday, I approached Ms Sello, together with Ms Hassim, there was an attorney present, Mr Poku, Mr Baloyi, and Ms Brighton, the third advocate was present. So we were all there. I approached them in the, let us call it the adjacent room to the boardroom. I discussed the issue of this. I say to them, I am approaching you at this point in time, because my instructions are that the meeting that he is now, Dlamini, deposed an affidavit to, was not off the record, the discussion. If you intend to pursue what is contained, Chairperson, if I may just ...[intervenes]

CHAIRPERSON: Can you please answer the question, which I said is quite crucial for me. That would be ...[intervenes]

ADV VAN DEN HEEVER: My attorney has instructed me and my client instructed me at all relevant times they understood the meeting to be off the record, and I want to come back to this. My issue is the following, as I say. I then approached them, without dealing with it here in an open forum, and I say to them, this is my instructions. If you intend to pursue this point, my attorney will go under oath, so will other people that was present, to deal with this issue as to whether the meeting was off the record or not.

The next morning, and I will go under oath if this is necessary, I then speak to the Evidence Leaders. Present were the junior sitting next to me, Ms Brighton, and attorneys were present. [Indistinct]... state, say to me, and I can point out even now exactly the place we were sitting.

CHAIRPERSON: Can you please give me ...[intervenes]

ADV VAN DEN HEEVER: They come back and they say ...[intervenes]

CHAIRPERSON: Sorry, can you please give me the names of the Evidence Leaders that you say were present?

ADV VAN DEN HEEVER: Ms Sello was present, as well as Ms Hassim. I again confirmed that with Ms Missi this morning. I tried to get hold of Ms Brighton. I then, they come back to me and say we had a meeting last night, that is the way I understood it, whether it is a consultation, and we agreed we are not going to pursue this point anymore. The words that were used were something to the effect that more of us agreed that it was off the record.

The fact was it was then stated to me unequivocally that the agreement is that this issue of Mr Dlamini deposing to an affidavit, the meeting is off the record and they are not pursuing the content of this meeting in this forum and we then parted ways. This is in August. That is my point. You come to me, my fellow counsel that is in this matter, the attorneys that is present, and you tell me to my face

that the meeting, it is now agreed between the parties that that meeting to which Mr Dlamini deposed an affidavit, or, ja, the affidavit is deposed about, is off the record. And then you go yesterday, despite stating it as a fact that it is an agreement that it was off the record, you come yesterday and you cross-examine on it. That is my issue.

And I am again stating this, I have never had to do this as Counsel but I will go up under oath and I will open myself for cross-examination if necessary about that meeting. I was not the only person that was there. And I loathe the fact that I am being made out not to state something that is the truth here. It is the truth. There is witnesses.

CHAIRPERSON: I guess it cuts both ways because if you say it is being suggested that you are not telling the truth, it cuts both ways in the sense that that equally means that Ms Sello is also not telling the truth. I am not ...[intervenes]

ADV VAN DEN HEEVER: In fact, Chairperson, you know why my recollection about it is so good ...[intervenes]

CHAIRPERSON: Can I just finish here? And by making that point I am not necessarily saying it is Ms Sello who is telling the truth and that you are not, and *vice versa*. I am also not saying you are telling the truth and she is not. So, but I am just saying when you ...[intervenes]

ADV VAN DEN HEEVER: [Indistinct]... [cross-talking]

CHAIRPERSON: When you emphasize the fact that it is being said that you are not being truthful, I am saying that is equally true of Ms Sello.

ADV VAN DEN HEEVER: But she has not addressed the meetings that we had on the 24th and the 25th, that is why I am saying it does not seem to me as though she is disputing that we had these discussions where the people were present. What she is disputing is the origins of the consultations that were had. And there you are correct, and Ms Baloyi is correct, I act on instructions and that is why I approached them and said this is my instructions. If you are intending to pursue this, my instructions is that there will be affidavits deposed to and then we can place it before the Commission and the Commission can then decide if it was an off-the-record or an on-the-record discussion.

And as a result of that I was then told that it was, there is an agreement, they had a meeting between themselves. Who is present, I do not know. But they are not pursuing the point anymore because they agreed the discussion was off-the-record and that happened on, I think it was the Wednesday, the 26th if I am not mistaken. And the reason why I remember it so well is that there was a tiff between me and Ms Hassim. We had an issue, you understand? I recall almost verbatim what happened on the Tuesday when I arrived, that she was angry with me and I

turned out to be angry with her because of what I said. And because when I approached her I said, I am doing this because I am duty-bound and ethically bound to first approach you.

I am not going to make a story of it at the Commission, I am telling you this now, can we sort it out off-the-record before we make a hoo-ha about it at the Commission. And that is what led to the discussion and then them coming back and saying to us and that is my issue. If it is disputed that they came back to me on that Wednesday and to say to me that there was, in fact, an agreement to that, there is many of us that will go under oath and confirm that. I have no reason to come and say to the Commission this is what was told to me if it did not happen.

ADV KHUMALO SC: Ms Van den Heever, there is correspondence from March 2026 where both sets of attorneys are exchanging letters. Do you accept that there is no contemporaneous correspondence where this off-the-record arrangement is set out? Do you accept that fact?

ADV VAN DEN HEEVER: I accept that, Mr Khumalo, but you, Chair, Commissioner ...[intervenes]

ADV KHUMALO SC: No, no, can you ...[intervenes]

ADV VAN DEN HEEVER: But you understand it does not often happen like that. I can argue because I went through

the correspondence too, it is quite clear even from the one letter that was pulled up where they say they speak about the issue for the security concerns, I went through that, I have got no reason to disbelieve my attorney if he says it was off-the-record.

ADV KHUMALO SC: Now please pause there. So there is no contemporaneous correspondence recording this arrangement. What then happens is a draft affidavit is circulated and it is sent to Mr Matlala's attorneys and ...[intervenes]

ADV VAN DEN HEEVER: It was not drafted by Mr Matlala's attorneys whatsoever.

ADV KHUMALO SC: No, no, I accept that. I did not suggest that it is drafted by Mr Matlala. Why would anybody then go through all that effort of drafting an affidavit and sharing it with Mr Matlala's attorneys if what was discussed at this consultation was never to be repeated?

ADV VAN DEN HEEVER: Commissioner, look at the last line. There is a line that deals with security. If you, this in relation to an application to the Commission for the provision of security, look at that line. It explains what is, it is almost, it is like we are dissecting a contract here and we are busy with going outside of the room. That is why I did take instructions as to what exactly the purpose of this

meeting was. And again, I do not want ...[intervenes]

ADV KHUMALO SC: So that part was not off-the-record?

ADV VAN DEN HEEVER: Mr Khumalo, sorry, Commissioner, the fact of the matter is that it was at all relevant times that the discussion was to be off-the-record. But I am saying to you, I am not going to speculate. My job is not to speculate, it is to deal with facts. My instructions are the facts. I am saying to you what this letter says. It is not clear-cut that it is off the, that it was not on-the-record discussion. The issue ...[intervenes]

ADV KHUMALO SC: Do you accept that it is not clear-cut that it was off-the-record?

ADV VAN DEN HEEVER: But it is also not clear-cut that it was on-the-record.

ADV KHUMALO SC: Ja, can you please address me on Rule 6.1 of the Rules of this Commission? Assuming you are correct that there was an off-the-record discussion ...[intervenes]

ADV VAN DEN HEEVER: I do not have the rules in front of me.

ADV KHUMALO SC: No, no, you must have them in front of you, otherwise how are you going to address us?

ADV VAN DEN HEEVER: I have got them in my bag if you would give me an opportunity. [Indistinct]... [microphone off].

ADV KHUMALO SC: Do you want me to share my copy? I think it would help.

ADV VAN DEN HEEVER: Please share your copy with me, I would appreciate it.

ADV KHUMALO SC: Can the attorneys please assist here. Please go to page 73.

ADV VAN DEN HEEVER: I am there.

ADV KHUMALO SC: Are you already there?

ADV VAN DEN HEEVER: I am.

ADV KHUMALO SC: Please look at Rule 6.1 and then address me on that rule, please.

ADV VAN DEN HEEVER: Ja, which rule do you want me to ...[incomplete].

ADV KHUMALO SC: [Indistinct]... [microphone off].

ADV VAN DEN HEEVER: Yes.

ADV KHUMALO SC: 6.1, sorry.

ADV VAN DEN HEEVER: Yes, I have got it. You can have your copy back. I have got the rules in front of me now. Thank you.

ADV KHUMALO SC: [Indistinct]... [microphone off]

ADV VAN DEN HEEVER: Yes.

ADV KHUMALO SC: You must thank Commissioner Baloyi.

ADV VAN DEN HEEVER: Thanks, Commissioner.

ADV BALOYI SC: I thought you had ...[indistinct] [microphone off].

ADV VAN DEN HEEVER: No, I am not, Commissioner Baloyi, you know I have never at war.

ADV KHUMALO SC: [Indistinct]... [cross-talking]

ADV VAN DEN HEEVER: I just do what ...[intervenes]

ADV KHUMALO SC: I am used to you so I know you are not fighting with anybody. Please then address us on the content of that rule.

ADV VAN DEN HEEVER: Chairperson, Commissioners, the question is, is it indeed evidence? You know, we had this discussion yesterday and last night, after what transpired, I gave long consideration as to address you on taking into account what you, what transpired yesterday, and what your function and duty is, and your mandate at the end of the day. The question is, what do you do now? Do you take evidence that you receive that is questionable and make recommendations on it? Do you now start to cherry-pick from it? Is it indeed evidence? If you agree that it is off the record, my issue is not as to what you can do and what you believe you can receive as evidence. My issue is that you come to me as an Evidence Leader in front of other people and you agree with me that the meeting was off the record, only to turn around when I am not present and then to confront the client.

ADV KHUMALO SC: Ms Van den Heever, we are discussing the evidence of Mr Dlamini which is on affidavit.

Now what does the rule say about that?

ADV VAN DEN HEEVER: This evidence is not on affidavit, Commissioner. The evidence, there is a draft there. The affidavit that you are referring to, if it is a 204, it is not an affidavit in law.

ADV KHUMALO SC: No, I do not, I am talking about Mr Dlamini's affidavit, the Investigator's affidavit which he attaches to that affidavit is notes of what transpired at the meeting. Now that is evidence. If I look at rule 6.1, what must I do with that evidence of Mr Dlamini?

ADV VAN DEN HEEVER: You are free to do with it what you wish to do with it at the end of the day. I am raising with you an ethical point and the reason why I am raising it with the Commission is because the Commission has time and again made reference to the ethical duties and obligations of Counsel.

ADV KHUMALO SC: Ja, but let me ...[intervenes]

ADV VAN DEN HEEVER: I am not taking it any further.

ADV KHUMALO SC: Let me say this to you. I think the ethical duties that you can take up with the Johannesburg Bar and the LPC, but sitting here as a Commissioner, if there is an affidavit in front of me and it is relevant to the issues we are investigating, this rule says I may receive that evidence that is relevant to my mandate, including evidence that might otherwise be inadmissible in a court of

law.

ADV VAN DEN HEEVER: I take note of it and to that extent that this is now the way that it has been dealt with, as I have indicated in August already, further affidavits will be submitted to the Commission from which the Commission, or which the Commission then must take into account when it makes a decision as to the value they wish to attach to the evidence and what they wish to do with the evidence, and that was the point I tried to solve way back in August before we reached this point when I said if you are going to go ahead with Dlamini's affidavit we will submit an affidavit to the contrary. So I cannot stop you Commissioner, and it is not my intention to stop you from doing what you wish to do with the evidence before you as you call it.

My point I am trying to make is, and that is what I wanted to do, is to place the facts that surrounded that affidavit on the record, to say that from the beginning it was disputed and I wished at that point already to place it in dispute by submitting affidavits to the contrary and we never did it because of the fact that the Evidence Leaders came back and agreed it was off the record. That is seemingly, maybe I am not making myself clear ...[intervenes]

ADV KHUMALO SC: No, no, you ...[indistinct] [intervenes]

ADV VAN DEN HEEVER: The issue is if you have got something that is disputed and I come to you and say I am going to dispute it by placing also an affidavit on the record to show that it is disputed, and you come back to me and you say you do not have to do that because it is not disputed. But as I say, I cannot stop you from dealing with it as evidence. All I can place on record to you now knowing the lay of the land, we will submit affidavits to properly dispute it as I wished to do back in August when I was told not to continue disputing it because it was no more in dispute, that it was off the record.

ADV BALOYI SC: Ms Van den Heever, maybe it is a question I should have asked Ms Sello. I noted that she did not, she chose not to go into the content of the draft affidavit. I am not intending to get into the content of it, but I want to ask the question and I hope I can frame it properly. This affidavit, page 65, I am talking about the email at page 65 from Ms Wilsnach which attaches a draft affidavit, this affidavit, does it does it contain any matter that arises from the consultation on the 27th, the disputed consultation?

ADV VAN DEN HEEVER: Commissioner, I understand your question but I cannot answer it at this point in time. It seemingly now will, I will have to go back and take proper instructions and go back to the source notes, what was

taken down by everybody at the meeting because it is the only way I am going to be able to resolve it and address you correctly on what transpired at the meeting.

ADV BALOYI SC: No, no ...[intervenes]

ADV VAN DEN HEEVER: So please, I am going to, I will come back to you on that. I cannot answer the question at this point in time unless I take instructions.

ADV BALOYI SC: Yes, I need to make sure that you understand my question because you are talking ...[intervenes]

ADV VAN DEN HEEVER: Yes, I do understand your question and all I am saying to you is I can only deal with your, or answer the question if I get an opportunity to take instructions.

ADV BALOYI SC: Okay, let me repeat my question just to make sure that you understand it. I am not asking you for what your source notes say. I am not asking you that question. I am asking you about the attachment.

ADV VAN DEN HEEVER: Yes, Annexure A.

ADV BALOYI SC: The email of 28 March attaches a draft affidavit.

ADV VAN DEN HEEVER: Yes.

ADV BALOYI SC: My question ...[intervenes]

ADV VAN DEN HEEVER: [Indistinct]... [cross-talking]

ADV BALOYI SC: My question is does that draft affidavit

contain any matter that comes out of the consultation? That is what I want to know, does it contain that? And let me alert you to why I am asking the question so that when you take instructions and you come back, and you do come back you have a complete answer. The reason I am asking the question about the content of that affidavit is because I would like to know from your attorney why it is that when he received this draft affidavit he did not respond to say, but that matter that you have in the affidavit was off the record. That is what I am interested in. So keep that question in mind. And then secondly a similar question comes out of page 65.2. Again it is a letter from your attorney. So the first one is an email that I first spoke to on the 28th of March, which attaches that affidavit.

ADV VAN DEN HEEVER: I have got that one.

ADV BALOYI SC: And then on the 30th of March your attorney again writes a letter, and then at paragraph 5 ...[intervenes]

ADV VAN DEN HEEVER: Sorry, just, sorry ...[intervenes]

ADV BALOYI SC: Do you want me to go slow?

ADV VAN DEN HEEVER: No, no, I just want the last one. There was a noise here in the background, I could not hear.

ADV BALOYI SC: So the first one that I asked you about is the email of the 28th of March ...[intervenes]

ADV VAN DEN HEEVER: Yes, I have got that.

ADV BALOYI SC: Which attaches that affidavit. And then the second is the letter, it starts at 65.1, it is dated 30th March, and it is a letter from your attorney. And then at paragraph 5, which is at page 65.2, your attorney says:

> "We further preserve our client's right regarding the interview you had with him on Friday, which same interview you had insisted on proceeding despite our request to postpone same as we had no opportunity to consider any documents or the request itself."

Right. And I would like you to address us on why it is in this letter your attorney does not record that that consultation was off the record. Do you understand my question?

ADV VAN DEN HEEVER: I will take instructions.

ADV BALOYI SC: I would like you to address us on that. Thank you.

ADV VAN DEN HEEVER: Do you need me to take instructions now, because I am going to ask then for a very brief adjournment. I do not want to ...[intervenes]

CHAIRPERSON: Perhaps not, because right at the start you indicated that Mr Matlala or indeed your instructing attorney would depose to an affidavit or affidavits that set all of this out, make whatever contentions and that you then

ask for what you think this Commission should do about all this. So perhaps whatever clarification you would want to give us or to tender or to proffer should be contained in that affidavit.

ADV VAN DEN HEEVER: I think it would be the proper way to go about it because that was indeed the way we wanted to pursue it in August already. So may I then ask in the interest of saving time, because time is quite precious to the Commission, can we move on to other aspects and then come back to this?

CHAIRPERSON: Just, all right. Or there is another issue you wish to raise before we proceed with the testimony?

ADV VAN DEN HEEVER: I have raised the issues that I wished to raise. As I said, I am sorry that it has now become this long.

CHAIRPERSON: Oh, so other issues are commencing with the testimony, that is what you ...[intervenes]

ADV VAN DEN HEEVER: No, I am saying then we can commence with further cross-examination at this point and we can come back to this issue in due course.

CHAIRPERSON: All right. Thank you. Thank you.

ADV SELLO SC: Chair.

CHAIRPERSON: Ms Sello, maybe there are other issues you want to raise, perhaps through leave by me, of course, because you do not necessarily have a right of reply. But

there is an issue I want to raise with you, which is, do you want to please, please succinctly deal with what Ms Van den Heever says, which is that there was a meeting on a stated date where Counsel were present and where Counsel undertook never ever to use the content of whatever may have been obtained at the consultation of the 27th.

ADV SELLO SC: I will ...[intervenes]

CHAIRPERSON: So now this is Counsel to Counsel with the direct potential of having a dispute of facts between Counsel.

ADV SELLO SC: I will do so, Chair, happily. But perhaps before I get to that point, if I may raise a different point, and it may assist in determining whether or not we actually land at the position that Advocate Van den Heever says we arrived at as Counsel to Counsel. I have got two correspondence files. I think, I do not know if the Commissioners do, because I want to turn to page 353, and that would be in my file 2. As the Commissioners locate that file, Advocate Van den Heever referred to an email of the 23rd of August, and we have tried to locate it, and I think we have located that email of the 23rd of August.

Unless I am wrong in how I am reading this, this is the only communication of the Sunday, the 23rd of August that we could locate, 353. Ms Van den Heever gives me a thumbs up. It would suggest that this is the email she

referenced.

CHAIRPERSON: Just a minute.

ADV SELLO SC: Thank you, Chair.

CHAIRPERSON: Yes, Ms Sello.

ADV SELLO SC: Thank you, Chair. At 353 is an email dated the 23rd of August from the Commission's attorneys and I had indicated that Advocate Van den Heever had referenced an email of the same date and she gave me a thumbs up to indicate that this is the email. And if we look at that email, Chair, it forwards to Mr Matlala's attorneys Mr Dlamini's affidavit together with Annexure A, and Annexure A being the consultation notes that Ms Van den Heever is taking issue with, and a confirmatory affidavit by the attorney. That is on the 23rd of August, Sunday at 11:06.

That will then take us to page 364 and 365 at 16:02, same day. What is being provided to Mr Matlala's legal representatives is the index and paginated bundle of the same documents that were forwarded to them at 11:06 the same day. The next communication is at page 367. And as emails threads print, we would have to start with the bottom email. There are two emails reflected in 367.

ADV BALOYI SC: Sorry, Ms Sello, in terms of timestamps, there is 366. Are you deliberately skipping it. There seems to be an extra ...[indistinct].

ADV SELLO SC: Oh, in fact ja, it is at 366. It is the same

bottom email at 367, but I think it is better that we read it at 366. So having provided the documents, Mr Dlamini's affidavit and the notes, and confirmatory affidavit, and having paginated the same documents now, at 20:51 on the same day, 23rd, we received an email from Nsuku Baloyi Attorneys, that is the other set of attorneys that represent Mr Matlala, to the effect and it reads:

> "Good evening, Evidence Leader. We respectfully request your urgent written clarification regarding the scope of permissible questions on record. As discussed yesterday, certain questions are excluded due to the pending criminal matter. We attempted to send an email to this effect, but it appears our system may be experiencing technical difficulties. To avoid any procedural uncertainty, kindly confirm in writing which questions may be asked and which are excluded. This confirmation is necessary to ensure proper management of the record and safeguard procedural fairness. We would appreciate your written response. Yours faithfully."

So having received the now paginated bundle of Mr

Dlamini's affidavit, the notes, and the confirmatory affidavit, what they seek to clarify is the scope of permissible questions. If we go overleaf at 367, that is a response to that particular email at 366. It is from the Commission's attorneys and it is at 21:31. It reads:

> "With reference to the correspondence below ..."

The email we just read.

> "... please note that until the Commissioners rule otherwise, there are no questions relevant to the terms of reference which we will treat as being impermissible. Trusting you will find the above in order."

CHAIRPERSON: Can you please explain the involvement of both firms with regard to this aspect, the aspect of consultations with Mr Matlala on the days that have been mentioned, the 27th in particular? Was the second set of attorneys, the Baloyi's, were they involved?

ADV SELLO SC: I will have to check as to the date, Chair. I think on the occasion that Advocate Van den Heever was not here, both sets of attorneys were present, and both placed themselves on record as Mr Matlala's attorneys.

CHAIRPERSON: Where? Here?

ADV SELLO SC: Here.

CHAIRPERSON: No, no, I mean at the consultations, because I want to understand what you have just referred us to in the context of the debate we are having this morning. So because throughout, I have understood reference to be to Mr Maluleke.

ADV SELLO SC: I understand.

CHAIRPERSON: And I understood his firm, that is Mr Maluleke's, to have been at the consultations. Now I wanted to understand the involvement of the Baloyi's.

ADV SELLO SC: I will have, this, to answer that, I would have to go to page 353. Maybe this will assist.

ADV VAN DEN HEEVER: Chairperson, maybe I can clarify this. This email, Chair, has got nothing to do with what we are busy with, just for record.

CHAIRPERSON: I will, ja, because you must have the last bite, I will afford you an opportunity, Ms Van den Heever.

ADV SELLO SC: If, I would have to dig further in the correspondence, but if we look at 353, firstly, I will confirm the only firm of attorneys that was present at the consultation of the 27th is Maluleke Attorneys. But by the 23rd of August, this is now almost four months later, at 353, Mr Dlamini's affidavit and notes and confirmatory affidavit is addressed to the Baloyi Attorneys, if the Chair has regard thereto, and to Maluleke Attorneys. So it is both sets of attorneys. And I dare say this is because at this juncture,

both firm of attorneys had come on record before this Commission. So this affidavit is shared with both firm of attorneys.

The response that then comes is from Baloyi Attorneys with a query post to which we respond. And the response at 367, the enquiry at 366 is from Baloyi Attorneys directed to the Commission's attorneys. When the Commission's attorneys respond, they respond at 367 to both sets of attorneys, both Baloyi Attorneys and Maluleke Attorneys. So they were in the loop at all times as to what was happening. It was not open to us to enquire from Baloyi Attorneys after they placed themselves on record who are they to be making such enquiries to us. We responded to the enquiry in the manner that we did. This is the 23rd.

So when we conclude then on the 23rd, according to these documents by half past 9, you have the affidavit as Mr Matlala's lawyers and Mr Matlala. And on the enquiry, whether or not there will be, on the question of scope of permissible questions, we say everything is open to ask questions on until the Chair rules otherwise.

On the 24th at the appearance, and once again, I go back to the issue of whether or not we could possibly have indicated to Advocate Van den Heever that it is off the record on the morning of the 24th, it is belied by the

engagement that then happens with Advocate Hassim in this Commission during the live hearing on the transcript of the 24th of August 2026. You do not have it before you, Chair, immediately. At page 23, it starts earlier dealing with other issues, but most importantly, at page 23, Ms Hassim was addressing the Commission, as I understand it, on an application for a postponement, I think, which was at the time contemplated by Mr Matlala's attorneys. And then she notes from line 12, and I quote:

> "And I say so because last night at 20:51, we received an email from his attorneys and the email says the following. If I may read it into the record, Chair, it says ..."

And it is that email from Baloyi Attorneys at page 36. And then she reads the response to that letter into the record. So she says:

> "So that was the correspondence between the two sides. It is quite confusing to ask what the meaning of this was because it suggests it is a request for the questions, what questions we intend to pose. From that, we thought maybe the approach being taken is to proceed on the basis of pose the

question, and then the privilege will be asserted once questions are posed and so I think my learned friend may need to also clarify that."

Then the Chairperson poses a question to Advocate Missi, Ms Missi:

"Does the letter mean that the application is abundant, or what does it mean?"

Then she clarified:

"No, the application is not abundant."

So that was the conversation. If there had been a ...[intervenes]

CHAIRPERSON: How do you relate that to the, what Ms Van den Heever says was agreed to on the 24th, which is that what transpired at the consultation of the 27th would not be used? How do you relate what you have just read to ...[intervenes]

ADV SELLO SC: Absolutely. If I understand Advocate Van den Heever ...[intervenes]

CHAIRPERSON: Yes.

ADV SELLO SC: That conversation was supposedly had in the morning of the 24th, before sitting resumed.

ADV VAN DEN HEEVER: Just for the record, I would ...[indistinct] [microphone off].

ADV KHUMALO SC: Sorry. Sorry, sorry.

CHAIRPERSON: Please.

ADV KHUMALO SC: Ms Sello, please go to page 396 of the same bundle. Ms Van den Heever, you will have a look at it also, because I am going to ask you to address us on it.

ADV SELLO SC: Yes.

ADV KHUMALO SC: Because this is what the issue is, whether Mr Dlamini's affidavit, the discussion about it.

ADV SELLO SC: Yes. I will come to that point, if I may deal with the Chair's question first, because if you look at the date, that is the 25th of August. So we are on the 24th of August, and Ms Van den Heever suggests that by the morning of the 24th of August before hearing resumed, that that deal was struck, that this was off the record.

ADV BALOYI SC: Ms Sello, she says the 27th, if I am not mistaken.

ADV VAN DEN HEEVER: Ja, I was ill the Monday. The discussion took place on the Tuesday, and they came back to us on the Wednesday.

ADV BALOYI SC: What is the 20th?

ADV VAN DEN HEEVER: [Indistinct]... [microphone off] 26th.

ADV BALOYI SC: 26th.

ADV VAN DEN HEEVER: And the 26th was the response ...[indistinct] [microphone off].

ADV SELLO SC: Okay, if it is the 26th, then it is not from the 24th. By the 24th, the affidavit had been provided and was, in part, touched on through the communication before this Commission on the 24th. She says, Commissioner Baloyi, ag, sorry, Khumalo correctly points out the communication at page 396 of the same file. This is the 17:51 email. And, Chair, you will see there, as I read it, that the Commission's attorney's record:

> "We confirm that Advocate Van den Heever indicated to our Evidence Leader, Advocate Hassim, at the close of today's proceedings, that you wish to bring an application to prevent the Evidence Leaders from dealing with Mr Bongani Dlamini's affidavit, as it is alleged that the interview held with your client on 27th of March 2026, was off the record."

So by the 25th of August, in the evening, there was no agreement that it was off the record. If anything, they are threatening to bring in an application to prevent Ms Hassim from relying on that. That application, as we know, was never brought. So if her recollection of facts is to be accepted, then it must be that following that email, threatening to interdict reliance on that, there would have been a communication to the effect that there is agreement

that it is off the record. There is no record of such an agreement and all Ms Van den Heever can reference is what she says, as now she corrects, would have been the meeting of the morning of the 26th of August after this email at 396.

CHAIRPERSON: And there is that old, old practice amongst lawyers to avoid exactly this sort of disputes of fact between lawyers, where one set of lawyers, where there have been discussions, agreements reached, will then write to the other side and say, this serves to confirm that at such and such a meeting of such and such a date, this was agreed to, colon, A, B, C, D. And if there is no response and denial that agreement was reached, there is authority that is in the form of *jurisprudence* or court judgments that says, that is an almost conclusive indication that there was indeed such an agreement. I am not at all suggesting, I am just saying, I am just saying, we would not be where we are today if something like that had been done by one of the two sides, probably more your side than the other side, Ms Van den Heever. Anyway, are you continuing?

ADV SELLO SC: Yes, if I may, on something this critical, because the effect of it would have been to exclude everything that was discussed at the consultation of the 27th, something that critical that Advocate Van den Heever

threatened to bring an interdict application, so to speak, on, on the night of the 25th of August. In fact, that letter, 396, goes further. It states:

> "It is expected that you will bring a substantive application tonight in order for us to answer thereto."

Now, that statement, I suggest, implies that the position that will be assumed in that answering affidavit would be contrary to the one that are asserted by Mr Matlala's legal representatives. So there would have been a dispute of fact in the first place, whether or not such an agreement was reached at any point.

Now, as I say, there is nothing further to say what transpired between 6 p.m. on the 25th of August and before half past 9 on the 26th of August, where, as Advocate Van den Heever suggests, the parties found each other and said, okay, we agree. There is no record of what transpired. She says that it was in a discussion with us. I have no such recollection. I was not part of such a discussion. I do not know if Advocate Hassim would agree that decision that was reached. But I dare say, in light of the ...[intervenes]

CHAIRPERSON: I doubt that she would, because ...[intervenes]

ADV SELLO SC: I doubt, Chair.

CHAIRPERSON: Because if she would, then she would not have cross-examined Mr Matlala on the content of that around which this issue revolves now.

ADV SELLO SC: Indeed, Chair. And I would have thought that had agreement been reached, it was an easy email to say, the issue that had arisen yesterday and that would have compelled us to issue this application has since been resolved. There would be no reliance on this. And there has never been communication to that effect. So the question then would be, what became of that application that was being threatened? Did the parties agree as to its fate? If so, when, how? Chair, it is all up in the air and I stand by my submissions that no such agreement was reached.

CHAIRPERSON: Thank you. Thank you. I said I would ...[intervenes]

ADV VAN DEN HEEVER: Chairperson ...[intervenes]

CHAIRPERSON: Yes, yes.

ADV VAN DEN HEEVER: I need to thank Commissioner Khumalo so much for pointing out this letter, because that just, everything fell into place. The evening of the 25th, I, at 21:20 get a missed call from Advocate Hassim. She follows it up at 21:21 with another missed call. I speak to her for 11 minutes on the morning of the 26th, the Wednesday morning, 7:18. And it was at that, she then, in

that conversation, the morning of the 26th, she said to me, have you prepared your application? I said, ja, we are going to deal with it and she then says to me, listen, we have had a meeting, do not prepare an application. We have agreed that it was an off-the-record discussion. I will make a screenshot of this and make sure that it is handed up in due course.

ADV KHUMALO SC: So it was not a meeting on the first floor of the Commission's ...[intervenes]

ADV VAN DEN HEEVER: No, I never said it was on the first floor. It happened down here.

ADV KHUMALO SC: Yes, that is the first floor.

ADV VAN DEN HEEVER: Yes. Oh, on the first floor.

ADV KHUMALO SC: Ja.

ADV VAN DEN HEEVER: But we then met there and we confirmed it. But the moment you spoke, when I saw this notice, it reminded me that I think there was WhatsApp communication. So I immediately went to go and check my communication.

ADV KHUMALO SC: You see, Ms Van den Heever, it is very important when you address us and you place facts on record that they are correct, because now Ms Sello has argued and you go to your WhatsApp and you say, oh, actually, it was not there, it was WhatsApp communication.

ADV VAN DEN HEEVER: Commissioner Khumalo, it was

confirmed there in front of everybody that that was the agreement on the first floor at the tea room or whatever it is called.

ADV KHUMALO SC: All right, I am going to leave that. But at least what this email shows is that between March and the 25th of August, the parties were not in agreement. This email shows that, so much so that your client was invited to bring a substantive application if their view is that this was an off-the-record meeting.

ADV VAN DEN HEEVER: As I said, and the reason for this was because I approached her and I discussed it with her at that point and I said to her, this is where we are. And what she then did, she ...[intervenes]

ADV KHUMALO SC: I do not want us to repeat what you have already said.

ADV VAN DEN HEEVER: It was a confirmation of my discussion with her.

ADV KHUMALO SC: So up to this point, there was no agreement between the parties that this was an off-the-record discussion.

ADV VAN DEN HEEVER: Because that was the first time I learned of this.

ADV KHUMALO SC: Yes.

ADV BALOYI SC: But it was not the first time that your attorneys, who were in the meeting, learned and understood

that there was an intention to utilise what was discussed in that consultation.

ADV VAN DEN HEEVER: As I said, Commissioner Baloyi, I do not think, as the Chairperson said, this is going to be taken any further, this is almost a he-says-she-says situation and I think the only way to resolve it is for the parties to go under oath and deal with it in that manner.

ADV BALOYI SC: Ja, when I say your attorneys were away, I am referring to the various correspondence. I am not doing a he-said-she-said.

ADV VAN DEN HEEVER: Ja.

ADV BALOYI SC: I am saying, looking at the correspondence that has been referenced, your attorneys knew, until you got involved, your attorneys knew that there was an intention to use Mr Dlamini's affidavit, and notes in particular, and they never raised any objection until you became involved and advised, and you were instructed. You say you were instructed in a certain way, and I accept your instructions are just that.

ADV VAN DEN HEEVER: And that only happened on the Sunday that they knew Investigator Dlamini was going to depose to an affidavit to deal with it. Up to that point, the issue as to whether the discussion was off the record never, was never raised, it never was an issue, because my understanding, it was always understood to be off the

record.

ADV BALOYI SC: Thank you.

CHAIRPERSON: I think we have reached the stage where we should continue with the testimony. But, pending the filing of the affidavit that you referred to, which will be indicating what relief you will be seeking, and any response that the Evidence Leaders may have, there is the issue of how we proceed today. My ruling is that we proceed, and if again a need arises to go to Mr Dlamini's affidavit, that should happen. That is my ruling.

What will happen, if in the end the Commission accepts that the position is as asserted by Ms Van den Heever, then anything, any and everything that relates to the cross-examination of Mr Matlala around Mr Dlamini's affidavit will be expunged from the record.

ADV VAN DEN HEEVER: Thank you, Chair. I am happy with that.

ADV SELLO SC: Thank you, Chair.

CHAIRPERSON: Yes. Do you think you will achieve much in 7 minutes?

ADV VAN DEN HEEVER: I think we need a coffee.

ADV SELLO SC: I think it will be enough time to greet Mr Matlala, and then it is time for a tea break.

CHAIRPERSON: Let us adjourn and resume at half-past.

ADV SELLO SC: Thank you, Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Let me just, before we start, quickly say this. We lost a lot of time yesterday, we have lost a lot of time today as well. We are sitting into the night today, so anybody who wants to make arrangements that may be necessary because of that fact, they must please do so now or during the course of their day. I emphasise we are sitting into the night. Thank you.

ADV SELLO SC: Thank you, Chair.

ADV VAN DEN HEEVER SC: Chairperson, are we going to McDonald's or the Sheraton? [Laughter]

ADV SELLO SC: Thank you, Chair. Chair, before we then proceed with Mr Matlala's testimony, it is necessary that I address the Commissioners. Advocate van den Heever, in the course of her address in the morning, suggested I was part of a meeting wherein the evidence leaders agreed with her that we would not be relying on Mr Dlamini's statement and notes. When we rose for tea, I approached Advocate van den Heever to point to her that I was not even present here on the 26th, so the meeting that she references that we held somewhere here with me is utterly impossible.

Now, it is important for me that I do this because she has accused me of serious professional misconduct and I am open now to charge by the LPC and the Johannesburg

Society of Advocates. There is no basis for the statement she made so strongly that I was part of that agreement. She has since, during the course of tea, shared with me a screen grab of her communication not with me, and she confirms that I was never part of that meeting. That being the case, I require Advocate van den Heever to officially retract those allegations she advanced against me and to apologise for impugning my integrity in that manner. Thank you.

CHAIRPERSON: And I remember, especially because it is a very unfortunate situation to have counsel and indeed legal practitioners stating diametrically opposed factual positions. It was on that basis and because of the seriousness of that situation that I specifically wanted to know who the role players or who the participants of that meeting were. I specifically asked Ms van den Heever who were present at that meeting or at that discussion and she mentioned you and Ms Hassim. You have heard Ms Sello.

ADV VAN DEN HEEVER SC: Indeed. I will accept that I am also getting old and I might have forgotten that she was not there on the next day. Similarly, she forgot about the fact that she was also not there because she would have placed it on record at that stage and I would have realised that she was not present. I accept she was not present on that day, but so too I was not present on the Monday when

the allegation was made that things happened. But I thank again Commissioner Khumalo for showing the evidence that I did in fact deal with this issue and I did deal with it on the Tuesday when I was present ...[intervenes]

CHAIRPERSON: Ms van den Heever, Ms van den Heever, the most important issue is to start with ...[intervenes]

ADV VAN DEN HEEVER SC: I did apologise. I have already apologised.

CHAIRPERSON: Not in open session because you made the assertion in open session, so you should actually start with that apology for us to take the apology seriously. That is where you should start.

ADV VAN DEN HEEVER SC: So first of all, I do apologise.

CHAIRPERSON: Thank you.

ADV VAN DEN HEEVER SC: I have apologised to her off the record. I apologise that I implied she was present, but similarly I want an apology for the fact that my reputation was also impugned and it was stated that these discussions never happened, that there was never any agreement reached about it and that there was never a discussion about me challenging the issue of Dlamini.

CHAIRPERSON: Whether or not the discussion took place is an issue that is still disputed by the two sides. So I am not quite sure who you would want the apology from at this stage.

ADV VAN DEN HEEVER SC: It is recorded on a letter that Ms Hassim, that Commissioner Khumalo has indicated that I challenged that particular issue. That email was sent on the 25th at 17.21, I think, the page...

CHAIRPERSON: I do not think we should stretch it, please. If you say Ms Hassim, then Ms Hassim is not here. Let us proceed on the basis on which I ruled we should. So Ms Hassim is not here, I am not sure who you want to tender the apology now. I think we have reached a stage where we should proceed. Affidavits are still going to be filed and if in the end anybody should apologise, that is something that will happen at a later stage. Let us proceed with the testimony.

ADV SELLO SC: If I may, Chair, for the record, then I shall not be filing – I cannot file an affidavit on an engagement I know nothing about, that I was not present in. So if I may be excused, because to file that affidavit in any event, I have to seek the permission of the JSA. So if Advocate van den Heever, if I acknowledge these are withdrawals, then it will not ...[intervenes]

CHAIRPERSON: I think, if affidavits are to be filed on the evidence leader's side, it can only be by people who can.

ADV SELLO SC: Yes.

CHAIRPERSON: So I do not think you need further worry about that.

ADV SELLO SC: I was not there. Thank you, Chair.

CHAIRPERSON: Let us proceed with the testimony.

ADV SELLO SC: With that dealt with, Chair, we are ready to proceed with Mr Matlala's testimony and Advocate Pooe will take over from this point. Thank you.

CHAIRPERSON: Thank you, Ms Sello.

ADV SELLO SC: Thank you, Chair.

CHAIRPERSON: Do we still retain the same file we had yesterday, Ms Pooe?

ADV POOE: Good morning, Commissioners.

CHAIRPERSON: Good morning, good morning.

ADV POOE: Yes, we will, Chair. If we can please retain the file that had the 204 statement. If we can also retain the file, file 10, that contained the Dlamini affidavit and notes. And Chair, while I am busy with some of the housekeeping, I just want to point to two other files that ...[intervenes]

CHAIRPERSON: Sorry, sorry. And the rest of the writing on that 10, is it the one that says, Application for Immunity Supplementary Affidavit Consultation Notes?

ADV POOE: Precisely.

CHAIRPERSON: And 10. All right.

ADV POOE: Yes.

CHAIRPERSON: Thank you.

ADV POOE: And then just two other files, three other files

that you should just know where they are behind you, so that we do not struggle, is file 1A, which contains the Ad Hoc bundle. An additional file that you should have somewhere behind you as well is file 2, which contains documents related to Witnesses C and Senona.

CHAIRPERSON: And 1A is Ad Hoc Statements and Transcripts.

ADV POOE: Yes, Chair.

CHAIRPERSON: All right.

ADV POOE: And then the last file you should have handy will be file 5, which contains Sibiya-related documentation or evidence and transcripts.

CHAIRPERSON: Yes, we are ready, Ms Pooe.

ADV POOE: Thank you, Chair. Good morning, Mr Matlala.

MR MATLALA: Good morning.

ADV POOE: We will continue with your statement. And if I recall correctly, Commissioners, we were at paragraph 56 of your 204 affidavit. We will continue along the same lines as we did yesterday, first by you confirming the truthfulness or otherwise of the relevant paragraph, and then we will proceed to ask a few questions to the extent that it is necessary.

MR MATLALA: Okay, thank you. I wanted also to ask for permission to address the Chairperson about the issue that we have been dealing with in the morning, because I think I

am in a better position, because I was present at that consultation on the 26th, if it might maybe help the Commission to have some progress. I do not know if I might be allowed to do that.

CHAIRPERSON: Mr Matlala, we have taken up quite a lot of time on that subject already. I want us to go ahead with the evidence now. What I could perhaps ask you to do in one sentence is to say, I confirm what Ms van den Heever here has said, or I do not. Just one sentence only. As for the rest, it will then go into the affidavit that I have ruled should be filed. Without any substantiation, please. If you feel you must, otherwise you may say whatever it is I want to say, I will say in my affidavit.

MR MATLALA: Ja, I think I would rather, because it is partly, so I would rather not say anything at all.

CHAIRPERSON: All right, not at this stage. Thank you, thank you then.

ADV POOE: Thank you, Chairperson. File 5 is the Sibiya bundle, just in case anyone did not hear that. So, Mr Matlala, we were at paragraph 56 of your statement. If we can start.

MR MATLALA: And the page?

ADV POOE: Page...

ADV KHUMALO SC: Page 15, Mr Matlala.

ADV POOE: Page 15. Mr Matlala, have you read

paragraph 56?

MR MATLALA: Do you want me to read it now?

ADV POOE: Yesterday, we did not read it out loud. I think the approach was that you would just look at it, read, and then confirm its accuracy or if you want to make any amendments or changes to it.

MR MATLALA: Okay. Ja, paragraph 56 is false. Completely false.

ADV POOE: And so, just to confirm, it was inserted by the IDAC investigators?

MR MATLALA: Yes.

ADV POOE: And it would have been completely made up by them?

MR MATLALA: Yes.

ADV POOE: Thank you. If you can please have regard to paragraph 57?

MR MATLALA: Paragraph 57 is also false.

ADV POOE: False. And was completely drafted by the IDAC investigators?

MR MATLALA: Yes.

ADV KHUMALO SC: Can I just, Mr Matlala, I want to say this to you. Very early in this Commission, we heard evidence from Witnesses A and B and they told the Commission about an interrogation at which you stated to them that you paid hundreds of thousands of rands to

General Sibiya. We also have an affidavit of Mr Dlamini who says you volunteered this information to him that you paid 500,000 to General Sibiya.

And then we have an affidavit that you signed confirming that you paid 500,000 to General Sibiya. Now you are sitting there under oath. You want us to believe that what you said in that recording played by Witnesses A and B, it was made up. What is stated here in this affidavit was made up by IDAC. What you allegedly volunteered to the Commission's investigators, you were hallucinating because you were under medication according to you.

What am I supposed to make of this? Must I believe that sitting there today you are telling the truth?

MR MATLALA: I think, firstly, I think you have mentioned the recordings. The recording, when we get to that part, we will deal with it. Those recordings, like I said before, those recordings were made up.

ADV KHUMALO SC: You did not say you paid General Sibiya to Witnesses A and B?

MR MATLALA: Anyway, I do not know who Witnesses A and B is.

ADV KHUMALO SC: When you were arrested the first time and you were interviewed by police officers, did you not say to them you paid General Sibiya money?

MR MATLALA: No.

ADV KHUMALO SC: You did not say that?

MR MATLALA: No, I did not say that.

ADV KHUMALO SC: Okay. And you did not volunteer to the Commission's investigators information to the effect that you paid money to General Sibiya?

MR MATLALA: I said it before that I do not remember saying that.

ADV KHUMALO SC: You do not remember?

MR MATLALA: Yes.

ADV KHUMALO SC: And when you looked at this affidavit and you initialled this page, did you not know what paragraph 56 and 57 were saying?

MR MATLALA: I think, Commissioner Khumalo, what we need to do here, like we were doing yesterday, is go sentence by sentence because here we are talking about paragraph 57 now.

ADV KHUMALO SC: Yes, I am focussing on paragraph 57.

MR MATLALA: Yes.

ADV KHUMALO SC: Because it refers to Sibiya saying, I need another 500,000, which means there was an earlier 500,000.

MR MATLALA: Ja, yes, so I am saying I was, to Advocate Pooe, that rather, like yesterday, we start with the first sentence and then the second sentence because of the paragraph. Some of the things I will say is false and then it

will be interpreted as if the entire thing is false. So rather just go by sentence by sentence.

ADV KHUMALO SC: We are coming to that, Mr Matlala. I am asking you now, as you were reading this affidavit and you signed it, did you not see that it says that you paid Sibiya ...[intervenes]

MR MATLALA: No, I did not see it.

ADV KHUMALO SC: You did not see that?

MR MATLALA: Yes.

ADV VAN DEN HEEVER SC: But I also want to, Commissioner Khumalo, with the greatest of respect, it was made clear yesterday that he never read through it and it was never read back to him, the 204 statement.

ADV KHUMALO SC: Yes, but why can the witness not say that to me?

ADV VAN DEN HEEVER SC: But, Chairperson, with the greatest of respect, Commissioner Khumalo, you are putting a statement to him that is not correct, it is not what was stated on the record.

ADV KHUMALO SC: No, Ms van den Heever, I am asking him, did he not see this when he signed this affidavit? That is what I am asking him. He can say, I did not see it. Mr Matlala, did you not see this paragraph when you signed the affidavit?

MR MATLALA: Of course I did not see it.

ADV KHUMALO SC: Okay. That is all I wanted from you. Thank you.

ADV POOE: Mr Matlala, just to clarify, yesterday you testified that there were four iterations of this affidavit. In those four iterations, did you not see any of this in all four versions of the statement or affidavit?

MR MATLALA: Ja, but three or four, I was estimating.

ADV POOE: Yes, whether it is three or four, in all three or four versions, you did not see any of the allegations contained therein?

MR MATLALA: No. I just signed them, I just initialled and signed.

ADV POOE: Chairperson, I am not sure why Ms van den Heever keeps making faces at me. I am really not sure.

ADV VAN DEN HEEVER SC: I am sorry, Chairperson, but I never made a face at her.

CHAIRPERSON: We are in serious trouble. It is ...[intervenes]

ADV VAN DEN HEEVER SC: We are obviously back at the kindergarten right now because we said, please do not make faces at me.

CHAIRPERSON: I wanted to say dispute of fact all around.

ADV POOE: Yes, precisely, Chair.

ADV VAN DEN HEEVER SC: Maybe my learned friend must concentrate on her examination of the witness and not

look at me. I did not make a face if I placed it on the record.

ADV KHUMALO SC: Ms van den Heever, that is not necessary at this point, can we please move on?

ADV POOE: A hundred percent, Commissioner Khumalo. So, in the three or four other versions that you dealt with, with IDAC, you signed and initialled all of the pages without having regard to the contents?

MR MATLALA: Yes, I did.

ADV POOE: Thank you, Mr Matlala. Then we can move on to ...[intervenes]

ADV BALOYI SC: Can I just check this? These various iterations of your affidavit, were they all given to you at the same sitting? Or this is something that happened over time?

MR MATLALA: No, it is not at the same sitting.

ADV BALOYI SC: Okay. So, over what period did you get the different iterations? Even if you are not exact, I just want to get a sense of, did you get the first draft at 8.00 in the morning, got a second one at 10.00, got another one at 12.00, and got the other one the following day? Or is it over days?

MR MATLALA: Over days, yes.

ADV BALOYI SC: And these were given to you, these different versions, in a sitting with the IDAC to initial? Or is

it documents that you took away and then you initialled and sent back to them?

MR MATLALA: I was sitting with them and then they gave me a document that I signed.

ADV BALOYI SC: The various versions you signed as you were sitting with them?

MR MATLALA: Yes.

ADV BALOYI SC: And all of them you did not keep a copy?

MR MATLALA: No, they never gave me a copy until the final one.

ADV BALOYI SC: Until the final one?

MR MATLALA: Yes.

ADV BALOYI SC: Okay, so you did have the opportunity, with the final version at least, you sat with it at some point without these people, without the IDAC investigators, after you had signed it?

MR MATLALA: I think, not after I signed it, it is after my legal counsel requested it from the previous advocate. I did not have it in my possession. So there is emails that we were requesting that they send them, so we have proof of that.

ADV BALOYI SC: Okay, but the various iterations you did them over different days?

MR MATLALA: Yes.

ADV BALOYI SC: Okay, thank you.

ADV POOE: Mr Matlala, yesterday Ms Hassim asked you about whether you understood the purpose of this affidavit and in fact pointed to you at the beginning of this affidavit that there was another affidavit that you would have signed. I just want to understand, what did you understand to be the purpose of this affidavit as you were preparing it with IDAC?

MR MATLALA: The purpose of the affidavit?

ADV POOE: Yes.

MR MATLALA: I think it was going to be, my understanding it was part of the 105 plea, but what was put in the affidavit itself, like I said, I did not read it, and they did not read it out to me, but we had a discussion, a very lengthy discussion, so but from my understanding it was part of the 105 plea. So they said I could not make a plea without a statement.

ADV POOE: And as part of that 105 plea, you would have negotiated with them, they would have said a sentence and they put that before the Court for you. Is that correct?

MR MATLALA: Negotiated with them?

ADV POOE: You would have had a plea and sentence agreement before that, right? Where you would discuss what would go into the affidavit, your cooperation with the various criminal proceedings in exchange for what was then

proposed, I think it was an eight-year term. Is that correct?

MR MATLALA: I think you are correct, or maybe I am missing your question, but yes, there was something that was promised, so I do not know whether you are saying, your is question saying, was I aware that what was promised to me or what?

ADV POOE: That you were made certain promises in exchange for this affidavit and you would then get that sentence, correct? The sentence that IDAC had proposed to you.

MR MATLALA: Yes, by the sentence, okay, ja, it is fine, ja.

ADV POOE: Yes, and so you understood that this affidavit would then be used in that process, correct?

MR MATLALA: Yes.

ADV POOE: And then you were prepared for this affidavit to be used in that process, knowing on the version that you present to this Commission that what was contained in that affidavit is things that you had no knowledge of, or you say were all made up predominantly by IDAC.

MR MATLALA: I was not prepared.

ADV POOE: You say you were not prepared?

MR MATLALA: Yes, I was not prepared.

ADV POOE: What do you mean by you were not prepared?

MR MATLALA: You are asking that I was prepared to go to

Court then.

ADV POOE: Mr Matlala, did this process not unfold before the Court?

MR MATLALA: Yes, it happened.

ADV POOE: Yes, and so this was part of the agreement and it was that you produced this affidavit, this statement implicating these individuals, you would then participate and provide testimony in the various criminal proceedings in exchange for that sentence that IDAC was proposing. And so this affidavit formed part of that agreement and you knew that that was the basis upon which that agreement was being negotiated for you or was being put in place and proposed. Is that not correct?

MR MATLALA: It is partly correct, but the statement was produced by the prosecutor, not myself. I am not the one who presented it in Court.

ADV POOE: But it was signed and formed part of the agreement.

MR MATLALA: Yes, it was signed.

ADV POOE: So for all intents and purposes, the Court understood that you had commissioned and signed this affidavit. Is that not correct?

MR MATLALA: Ja ...[intervenes]

ADV VAN DEN HEEVER SC: Just for the record, this agreement was never before Court, maybe my learned

friend must ...[intervenes].

MR MATLALA: No, it was before Court.

ADV KHUMALO SC: You see the problem with you testifying when a witness is asked questions, Ms van den Heever. You ask for permission from the Chair, you say, Chair, can I address you on this issue? Chair gives you permission, then you address him. Now you have a situation where the witness is saying one thing and you are saying another.

CHAIRPERSON: Immediately you said what you said, Mr Matlala, there and then contradicted you. Because that is a factual issue, that is an evidential or evidentiary matter. That is the sort of thing he should respond to, not you, please, Ms van den Heever.

ADV VAN DEN HEEVER SC: The issue, Chairperson, is that 204 was never before the Court. It is put to him that it was before the Court and it was not.

ADV KHUMALO SC: Ms van den Heever, please, when you want to address the Commissioners, ask for Chair's permission. Can we please agree on that?

ADV VAN DEN HEEVER SC: I will do so.

CHAIRPERSON: And then Chair gives you permission, then you address him. Because in the middle of a question to a witness, you answer it and then the witness immediately contradicts you. Now we have a transcript that

says two different things and that is not ideal. So can we please stick to the rules? I know you know them. So please can we do that?

ADV VAN DEN HEEVER SC: I already indicated I will, but I have also got a job to do, Commissioner Khumalo. I cannot sit here and allow evidence to go on record that is just patently not correct.

ADV KHUMALO SC: But your job does not allow you to [indistinct]...

ADV BALOYI SC: Can I make a different point, Ms van den Heever? We had this discussion the last time, that you have to distinguish a discussion which is fact-based on matters that are within the witness's knowledge. You will have the opportunity, if you find you need to re-examine because you want to clarify some things. But you have to let the witness speak to his recollection of what happened. And I accept he may well be wrong on some issues, but that is something you deal with in re-examination.

ADV VAN DEN HEEVER SC: I do accept it, but it is just the way you raised it. A proposal is made that is incorrect. I learned at the as young people should correct their position.

CHAIRPERSON: No, Ms van den Heever.

ADV BALOYI SC: I learned differently at the same bar. So let us not do the dispute of fact again.

CHAIRPERSON: You just cannot, Ms van den Heever, testify, because that is the effect of what you did just now and that is the effect of what you suggest you were taught at the bar. If facts are wrong, that you as counsel there must testify. I was never taught that and I was in the practice of law for many, many years and I was also a judge for many, many years. I have never known counsel to testify from the bar. I do not know that. I do not know which bar taught you what you say you were taught from a young age.

ADV VAN DEN HEEVER SC: Chairperson, with the greatest of respect, I have been taught if a proposal is put to a witness that is patently incorrect, then you are entitled to correct it.

ADV BALOYI SC: Can we establish and agree the rule is on fact-based matters the witness answers. If you have any corrections you want to make you do that on re-examination, then our processes will run much more smoothly than what just happened now because it is actually quite embarrassing what happened now, that you say one thing and your client contradicts you. So there is some lesson there.

CHAIRPERSON: And that is because of a simple fact because this is a factual matter of which Mr Matlala has knowledge, it is not a legal issue. Ms Pooe asked a simply

question, did this serve before the magistrate? Yes, it was the magistrate. That is a factual issue it is either a yes or a no. I do not see why counsel should barge in and respond to that factual issue, I just do not understand. Please, please be careful, let us not waste time. Yes, Ms Pooe?

ADV POOE: So, Mr Matlala, just to be clear this process you were trading in this affidavit, this process with IDAC, you were trading in this affidavit which is made up predominantly by IDAC's lawyers in exchange for a lesser sentence?

MR MATLALA: For actually witness protection.

ADV POOE: And a lesser sentence.

MR MATLALA: Yes.

ADV POOE: Thank you Mr Matlala. Then I am going to ask that we move to the next paragraph.

MR MATLALA: Sorry, before we do that I advised, I do not know if you want to do it on paragraph 56, I said if you can go sentence, because we are not finished there then we move to another issue, I said can we do it by the first sentence and the second sentence?

CHAIRPERSON: I think we were in 57 when you said that 57, do you want to look again?

MR MATLALA: Yes.

CHAIRPERSON: Yes, we were on 57. So it says after the payment of the 500,000 referred to above had you paid

500,000 before?

MR MATLALA: [No answer]

CHAIRPERSON: Right at the beginning of the sentence there. After the payment of the 500,000 referred to above, is there a R500,000 referred to above that you had paid?

MR MATLALA: [No answer]

CHAIRPERSON: I am doing the sentence by sentence that you said should be done.

MR MATLALA: Yes, we are on 57.

CHAIRPERSON: Yes, that is 57, yes.

MR MATLALA: So now is my chance to answer the first sentence.

CHAIRPERSON: Yes, yes.

MR MATLALA: The last, let me just say the last sentence is false.

CHAIRPERSON: So only the last?

MR MATLALA: No, and then the first sentence I do not want to incriminate myself for perjury for making an inconsistent statement.

ADV BALOYI SC: Can you just explain how that arises? If you say what it would be inconsistent with what other statement that you say would be inconsistent?

MR MATLALA: Not statement, I am sorry, not statement, testimony.

ADV BALOYI SC: Yes, explain it. I am trying to

understand what your answer means.

MR MATLALA: Yes.

ADV BALOYI SC: So if you would just explain what inconsistent statements you are speaking about or testimony you are speaking about.

MR MATLALA: I am speaking about on paragraph 57 the first sentence.

ADV BALOYI SC: Yes.

CHAIRPERSON: If you deny it, you say it would be inconsistent with some other statement. Is that what you are saying?

MR MATLALA: No, I am saying I do not want to comment on it because I do not want to incriminate myself. The first one.

CHAIRPERSON: Then please respond to Commissioner Baloyi, Commissioner Baloyi asked and validly so, just explain how exactly this perjury arises.

MR MATLALA: No, I said with an inconsistent testimony, before I said statement I wanted to correct that, I said testimony.

CHAIRPERSON: It would be what being inconsistent with what?

MR MATLALA: The first payment after the payment of 500,000 the first sentence.

ADV BALOYI SC: And you say it would be inconsistent

with what other statement that you have made?

MR MATLALA: Not statement, my previous testimony, yes.

ADV BALOYI SC: Which said what? We have to we have to understand, otherwise your testimony means nothing. We have to understand what you mean and what you are referring to.

MR MATLALA: Let me not say testimony, let me say the consultation the, the consultation, I do not know how to put, it as a consultation or as a testimony, I do not know what to call it. The statement from Mr Dlamini, I do not know what to call it.

ADV BALOYI SC: So you are saying if you answer anything about the first sentence, it may be, it may put you into trouble when we look at what you said in the consultation with Mr Dlamini on the same issue?

MR MATLALA: Yes.

ADV BALOYI SC: Is that what you are saying?

MR MATLALA: I am referring to what I have been asked yesterday.

ADV BALOYI SC: Ja. I do not know Mr Matlala that you have a licence to refuse to answer questions and say because I have previously said something else, I do not want to answer this. That is not a basis. You are either afraid to incriminate yourself and if we read anything into it we will make of it what we make or you say this is a matter

between me and my lawyer and I am not prepared to discuss it or other basis for privilege.

But to say to us if I answer you, if I say to you I agree or disagree that is what I put in that statement, because remember this is what you are still discussing, is this again something that IDAC put in or is this something that you said to the IDAC investigators, that is what the question is right now. And I fail to understand how you are unable to say yes, I told IDAC this and that is all I am prepared to say or no, I did not tell IDAC this, therefore like I have told you with the others they put it in there and that is all I am prepared to say.

I do not understand how you cannot say that because at this point that is the question. So you either, I know, if my recollection of your testimony yesterday, is you deny that you paid R500,000 to General Sibiya, that is my recollection of your testimony yesterday and you said IDAC put that stuff in there. Now, in paragraph 57 you are recorded as saying after the payment of 500,000, which is what earlier you are recorded as saying you paid to General Sibiya:

> "After the payment of 500,000 referred to above and after some passage of time, I was informed by Sibiya that he needed another R500,000."

Now you can either say yes that is true that happened or you say none of it happened as recorded there, I do not know where IDAC got it from. I do not understand what is the difficulty with answering that question.

MR MATLALA: Commissioner, I said I did not say I do not want to, I said I do not want to incriminate, it might incriminate me for perjury.

ADV BALOYI SC: Ja, can I just express this view, Mr Matlala, and it goes from what we did yesterday and I say it hoping that it will improve the quality of our engagements. I think you have not been, you are not helpful to the Commission. We have gone the whole length of privilege, against self-incrimination, we are still waiting to hear on some of it whether you are being charged or not, but those defences have been raised for your benefit.

We are having this back and forth with you. I must say my view, this has been a complete waste of our time. And if this is how we are going to be proceeding, then at this point my honest view of you is you are being obstructive. You are not helping the Commission in any way, at all. You have raised the various defences of privilege. I do not want to incriminate myself. I do not want to be accused of perjury for inconsistent statement without a valid basis in many of them.

And that translates to a failure to provide

satisfactory and complete answers to questions that are fairly put to you. This is a fair question to you on any construction. 57, the first sentence, is that what you told IDAC or not? You should be able to say yes or no. Is that true or not? You should be able to say yes or no.

Your reliance on previous inconsistent statement and therefore I might open myself up to perjury is not a satisfactory answer. It is not. And you are here not for an outing today. You are here to assist the Commission, which is a fact-gathering body. You have the protections that are provided for in the rules and in the regulations.

And the chairperson is very strict about upholding those protections that you are entitled to, but you are not being of help to us. Not at all. I do not know if you want to comment, but that is my view of you at this point. It is you are not being of assistance at all to the Commission. You may comment if you have anything to say.

MR MATLALA: Yes, I would like to comment that going forward, if I feel that a certain question might incriminate me because of a previous statement or testimony, then what should I do if I feel like this thing will incriminate me? What should I do about it?

ADV BALOYI SC: The duty to us is to tell us the truth. That is your duty to us. You cannot say to us, I cannot answer you because I might be inconsistent with a previous

statement. Your duty to this Commission is to assist us in our fact-finding process. That you may have lied elsewhere, that is a matter to be dealt with. It is not a licence for you to now say, well, I cannot answer you.

Because then you are not assisting our fact-finding inquiry. I do not know what you are doing. You are most certainly not assisting a fact-finding enquiry, if, on being asked a legitimate question, that you can answer without prejudicing your protections that you have, if you can answer it and you choose not to answer it, then that is not a satisfactory response that you are obliged to give to us. Thank you, Chair. Ms Pooe, you can ask your question.

ADV POOE: Commissioners, I think the witness has dealt with the two sentences in paragraph 57, because he dealt first with the second sentence and then proceeded to the first. So I propose we move to paragraph 58. And, Mr Matlala, you had indicated that your preference is for us to go sentence by sentence. And so I am just going to ask that you look at the first sentence.

CHAIRPERSON: Mr Matlala, I heard you say that in respect of paragraph 57. That is not necessarily what we did yesterday and if we add to this, we will be here until Saturday. What we did yesterday, was for you to read a paragraph inwardly and for you to then indicate what in that paragraph, if anything at all, you do not agree with. And to

deal with it sentence by sentence is going to take us forever.

You know what the true factual position is and you are also aware of what privilege you want to assert. And having gone through the paragraph inwardly, you should then dispute whatever it is you want to dispute, if that is the stance you want to adopt, or raise whatever else you want to raise in respect of whichever sentence. But for us to say, okay, now let us look at the first sentence, now let us look at the second sentence and so on. That is going to be a bit impractical.

I could understand, for instance, a situation where a paragraph takes a quarter of a page or maybe half of a page. So it may be difficult for you to engage meaningfully with that kind of paragraph. But yesterday we managed, we did manage and I think with all the paragraphs. Let us rather proceed in that manner. If you have an issue in respect of a specific paragraph, then you may say so. Thank you.

ADV VAN DEN HEEVER SC: Chairperson, my attorney just wishes to be excused. He asked me that we ask your permission that he may be excused.

CHAIRPERSON: Is that for the day?

ADV VAN DEN HEEVER SC: Yes, for the rest of the day. He needs to attend to something relating to another matter

of ours. And right now we do not want to make a wrong move like yesterday and get chastised again.

CHAIRPERSON: Yesterday, Mr Maluleke promised me that he would sit into the night if we have to.

ADV VAN DEN HEEVER SC: That is yesterday, it is for me today to sit into the night.

CHAIRPERSON: No, no, no, you are excused, Mr Maluleke. Thank you.

ADV POOE: Mr Matlala, if you can then read paragraph 58, please.

MR MATLALA: I do not need to read it out loud?

ADV POOE: No, you do not need to read it out loud. Just when you are done reading it, just indicate.

MR MATLALA: I do not agree with paragraph 58.

ADV POOE: And what about it do not you agree with or do you mean that this is not something that you told IDAC?

MR MATLALA: Yes.

ADV POOE: And so IDAC would have inserted this themselves?

MR MATLALA: Yes.

ADV POOE: And then, Mr Matlala, if you can ...[intervenes]

ADV BALOYI SC: If I can just ask, before you move on, because I can see the pattern. Mr Matlala, when you initial each page as you have done, what did you think you were

doing? What did you understand to be the purpose of your initialling each page?

MR MATLALA: I know that I was signing a statement, a 204 and 105 agreement statement.

ADV BALOYI SC: My question is not about the statement itself. It is about the initialling of each page because it does have a consequence. It does convey something when you decide to initial a page, hence my question to you. What did you understand you were doing when you were initialling these pages? Now that you tell us that you do not agree with paragraphs in the pages.

MR MATLALA: Signing that statement, I did it because of under undue influence. It is not like I did it willingly. So and I was not afforded the chance to go through the statement. It was a very huge bunch of papers there. So I just initialled each and every page. I did not, no one else read that back to me.

ADV BALOYI SC: You are saying you initialled without reading these pages?

MR MATLALA: Yes.

ADV BALOYI SC: Is that what you are telling us?

MR MATLALA: Yes.

ADV BALOYI SC: Okay. Even though, and you signed at the end saying, I know and understand the content. So there was a misrepresentation when you sign and say at the

end, I know and understand the contents and I consider myself bound by the oath that I am taking. That was a misrepresentation.

MR MATLALA: I was not intending to make a misrepresentation, but the intention was not that. But because of the influence, yes, I ended up signing.

ADV BALOYI SC: It was a misrepresentation. You were not intending it, but it was a misrepresentation and you knew that is what was happening at the time.

MR MATLALA: I knew what was happening, meaning?

ADV BALOYI SC: You knew that you are misrepresenting that you understand and agree with the contents of this affidavit when you sign at the end. You knew at that time that is a misrepresentation.

MR MATLALA: No, I did not.

ADV BALOYI SC: And I am saying that because you say you had not read it, so you did not know the contents. And I am saying to you, well, your oath at the end says, I know and understand the contents of this affidavit. That is what we do when we take the oath. We say, I know and understand the contents. And I am saying to you, if your explanation is true that you did not read this document, you then were not truthful when you say, or you were misrepresenting when you signed at the end to indicate that you know and understand the contents.

It must follow if you had not read this and you did not know what the contents were. Or you even did not agree with the contents, even if you had read them and you did not agree with them. It must follow that when you sign and you indicate the way I suggest your signature and your oath indicates, it was a misrepresentation. It must follow.

MR MATLALA: What you are saying perfectly makes sense, but that was not my intention.

ADV BALOYI SC: Okay, thank you.

CHAIRPERSON: Was any part of this affidavit, any part whatsoever, read to you?

MR MATLALA: No, nothing was ever read to me. What was happening is we will have a discussion and then some of the things, while Mr Perumal was typing, and then after a day or three or five days he will come back and say, let us rectify here. And then I ask him, what do you want me to rectify? He tells me that, listen, the statements that I had before, I think he had some information before. But it did not correspond with, I think his state witness, it did not correspond with what he wanted me to put on the statement. So I did all of those things, yes, but my intention was not to misrepresent.

CHAIRPERSON: Ms Pooe.

ADV POOE: Thank you, Commissioners. Then if we can proceed to the next paragraph, paragraph 59. Mr Matlala,

is the contents of this paragraph correct?

MR MATLALA: Yes, it is correct.

ADV POOE: So just to be clear, the first sentence, it relates to providing Mr Sibiya a payment of 50,000 that was made at the basement of ...[intervenes]

CHAIRPERSON: 500.

ADV POOE: 500,000 that was made at the basement of the State Theatre in Pretoria, and it was said to be towards the payment of a wedding.

MR MATLALA: It was, it was what?

ADV POOE: Excuse me? Do you want me to repeat the whole thing?

MR MATLALA: No, I was listening, but I did not catch the last...

ADV POOE: Oh, that the payment was towards the child's wedding, which was happening in North West.

MR MATLALA: Yes.

ADV POOE: And do you note there that you, well, the statement says, and as you have confirmed to be correct, that it says a further payment of 500,000.

CHAIRPERSON: I must, I must apologise to you, Ms Pooe, you are correct, it is actually R50,000. Of course, the crazy positioning of the zeros. But Mr Matlala admits that it was 500,000, correct?

MR MATLALA: Yes, that is correct, Chair.

CHAIRPERSON: Yes, but what is written on there is a strangely written 50,000.

ADV POOE: Yes, Chair, I admit initially I thought 500,000, then because of the spacing, I had to count the number of zeros and landed at 50, but as you indicate, Mr Matlala has confirmed.

CHAIRPERSON: Mr Matlala admits the 500,000.

MR MATLALA: It is paragraph 59, right?

ADV POOE: Yes, yes. Now, Mr Matlala, just before the Chair asked, or confirmed, I was pointing to you that note there that it indicates that it was a further payment, suggesting that there would have been another payment before that.

MR MATLALA: No, it is not a further, I see it is a further, okay, I am sorry to say it is a correct statement, the further payment part.

ADV POOE: Okay, so it was the first payment of 500,000 towards the wedding.

MR MATLALA: Yes, because I can see the following paragraph 60, so it is not the further.

ADV POOE: Okay.

ADV BALOYI SC: So you suggest the 'further' would be deleted in that paragraph 59.

MR MATLALA: It will follow on paragraph 60.

ADV BALOYI SC: Okay. No, what I am saying is at 59,

look at 59.

MR MATLALA: Yes, the 'further' must be deleted.

ADV BALOYI SC: We should remove that. Okay, disregard it, okay.

ADV POOE: And then, Commissioners, just to point out, it is not necessary to go there, but in file 10, where Mr Dlamini's notes are, at page 5 in particular, you will note there that Mr Dlamini also made reference to Mr Matlala having indicated, the figure there is different, 400,000, paid to General Sibiya as contribution to General Sibiya's child's wedding or lobola celebration in North West, which is consistent with what Mr Matlala just confirmed, but for the stated amounts.

ADV KHUMALO SC: Can I just, Mr Matlala, why would you need to give General Sibiya 400,000 or 500,000? What would that be for? I mean, you are not his relative. I can understand the relative contribution towards a family member's wedding, but why would you, a businessman, give General Sibiya 500,000 towards his child's wedding?

MR MATLALA: Commissioner, if you can remember, there was somewhere where there was emails, a change of emails about the security issue. So, it is something that I raised before with the evidence leaders when they were consulting me for the first time. So, the issue that you, the question that you are asking me now, I think it falls within that

security issue.

ADV KHUMALO SC: Are you saying you fear for your safety and the family member's safety?

MR MATLALA: Yes, I do.

ADV KHUMALO SC: So, you can explain further, but you do confirm that you gave General Sibiya 500,000?

MR MATLALA: Yes, I do.

ADV KHUMALO SC: Thank you.

ADV POOE: Thank you. Just one more reference, Commissioners, to this. If we can go to file 2, and that is where you will find the evidence of Witness C. If we can go to page 444.

CHAIRPERSON: Sorry, you said we go to?

ADV POOE: File 2.

CHAIRPERSON: Yes?

ADV POOE: It contains the evidence of Witness C, Senona.

CHAIRPERSON: Page?

ADV POOE: 444.

CHAIRPERSON: Oh, thank you.

ADV KHUMALO SC: S-E-N? S-E-N number?

ADV POOE: S-E-N number?

ADV KHUMALO SC: Or is it S-C-J-C?

ADV POOE: Oh, my apologies. C-J-C number. Commissioner Khumalo, I will just have to go back to the

beginning.

ADV KHUMALO SC: [Indistinct]...

ADV POOE: Yes, we will do so. It would be CJC434.7. And you will see, Commissioners, that is a portion of a transcript of the interview that took place between Witness C and Mr Matlala after he was arrested. In this instance, I wanted the Commissioners to note this is a discussion with Witness C about favours that were given to Mr Sibiya. In particular, if we will go to line 17, the bottom half of that page, where Witness C says:

> "So, you pay in advance for whenever you need something."

Mr Matlala responds:

> "The guy would always call and ask for money for a wedding or ask [indistinct] stuff. You know, want to buy a farm, want to, it is different things that he would ask money for."

And then it is indistinct and it says Durban. So one of the things that Witness C noted that Mr Matlala paid for was related to a wedding, which is now consistent with Mr Matlala's confirmation now and what was also said in Mr Dlamini's affidavit.

ADV KHUMALO SC: Did you say this was your first payment to General Sibiya, this 500,000? There were no

other payments before this one?

MR MATLALA: Before, no.

ADV KHUMALO SC: So this was the first one from you to him?

MR MATLALA: Yes.

ADV KHUMALO SC: Thank you.

ADV POOE: Thank you. Mr Matlala, if we can then move to the next paragraph, which is paragraph 60. If you can read the paragraph.

MR MATLALA: Yes, paragraph 60 is correct.

ADV POOE: And you confirm the contents of all of it?

MR MATLALA: Yes.

ADV POOE: And then just, Commissioners, to point out that similarly in Mr Dlamini's notes at page 5, just under the one that we dealt with, he also noted that Mr Matlala indicated that 50,000 was given to General Sibiya for travel costs to attend the Excellence Awards in Durban. Mr Matlala, why did you give General Sibiya money to attend, the 50,000?

MR MATLALA: This is the question that I have explained to Commissioner Khumalo, that it has to do with, I am not comfortable, but it has nothing to do, I am not comfortable talking about it because of the security issues.

ADV POOE: And would you be willing to talk about some aspects of your testimony *in camera*?

MR MATLALA: Of course.

ADV POOE: All right. And then if we can ...[intervenes]

ADV BALOYI SC: Maybe to be more specific, because this is the second time it arises and it relates to explanations for the payments, so maybe more specifically, would you be prepared to give that explanation, not publicly, whether *in camera* or in another forum?

MR MATLALA: Yes, in another forum, yes.

ADV BALOYI SC: Thank you.

ADV POOE: And then, would you then be willing to deal with all of the payments, not just these two?

MR MATLALA: No, it is not, when you say all, you are alleging that there is other payments.

ADV POOE: So there are no other payments, it is just these two?

MR MATLALA: Yes, no, there were other requests, yes, but not payments.

ADV POOE: All right. Then, Mr Matlala, just before we move past this paragraph, I just want to ...[intervenes]

CHAIRPERSON: I have just been agonising in my mind, you know, over what you have just said. You see, the practical difficulty I have is that an application for the hearing of testimony *in camera* has to be made openly, publicly. The public must be aware that such an application has been brought and the media is given notice and the

media and anybody who wants to, are afforded an opportunity to respond.

And in that application, an indication is given as to who is going to testify, unless it is in those instances where the identity of the person is not divulged. And also, the basis why that evidence should be heard *in camera* is given. So what I am agonising over is, when that application is brought in your case, is it not so that the people that you are fearful of will know that you are going to be testifying *in camera*?

And I am just wondering how that then assists you. I do not know whether I should be raising it, but I have just been agonising over that in my mind. Because once that application is brought, we do not have a facility where we cannot even indicate to the public that someone is going to be testifying *in camera*. So that part at least must come out in the open. So once that happens, whoever it is you are fearful of will know.

And once they know, they will probably know what it is you are going to be testifying about. And then that situation puts us exactly where we are here in open session. Am I making sense?

MR MATLALA: I hear you, Chairperson.

CHAIRPERSON: Yes. Anyway, I thought I should vocalise what is happening in my head. Yes, Ms Pooe?

ADV POOE: Okay, Chair. If ...[intervenes]

CHAIRPERSON: I am not suggesting, for example, the evidence leaders are minded to bring such an application. I am not at all suggesting that they should not. But I am just stating what I foresee. Thank you.

ADV POOE: Perhaps, Chair, then we should leave it at perhaps through means that would be acceptable to the Commission, not necessarily restricting it to an *in camera* application. It could also be a confidential statement. It could be other things that we may need to consider once we had a discussion with Mr Matlala about these safety concerns.

CHAIRPERSON: And please, I should not be understood to be insensitive to the safety concerns that Mr Matlala has. I am not, I am not. I guess it is more to say that those will exist even if the suggested alternative were to be what then happens. Those concerns should still be there. And I repeat, I am not rubbishing them, nor am I not taking them seriously. I am. Thank you.

ADV POOE: And Mr Matlala, would you undertake that if we are to provide that alternative way, whether it is a confidential statement or *in camera* application, that you will disclose the reasons?

MR MATLALA: Yes, I will.

MS POOE: Thank you. Then, Mr Matlala, just before we

move off this paragraph, can we go to file 1A, which is the Ad Hoc bundle at page 74? File 1A, which contains the Ad Hoc, which is the Ad Hoc bundle at page 74. I will ask that they project if that will be quicker. If we can just enlarge it just so that it is clear, we are dealing with those first couple of questions. You will see this is the Ad Hoc Committee transcript of your testimony. In particular, I just wanted to draw your attention to, do you see where Mr Malema says:

> "Okay, that recording we heard about it in the thing there, do you say it is not legitimate?"

Do you see that? And your response is:

> "No, it is not, I even have proof of what happened."

Do you see that? If you look at the screen in front of you, there is a little cursor that is...

MR MATLALA: Yes, I can see.

ADV POOE: You can see that. Now, you see the next question is where I want to draw your attention to. Mr Malema says:

> "So you never gave Sibiya money?"

our response was:

> "No, never."

MR MATLALA: Yes.

MS POOE: And so you would have then lied or misled the

Ad Hoc Committee in this regard.

MR MATLALA: This is why I said I do not want to incriminate myself.

MS POOE: All right, thank you, Mr Matlala. If we can then move to the next paragraph, let us deal with paragraph 60.

MR MATLALA: What page were we in? Page?

MS POOE: We are still on page 15. So we are dealing with paragraph 61 of your statement that starts with as a result of the above.

ADV BALOYI SC: Should we put away 1A? We have a very busy desk.

MS POOE: Yes, you can put it away where you can find it. Mr Matlala, have you read through the entire paragraph?

MR MATLALA: Yes, I did.

MS POOE: Okay. And do you confirm the contents of this paragraph?

MR MATLALA: No. Mr McBride, they said I must add him because if I do not add people who are protecting General Sibiya, those people, they know they are his friends. So Mr McBride, I never saw him there. So it is something that they advise. I remember the person who advised me is Mr Bellochun, actually, who said we must add Mr McBride.

MS POOE: Okay. So the contents of this paragraph are correct, but for the inclusion of Mr McBride's name, which was suggested by IDAC investigator Mr Bellochun.

MR MATLALA: Yes.

ADV KHUMALO SC: Are you saying Mr Bellochun told you to lie under oath? Is that what you are telling us?

MR MATLALA: No, he told me that he wants people who are friends with him, yes.

ADV KHUMALO SC: Yes, I get that part. But he told you to put that in an affidavit.

MR MATLALA: No, he did not say lie under oath. He said like what I just explained earlier. But obviously that is lying under oath.

ADV KHUMALO SC: Yes, no, no, I think you understand what I mean.

MR MATLALA: Yes.

MS POOE: Okay. And then in relation to this paragraph, just to again note the following, in relation to Mr Dlamini's affidavit, if we go to page 7. File 10, page 7. So on page 7, Dlamini is dealing with the notes taken about the Ad Hoc Committee testimony. In particular, Mr Matlala, you can have regard to the last two points in that section, just before he deals with General Mkhwanazi.

MR MATLALA: Is starts with 'the truth'?

MS POOE: Yes. So even in that consultation, you confirmed that you and your wife were invited to General Sibiya's son's engagement party. So it is consistent with this paragraph. Can you see that?

MR MATLALA: Yes, I do.

MS POOE: And then, Commissioners...

ADV BALOYI SC: But also noticeably, you do not include Mr McBride in your consultation with Mr Dlamini. I am just pointing that out.

MR MATLALA: Mr McBride was not present.

ADV BALOYI SC: Thank you.

MS POOE: And then, Mr Matlala, who invited you to this wedding? I mean to this engagement party. My apologies.

MR MATLALA: Mr Sibiya.

MS POOE: Did he do so directly?

MR MATLALA: Through, no.

ADV POOE: Through?

MR MATLALA: Sergeant Nkosi.

MS POOE: Through Sergeant Nkosi. Just, Commissioners and Mr Matlala, can we go to file 5? That would be the file containing General Sibiya's evidence. And if we can go to page 15.

CHAIRPERSON: Which flag or tab?

MS POOE: My apologies, Chair, I will set up my file so that I can follow the tabs. I am going to ask Commissioner Khumalo to assist you to get to...

ADV KHUMALO SC: Is it the chat?

ADV POOE: Yes, it is the chat.

ADV KHUMALO SC: Yes, we are there.

ADV POOE: Okay, thank you.

ADV KHUMALO SC: Are you there, Mr Matlala?

MR MATLALA: Yes.

ADV KHUMALO SC: Thank you.

MS POOE: On page 15, you will see there, and it is chat number 4.

MR MATLALA: Yes, I see.

MS POOE: There, General Sibiya sends a text, a WhatsApp message to Sergeant Nkosi and says:

"Ask her to make a turn."

And at chat 5, Sergeant Nkosi responds and says:

"I spoke to him earlier. He promised to come around 8 o'clock."

MR MATLALA: Yes.

MS POOE: Or 20h00. Would this have been the invitation you are talking about?

MR MATLALA: Ja, but because it is a long time ago, the time I cannot confirm.

MS POOE: All right. Just to say, Commissioners, you will recall in the evidence of Sergeant Nkosi, he and General Sibiya both confirmed that this would have been the date of the engagement party.

MR MATLALA: Sorry, Advocate Pooe, just to clarify something, I think there was two weddings, the engagement party and there was also a wedding. So I am not sure if you

are confusing the two.

MS POOE: So this one in particular is the engagement party that happened at his residence.

MR MATLALA: So you are aware that there is also a wedding. It is not on the same day.

MS POOE: Yes.

MR MATLALA: Okay.

ADV POOE: It is not on the same day. In this paragraph, we are dealing with the engagement party.

MR MATLALA: Okay.

ADV POOE: And you confirmed that you were in attendance.

MR MATLALA: Yes.

ADV BALOYI SC: Can I just clarify? You attended both.

MR MATLALA: No, no, no.

ADV BALOYI SC: So you attended the engagement party.

MR MATLALA: Yes.

ADV BALOYI SC: Okay. Thank you.

MS POOE: Now, General Sibiya testified in this Commission that you were not invited, but rather that his wife had consumed a lot of alcohol and you were... What did I say? Oh, your wife, not General Sibiya's wife, that your wife had consumed alcohol and he had requested that you come and fetch her. That is not correct?

MR MATLALA: I was asked by Sergeant Nkosi.

ADV POOE: You were asked by ...[intervenes]

MR MATLALA: I was told by Sergeant Nkosi.

ADV POOE: To come to the party.

MR MATLALA: Yes.

ADV POOE: And it was an invitation to come to the party, not to come and fetch your wife.

MR MATLALA: Yes.

MS POOE: All right. Thank you.

ADV KHUMALO SC: Is it correct that you spent up to three hours there at that party?

MR MATLALA: It is possible. It is a long time ago, but it is possible, yes.

ADV KHUMALO SC: So in other words, you did not just come in and pick up somebody and go.

MR MATLALA: Maybe two hours. It was not room, maybe two hours. Ja. But more than one hour.

MS POOE: Now, Commissioners, Mr Matlala, can we go to file 1C again? I am so sorry. 1C. 1A, my apologies. The Ad Hoc Committee, 1A. My apologies, did I indicate a page number? If we can start at page 41. You will see there again, Commissioners, this is the Ad Hoc Committee transcript. And Mr Matlala was being asked about this engagement party and his attendance. In particular, Mr Matlala, I want to draw your attention to where Advocate Arendse says:

"But did you know before she went there and before she had too much to drink that she was at Lieutenant General Sibiya's son's engagement party?"

Your response is:

"No, I do not know."

Advocate Arendse asks:

"Were you not invited to the party?"

Your response:

"No."

Advocate Arendse then says:

"Why? Your wife was invited to the party."

Mr Matlala, you say:

"My wife's friends are not my friends."

And so your testimony there is in contradiction to what you are testifying to us now before this Commission. Can you see that?

MR MATLALA: I do.

MS POOE: And so, Mr Matlala, there you misled the Ad Hoc Committee.

MR MATLALA: Advocate, can we please deal with this in that other forum that you promised?

MS POOE: I must deal with it in the other forum of mine.

ADV KHUMALO SC: Mr Matlala, if what you are telling us today is different to what you told the Ad Hoc Committee, it

means either you misled the Ad Hoc Committee or you are misleading us. It must be that way. If you said yes here and you said no there, it means you misled one of the two bodies. It is as simple as that.

So you do not need to go *in camera* to confirm that because we have the transcript where you say you were not invited. You are confirming before us that you were invited ...[intervenes]

MR MATLALA: *In camera*.

ADV KHUMALO SC: The simple answer is you misled the Ad Hoc Committee.

MR MATLALA: *In camera* I wanted to give the reasons.

ADV KHUMALO SC: Not the reasons, but the fact that you misled the Ad Hoc Committee. Advocate Pooe may ask you what your reasons were, but the question was the testimony before the Ad Hoc Committee, that was false.

MR MATLALA: [No answer]

ADV KHUMALO SC: Was it false?

MR MATLALA: It is not the same, obviously, Commissioner.

ADV KHUMALO SC: But if it is not the same, it means it is false.

MR MATLALA: I agree with you.

ADV KHUMALO SC: Yes.

MS POOE: All right, thank you. Mr Matlala, then can we

move to the next paragraph, paragraph 62 at page 16?

MR MATLALA: Yes, I can see it.

MS POOE: Chair, my apologies about this. I just conferred with my learned senior here. We are about to, the next three paragraphs deals with a theme that is quite involved, and we will have to set up the audios and move around different files. And I do not want to start it only to be disturbed in five minutes.

CHAIRPERSON: Oh, you want to give us another extra seven minutes like it was just before tea? We are happy to accept that.

MS POOE: Yes, Chair, I think we all deserve it.

CHAIRPERSON: Let us adjourn and resume at 2.00 p.m.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Ms Pooe.

ADV POOE: Thank you, Chair. Mr Matlala, if we can go back to your statement, we are at page 16, dealing with paragraph 62.

ADV SELLO SC: Chair, with your leave, if I may address you, I have requested an opportunity from Advocate Pooe. When we started this morning, the Chair indicated that we are sitting until late. We have consulted our notes, and we think we can place on record, however late we sit, we are not finishing today, and to place on record that tomorrow is

a day available to continue the sitting and that we sit at least normal hours today and we will finish off tomorrow. I have had a discussion around the possibility of sitting tomorrow with Advocate Van Den Heever, and she will address you on that. But before she does, perhaps I put on record my challenges.

For us to be able to sit today and yesterday and today required the Commission to approach the trial judge in Mr Matlala's case, criminal case, to see whether there would be space available, because he has set that trial down for the remainder of the term, there would be space available to slot in Mr Matlala in the Commission to conclude. After discussions, we then were allocated the 9th and the 10th.

We are quite loath to keep interrupting that trial because it is not only the interest of Mr Matlala we must take into consideration; it is also the interest of his co-accused. As things stand, we require only one person in the list of accused, and there is no reason really why we should disrupt everybody else's program.

As things stand out, Judge Moosa's case is not sitting for the remainder of the week, which would mean then we will not have to go disrupt his program. We have adjusted our affairs in such a way that we make available tomorrow so that we complete the testimony of Mr Matlala.

But like I said, Advocate Van Den Heever will place her position on record. I had a brief discussion before we resumed, Chair.

CHAIRPERSON: And when you made the request, the position was that Mr Matlala's trial was scheduled to run for the whole week.

ADV SELLO SC: When I made the request and granted the two days?

CHAIRPERSON: Yes.

ADV SELLO SC: Yes, it had been on the understanding that they would then be running for the remainder of the week. So we subsequently learned that for whatever reason they are not, and this week he would be available.

CHAIRPERSON: Thank you. Yes, Ms Van Den Heever?

ADV VAN DEN HEEVER: Chairperson, let me start off by saying that we are not available tomorrow. I am not available. I informed everybody yesterday already that I am not available tomorrow. Ms Missi is in a different court. She is not available, and because of what transpired yesterday, the predicament we are sitting in today, my client has elected, as many other witnesses have, to have me present in the future when he is being examined. My attending any event is not available tomorrow. That is number one. So we are not available to continue. On previous occasions ...[intervenes].

CHAIRPERSON: I think at the very least, rather than just a categorical statement I am not available, is Ms Missi your junior at the trial or not?

ADV VAN DEN HEEVER: No, she is not my junior at the trial.

CHAIRPERSON: She is not? Okay, All right, thank you, thank you. Let me move on then. At least I think you owe us an explanation as to why you are not available. You cannot just say ...[intervenes].

ADV VAN DEN HEEVER: I am not available and she ...[intervenes].

CHAIRPERSON: No, no, no, no, no, no. That is exactly the issue I am raising with you. You cannot just say – please listen to me, please listen to me, and not to Ms Missi. You owe us an explanation as to why you are not available. I asked, for example, and I asked this deliberately, because once Ms Sello said that you wanted to address, I already thought the possibility is that you were going to say you are not available, because if you were agreeable to us sitting tomorrow, there would be no issue and in all probability there would be nothing to address.

But the short point I want to make now is that rather than saying I am not available tomorrow, Ms Missi is not available, my attorney is not available tomorrow, you owe us an explanation as to why you are not available,

especially, and underline especially, because the trial, and that is exactly why I asked about the trial and how long it was scheduled for, because the trial in which you are counsel was set down for the whole of this week, and a special request was made for Mr Matlala to be released only for today and tomorrow and not for Wednesday up to and including Friday. So I would imagine that you would have been available for the criminal trial.

ADV VAN DEN HEEVER: Chairperson, first of all, the manner in which we deal with this matter is a bit differently. If for some reason one of the counsel is not available in that matter to make the matter progress, another counsel stands in. We are busy with a trial-within-a-trial that did not involve my client. So for that reason, I was not going to be available in any event tomorrow.

I am not going to place my personal situation on record. I have already explained yesterday what the situation is, and I have addressed you in chambers on why I am not available. Ms Missi is not available because she is busy with another matter. She became available today because a matter stood over to come and assist me today. My client ...[intervenes].

CHAIRPERSON: And the attorney ...[intervenes].

ADV VAN DEN HEEVER: My attorney ...[intervenes].

CHAIRPERSON: Because it is a trial-within-a-trial, the

attorney was also not going to be at the trial, which I would find very strange.

ADV VAN DEN HEEVER: In the High Court, as per the professional rules, it is not necessary for the attorney to sit in. The attorney is running a practice and is not sitting in during the trial. So he is busy with something else. He has got another matter. I did, in fact, give him a call at this stage.

Chairperson, with the greatest of respect, why are we not accommodated when we say we are not available? On previous occasions, you know, and the record will reflect that we have bent over backwards to make ourselves available to attend the commission and try and finish the matter. It is ...[intervenes].

CHAIRPERSON: I must say I would find it very, very strange that when a trial is going on, just because it is a trial-within-a-trial that is not involving Mr Matlala, not even a single legal representative from his team would be there. I, for the life of me, am yet to see something like that.

ADV VAN DEN HEEVER: With the greatest of respect, Chairperson, it is as strange as, and I have dealt with this, we have had an issue and I have placed it on record there for the commission to *ex parte* approach a judge and not see any of us and discuss with us what our opinion is about the matter being dealt with or arrangements being made for

the matter to be postponed without us being there. We also – that is not right.

CHAIRPERSON: You see, Ms Van Den Heever, you are given to this thing of talking about something else when something else is being raised with you. I am talking to you about what I see as very strange, that Mr Matlala would be there all by himself, not a single one of his legal representatives being there, just because what is being considered by the judge is a trial-within-a-trial that does not involve him. So not a single person from Mr Matlala's legal team is there. I am yet to see, in my many years of involvement with the legal profession, which must be around 45 years now or thereabout – I am not necessarily saying practice, but my involvement with the law in court proceedings, probably around 45 years now – I am yet to see what you are talking about.

ADV VAN DEN HEEVER: Chairperson, if you are doubting me, I can tell you, as an officer of the court, that is what happened. He is not unrepresented. He has got somebody that represents him. Because none of the issues involve him personally, there is another attorney and another counsel that is standing in for that time. I am again stating to you, I have yesterday – and I am happy that we adjourn and I will again explain to you outside of the court, outside of these proceedings, why I am not available. I am not

going to put my personal situation on the record for the whole world to hear it.

CHAIRPERSON: No, no, if it is related to what you told us when you asked not to be in attendance when we sat into the evening yesterday, you do not need to repeat that.

ADV VAN DEN HEEVER: It is not only that it involves me too, something I had to wait for a very long time. But I am happy, I would rather ask that we adjourn so I can address you on it outside. Because I do not know why I should be placed on the spot when I, as an officer of a court, as somebody who you can accept my word. If I tell you I am not available, I am not available. I am not sitting here making up a story for whatever reason that I am not available. I have already yesterday told you I am not available.

CHAIRPERSON: And yesterday, yesterday you had indicated that Mr Maluleke also could not sit until the evening, but I did manage to talk to him and he was able to sit until 6 p.m. ...[intervenes].

ADV VAN DEN HEEVER: But Chairperson ...[intervenes].

CHAIRPERSON: I am not ...[intervenes].

ADV VAN DEN HEEVER: Chairperson ...[intervenes].

CHAIRPERSON: No, no, no, I am not suggesting that what you had told us was not the truth, but I guess all I am saying is, all I am saying is, I was able to talk to him and he

did manage to attend. Maybe we, ja.

ADV BALOYI SC: Ms Van Den Heever, my recollection yesterday is you had offered Thursday, if I am not mistaken, when we were talking about sitting past 4 o'clock, and you were ...[intervenes].

ADV VAN DEN HEEVER: [Indistinct] ...[intervenes].

ADV BALOYI SC: Let me finish. And we were trying to negotiate the time for yesterday, my recollection is that you had indicated that we have to, you had asked that we finish yesterday at 16:00 and you can make yourself available, I think you had said Thursday. Where is that?

ADV VAN DEN HEEVER: I have grave difficulties with what is going on here right now, Commissioner, because I wanted this matter to stand down for me to bring a review application. I was told I cannot do it because of the fact that only two days are available for this Commission to sit. But right now, seemingly that was ...[intervenes].

CHAIRPERSON: No, no, no, no. We never stopped you from bringing your review application. Please, please, that is factually untrue. We never said that. We never said that. I even said we are going to go ahead if overnight, because you had said such urgent applications are even brought overnight, and you even gave an example of a judge who had once done that overnight, and an order is available the following day.

I said we are going ahead. We are not waiting for that review application. If overnight you do get your order, you bring it here. We will immediately stop the proceedings, and what would have happened the previous day will be disregarded altogether. That is what I said. I never refused you the opportunity to go bring your application. Please do not state facts that are untrue, Ms Van Den Heever.

ADV VAN DEN HEEVER: Chairperson, it is not untrue. That is not what I tried to imply. I said the premises on which you said I am continuing now, you can do it in due course today or whenever you want to do it, was because of the fact that it was placed on record there is only two days available for Mr Matlala.

ADV BALOYI SC: I still do not have an answer to my question ...[intervenes].

ADV VAN DEN HEEVER: I do not know ...[indistinct] Chairperson, I have to look.

ADV BALOYI SC: Sorry, say that? Say that again?

ADV VAN DEN HEEVER: I did ...[indistinct].

ADV BALOYI SC: Yes, and my simple question is that is – no, ma'am. Ms Van Den Heever, please, please give me a chance to finish, and then you will answer whichever way you want to answer. You have now said Thursday is available, and the reason I asked you is because I am trying

to see whether if we do not use tomorrow, we still have a day in the week to run, and that is a matter for – if you say now, as you have said, you are available on Thursday, then that is a matter that goes back to Ms Sello, and she will indicate whether the scheduling allows for that to happen.

We do have a witness scheduled for tomorrow, by the way. So this accommodation, or this idea to sit tomorrow and hear Mr Matlala, would push out another witness. You say you are not available, and all I am doing is checking whether we have another week in the day where you are available and we run with that. It is simply that. So you are available on Thursday. If you cannot do tomorrow, then it is back to the Chair and Ms Sello how they want to handle it.

CHAIRPERSON: And please, on your suggestion that you are talking about how things are run here and you are complaining about what you had said about tomorrow, Commissioner Baloyi has actually touched on that. It is a reality that there is a witness schedule for tomorrow, and Ms Sello, in our presence, called the Chief Evidence Leader and pleaded with him because tomorrow's witness is going to be led by the Chief Evidence Leader, and pleaded with him to allow him that we should continue with Mr Matlala. There are no issues there.

That is the factual position, and that is because the

Evidence Leaders now realise that it is practically impossible for Mr Matlala's testimony to be finalised today. It is as simple as all that. It is not as if there are issues and the way things are run here and so on, the way you seem to suggest. That is the simple factual position, Ms Van Den Heever.

ADV VAN DEN HEEVER: Yes, but, Chairperson, with the greatest of respect to it, and let us not prolong this, but the fact is, why am I then taken to task just because of the fact, if it is as simple as that we could go on on Thursday, why am I taken to task? Because I say for personal reasons, I am not available tomorrow, my junior is not available, my junior, we could have moved on. None of this was needed. We could have moved on to Thursday. It was a ...[intervenes].

CHAIRPERSON: No. We know for a fact that the case was scheduled, the criminal case, to run for the whole week, but for the request by Ms Sello. That is a factual position. Now, if counsel says they are suddenly not available, she and the attorney, surely I am entitled to inquire as what has since happened if they would otherwise have been available for the trial. I am entitled to that.

If you do give us an explanation, as you have indeed done, that is something else altogether. For you to say that you are being put to task is totally unacceptable,

actually, I should say so. It is unacceptable. I cannot, in the manner in which you stated it categorically, I am not available tomorrow, my attorney is not available tomorrow, must I just leave it at that when I know for a fact that the case was scheduled for tomorrow, and also for, in fact, for the rest of the week? I cannot do that. I would be failing in my duty. I must understand why that categorical statement is being made. Let us proceed, please, Ms Pooe.

ADV SELLO SC: Thank you, Chair.

ADV POOE: Mr Matlala, if we can return to your statement at page 16, if we can go to paragraph 62, and can you read that paragraph?

CHAIRPERSON: Another thing I must address, I should not appear to have accepted the assertion that Ms Van Den Heever made about Mr Matlala's insistence that on any and every day Ms Van Den Heever must be here. If circumstances are such that we should proceed and there is someone else from the legal team who is available, I may, I may, I am not saying I will, I may direct, as I have done in respect of other witnesses, that we proceed in the absence of Ms Van Den Heever and in the presence of whoever else may be available from the legal team. I just thought I must state that categorically so that it does not appear as if I accepted what Ms Van Den Heever said today. Yes, Ms Pooe?

ADV POOE: Thank you, Chair. Mr Matlala, have you had regard to paragraph 62?

MR MATLALA: Yes, I did.

ADV POOE: And can you confirm the contents of this paragraph?

MR MATLALA: Yes, but I can confirm that the animals, Mr Nkosi was at my farm, but not – okay, I can confirm it, but not the way it has been put here.

ADV POOE: Okay, let us do this then. You say you can confirm that Mr Nkosi visited your farm in Bela-Bela. That is correct?

MR MATLALA: Yes.

ADV POOE: Now, the next part says:

> "He saw the animals on my farm and he must have told Sibiya about the animals that I had on my farm because not long thereafter, Sibiya asked me for the impala."

So that is where you have a problem?

MR MATLALA: Yes, only because not long thereafter, Sibiya asked me for the impalas.

ADV POOE: Okay, so the last part of that sentence?

MR MATLALA: Yes.

ADV POOE: Is that to be replaced with something else, or it is not true, or it was inserted by IDAC?

MR MATLALA: Ja, it is not my statement, so it was inserted. Only the last part.

ADV POOE: Okay.

MR MATLALA: But I am not disputing the – I am not saying the impalas story never happened, but I am saying the way it has been put here is not true.

ADV KHUMALO SC: Let me ask this: Did General Sibiya at any stage ask you for impalas?

MR MATLALA: No.

ADV KHUMALO SC: Thank you.

ADV POOE: And where you say, or where the statement says he must have told Sibiya about the animals that I had on my farm, is that confirmed?

MR MATLALA: Yes.

ADV POOE: Okay. Now, if I can ask you to go to the notes of Mr Dlamini at page 5? So that is File 10.

MR MATLALA: Page 5?

ADV POOE: Yes, page 5. For now, there is a subtopic called impalas. I just want you to look at the first point there. You see where he says at page 5 under the topic impalas, just that first point where he says:

> "At some point when Sergeant Nkosi visited Cat game farm in Limpopo, he saw impalas, zebras and asked if he can come and shoot them. Cat did not allow

him. During their discussion, Sergeant Nkosi indicated that maybe his friend might like the impalas in his farm. Sergeant Nkosi, according to Cat, was referring to General Sibiya."

Is this a more accurate account?

MR MATLALA: Yes.

ADV POOE: All right. So you did, just to confirm, have a discussion with Sergeant Nkosi about his friend wanting game animals, or impalas?

MR MATLALA: Yes, I did.

ADV POOE: All right, thank you. If we can then go to the next paragraph, paragraph 62?

ADV KHUMALO SC: Do you mean 63?

ADV POOE: My apologies, 63, where it says my farm manager.

MR MATLALA: Yes.

ADV POOE: Now, can you confirm the contents of that paragraph?

MR MATLALA: Yes, I can confirm that.

ADV POOE: So everything is correct?

MR MATLALA: Yes.

ADV POOE: All right. Okay ...[intervenes].

CHAIRPERSON: Sorry, Ms Pooe, is there not something about – or are you going to come to that at a later stage –

is there not something about these impala in Mr Matlala's chats?

ADV POOE: Chair, I just wanted to deal with paragraph 64 as well before we go to the chats.

CHAIRPERSON: All right, all right.

ADV POOE: Then we can neatly deal with both paragraphs. Maybe, Mr Matlala, since paragraph 63 is confirmed, if we can read paragraph 64.

MR MATLALA: Ja, it is not accurate, ja.

ADV POOE: Okay, what is not accurate?

MR MATLALA: Because I sent the WhatsApp to Mr Nkosi.

ADV POOE: Yes?

MR MATLALA: And then I said I realised after that the friend, but not before the delivery. I realised after the delivery. So I see here it says during the delivery, I asked Nkosi to confirm with Sibiya where the implants were to be delivered.

ADV POOE: Okay, so are you saying that in your conversation with Mr Nkosi, you did not ask him to confirm with Mr Sibiya because at the time you did not know that it was going to Mr Sibiya?

MR MATLALA: Yes, I sent this WhatsApp to Mr Nkosi, not to Mr Sibiya, about the address.

ADV POOE: Yes, so it does say that you asked Mr Nkosi. So the correction there is that you did not ask him to

confirm with Mr Sibiya. You did not know it was for Mr Sibiya.

MR MATLALA: Because, yes, if it was for Mr Sibiya, I could have told my family to go straight to Mr Sibiya's farm, a place of residence.

ADV POOE: Okay. And then ...[intervenes].

ADV BALOYI SC: But who did you understand these would be for when you are speaking to Sergeant Nkosi? Who did you understand these impalas were being delivered to?

MR MATLALA: It did not matter to me by that point because I wanted to get rid of the animals anyway, because every year I give it to people. So, but I just realised after that they were going to General Sibiya. So, but at that time I did not care where they were going to.

ADV BALOYI SC: And you did not know that they are going to Sibiya?

MR MATLALA: At that time, yes.

ADV BALOYI SC: Okay.

ADV POOE: All right. Mr Matlala, then let us deal with the second sentence that says:

> "Sibiya WhatsApp message me directly the address, and I gave it to Botha."

Do you confirm that sentence?

MR MATLALA: No, this was sent to me by Sergeant Nkosi, the address. Then I forwarded it to Mr Botha.

ADV POOE: Okay, so Sergeant Nkosi WhatsApp messaged you the address?

MR MATLALA: Yes.

ADV POOE: Do you remember in what form was it typed out, written address or a location pin, or how did he do that?

MR MATLALA: Ja, yes, I think it was a location pin.

ADV POOE: Okay. And then the last sentence just says:

> "I submit that Botha will corroborate and provide details of transportation and delivery of the impalas."

MR MATLALA: Yes.

ADV POOE: Okay, so that remains. Okay. Then, Mr Matlala, let us just deal with the relevant WhatsApp conversation in this regard. If we can please go to File 5? File 5 on page 3. Apologies, page 3. Just for the record, this is an excerpt of WhatsApp chat conversations between Mr Matlala and Sergeant Nkosi. Can you see that, Mr Matlala?

MR MATLALA: Yes, I see.

ADV POOE: Okay. I am going to ask that we play chat 6 because prior to that, that green box represents a telephone call. So the first relevant message is on the 21st of March at 07:24. If we can please play that recording?

MR MATLALA: Seven?

ADV POOE: 07:24, chat 6. You see where it says Opus? That represents an audio file. So I am going to ask that we play the audio file.

MR MATLALA: Okay.

[AUDIO PLAYED BACK]

> "I am sorry to bother you, sir. Can you send me a pin drop to where the bucks, to where the impalas must go, please, sir? If you can just send me a pin drop where it must go to?"

ADV POOE: Thank you. Mr Matlala, can you identify who is speaking there?

MR MATLALA: Yes, I can.

ADV POOE: Who is speaking in that voice note?

MR MATLALA: Mr Rudi Botha.

ADV POOE: And you forwarded this voice message to Sergeant Nkosi?

MR MATLALA: Yes, I did.

ADV POOE: All right. Thereafter, if, Commissioners, we can then go to page 12 of the same bundle? And just for the record, this is communication between General Sibiya and Sergeant Nkosi. You will see on the same day, on the 21st of March 2024, at 07:24, it is chat 4, you see the same opus. So that is the same voice recording that you sent to Sergeant Nkosi.

MR MATLALA: Yes.

ADV POOE: And then you see the next message at chat 5, Sergeant Nkosi tells General Sibiya:

"Morning, it is from Cat."

MR MATLALA: Yes, I do.

ADV POOE: Then, Commissioners, if we can then go back up to page 4?

MR MATLALA: Of the same ...[intervenes].

ADV POOE: The same file. Specifically at chat 5, you will see there, there is a screenshot, that picture there.

MR MATLALA: Yes.

ADV POOE: I am going to refer you to page 6. That is the screenshot that is contained in page 4. So you will see there it is a screenshot, up top it says Rudi Farm Manager.

MR MATLALA: Yes.

ADV POOE: And just to confirm, is that your conversation with your farm manager?

MR MATLALA: Yes, it is.

ADV POOE: And if we look at the contents, you cannot see the first message because it is just cropped, but it looks like a file. Can you see that? It says one page PDF file. Can you see?

MR MATLALA: Yes.

ADV POOE: And then you say to him:

"Please check your account again."

You see that?

MR MATLALA: Yes.

ADV POOE: He responds and says:

> "Thank you, sir. I got it. Thank you very much. Thanks, sir. We will do that."

And then he says ...[intervenes].

MR MATLALA: Sorry, what page are we at?

ADV POOE: We are at page 6.

MR MATLALA: Okay.

ADV POOE: Have you located it in your file?

MR MATLALA: No, it is fine. I was comparing to the screen, so I just got confused because here is blank, but I understand, ja.

ADV POOE: No, because it is redacted.

MR MATLALA: Ja, it is fine. I understand.

ADV POOE: Yes. And then you will see that there is a voice recording. It is 10 seconds, just to say the voice recording that was shared between General Sibiya and Sergeant Nkosi, as well as yourself and Sergeant Nkosi was 10 seconds. Can you confirm, if you can, whether or not that is the same recording that you then forward to Sergeant Nkosi?

MR MATLALA: I cannot. The recording I have to listen to, I cannot confirm because I have to listen to it.

ADV POOE: Okay, then that is fine, because the

screenshot we obviously cannot play that recording ...[intervenes].

MR MATLALA: We only have – are you talking about the – we are on page 6, right?

ADV POOE: Yes.

MR MATLALA: You are talking about the voice recording, the voice note?

ADV POOE: Yes.

MR MATLALA: You are saying you cannot play – you just played it, or you are saying ...[intervenes].

ADV POOE: So it is the same one. Remember we played the recording ...[intervenes].

MR MATLALA: No, I thought you have another voice note you want to you say...

ADV POOE: No, no. Remember in this instance we are looking at it as a screenshot that you sent to Sergeant Nkosi. So this is the screenshot that we are looking at. So I was trying to establish if you recall whether that 10-second voice note that Mr Rudi Farm Manager sent to you is the same one that you sent to Sergeant Nkosi, because they are both 10 seconds. But if you cannot confirm ...[intervenes].

MR MATLALA: Confirming without knowing the contents is going to be a difficult one. I cannot confirm that.

ADV POOE: That is fine. Now you will see you respond

and say, okay, and then what follows thereafter is a location pin that you forward.

MR MATLALA: Yes.

ADV POOE: And you will recall that in the voice note that you sent, he was asking you to tell him where the impalas were to be delivered, and your response is the location pin. So my assumption is that it is most probably the same voice note, because that is when he was asking you to confirm where the impalas are to be sent.

MR MATLALA: Yes.

ADV POOE: And then he sends you the voice note. He responds and says:

> "Thanks, sir. Hi there, sir. Once everything has been arranged, he will catch the impalas on Sunday and transport it on Monday to that location. Is it good?"

You respond and say:

> "No problem."

MR MATLALA: Okay.

ADV POOE: All right. Now, Mr Matlala, just to check with you, do you recall just the first message where I said it was a PDF and you can see one page? Do you recall what that was?

MR MATLALA: But by the look, I do not know.

ADV POOE: By the looks of things, given what you say after that, you say:

"Please check your account."

MR MATLALA: To the farm manager?

ADV POOE: Yes.

MR MATLALA: Yes, I know what it is, yes.

ADV POOE: What is it?

MR MATLALA: I think it is the transport guy who was supposed to transport, because he had to get a truck to transport the impalas. I think it should be an account number of – it is either his account number or account number of the transport guy between the two.

ADV POOE: Okay, and were you then to pay for the transportation?

MR MATLALA: Yes.

ADV POOE: All right. And you did pay for the transportation?

MR MATLALA: Yes, I did.

ADV POOE: All right. And at the point that you are paying for the transportation, you still did not know that the impalas were going to General Sibiya?

MR MATLALA: At that point, yes.

ADV POOE: At what point do you learn that it is going to General Sibiya?

MR MATLALA: Actually, I heard from someone telling me

that I sent the impalas to General Sibiya, and then I asked that guy. I think it is in my phone chat. If you have my chats also, you can check it.

ADV POOE: That guy being Brown Mogotsi?

MR MATLALA: Yes.

ADV POOE: So you then find out that the impalas in question are for General Sibiya when ...[intervenes].

MR MATLALA: No, by that time I knew they went to Sibiya, but I am saying I asked him that why are you saying it is me who sent the – he said, the way I received it, it was as if I arranged, I called, it was my deal with General Sibiya. So I was asking him that is it true that you are saying I sent the impalas to General Sibiya?

ADV POOE: Okay, so you were confronting Brown Mogotsi and asking – you are confronting, saying you said I sent impalas to General Sibiya?

MR MATLALA: Yes.

ADV POOE: Okay. What I am trying to understand is at what point did you know that these impalas were going to General Sibiya?

MR MATLALA: I knew that during the – after the location, before they were even delivered.

ADV POOE: Okay. So the day of this, because that is when you get the location pin from Sergeant Nkosi, would have been the day that you found out that the impalas were

for Mr Sibiya.

MR MATLALA: Yes.

ADV POOE: All right. Now, I just want to take you to – let us first go to Witness C's bundle, which is File 2 at page 439. I will ask that it be projected if that will be quicker. So this is a portion of a transcript of one of the interviews that was conducted with the investigating officers on your arrest. In particular, I just wanted to draw your attention to line 10. Do you see that where – perhaps it started at line 8 with the male speaker says:

> "No, it is fine, it is fine. There is no need for you to be worried."

Can you see that?

MR MATLALA: Yes.

ADV POOE: All right. So the part I want to refer you to is from line 10, where you say:

> "One thing that we can use of Sibiya, it happened, but it was there ...[indistinct] so I gave him the impalas."

The male speaker says:

> "You gave him the impalas?"

Mr Matlala, you then say:

> "They does all of them, ja. There were 20 of them."

And then male speaker says:

"Ja, at the plot."

And it says Mr Matlala:

"Ja, so, but they died, all of them ...[indistinct] to use."

And it goes on about registering impalas. You see that is consistent with what you say in your statement about delivering 20 impalas to General Sibiya. Can you see that?

MR MATLALA: Ja, but this witness, if this is that recording, it is a transcript of that recording. Some of the things that I hear, there is a lot of things which you will see if – can I please have a copy of this?

ADV POOE: You want a copy of the transcript?

MR MATLALA: Of this, no, of this transcript, and where was it recorded? I heard it also, but I am saying now because I have a lot of files here, I do not know which one it is.

ADV POOE: Okay. So it is contained in File 2. Chair, Mr Matlala, I have been advised that in the physical files, they did not provide you with the full transcript. They only did portions. But the full transcript was provided with the electronic bundles that were sent. But what I have requested them to do is that while we are sitting in the session, for them to reproduce for you the whole transcript.

MR MATLALA: Please.

ADV POOE: But here, Mr Matlala, my simple point was

that you see the two versions that you gave are consistent with one another as they relate to impalas. I will not stretch it beyond that.

MR MATLALA: Okay.

ADV POOE: And then ...[intervenes].

CHAIRPERSON: Sorry, I did not hear you, Mr Matlala.

MR MATLALA: Sorry?

CHAIRPERSON: I thought you said something. I am saying I did not hear you.

MR MATLALA: No, I said okay.

CHAIRPERSON: All right, thank you.

ADV POOE: Now I want to refer you to now, sorry, Commissioners, 1A. If you can go to File 1A, we are going back to Ad Hoc transcript. Just to say we will only, well, I cannot promise, but for the most part we will be in those three files.

CHAIRPERSON: Statement 1A, and what is the third one?

ADV POOE: The files. It is 1A, File 2 and File 5. Page 60. There you will see it is the transcript of your testimony before the Ad Hoc Committee. Here you were being questioned by Ms Sokanyile, and where I would like you to refer to is where she says, roughly about in the middle of the page, where she says:

"Then in another message you say..."

Can you see that? If you look at the screen in front of you,

they will just show you where that little hand is moving. So where it says:

> "Then in another message you say I heard that you told Mr S that I told you that I gave him some animals to keep at his plot, so I wanted to hear from you if there is any truth in this."

And then she asks:

> "Who is Mr S?"

You see that?

MR MATLALA: I see that.

ADV POOE: Just to say that prior to this, she was asking you about your messages with Mr Brown Mogotsi. So if you look at the question before this one, where she says:

> "Okay, in another message, you are very disturbed to say that you sent a message to Mr Brown Mogotsi saying morning, just to let you know that my contract was cancelled yesterday. I see you have been avoiding me."

So this is the context in which then she reads the next message, which is related to the impalas. Can you see that?

MR MATLALA: Can you please just highlight it? Yes, I see that part.

ADV POOE: All right. So she is now reading another message between you and Mr Mogotsi, where you said to Brown:

> "I hear that you told Mr S that I told you that I gave him some animals to keep at his plot, so I wanted to hear from you if there is any truth in this."

And the first question she asks is:

> "Who is Mr S?"

Your response is:

> "It is Mr Sibiya."

She then say:

> "So you were talking with Brown Mogotsi, talking about Mr S Sibiya, yet you are saying that he did not connect you with Mr Sibiya."

Your response i:

> "Yes, he did not connect me with Mr Sibiya."

She then says:

> "You connected yourself with Mr Sibiya, but how? But can you discuss with Brown Mogotsi about Mr Sibiya?"

You then say:

> "Because I heard a rumour that I gave

him impalas to his farm, then when I followed the rumour, I heard the rumour was from Brown."

Now, earlier in your testimony, is this the conversation you were talking about that you were confronting Brown?

MR MATLALA: Yes.

ADV POOE: Now, in this, they are asking you about this conversation. You say it was a rumour that you were following up with Brown on. Now, in accordance to the answers that you just gave, this was not a rumour, right, that you gave General Sibiya impalas?

MR MATLALA: It was a rumour because I did not directly give him impalas.

ADV POOE: It was a rumour because you did not directly give him impalas?

MR MATLALA: Yes.

ADV POOE: But on the day that you asked for the location pin, from then on you knew it was for General Sibiya.

MR MATLALA: Yes, I knew, yes.

ADV POOE: So at the point that you then have this discussion, you just have to doublecheck the date, you would have known that you gave the impalas to General Sibiya.

MR MATLALA: Yes, I actually, just this is a WhatsApp message. I wanted to know the context of how did he, but

he did not respond to me anyway. But I wanted to ask him that how did you put it to whoever you said that I gave Mr Sibiya impalas, but he did not respond to me anyway.

ADV POOE: He did not respond to you. It is okay. What I will ask our team to do is in the meantime to find that chat and we can always display it for you.

MR MATLALA: Yes.

ADV POOE: But my simple point here is that this was not a rumour. This is something that actually occurred.

MR MATLALA: Yes, it was not a rumour, I agree. But I wanted to know from him that how did he put it when he said I gave him the impalas.

ADV KHUMALO SC: Was your issue that he is repeating the fact that you gave that General Sibiya impalas? Because I am not clear what your issue with Brown Mogotsi was. Were you not happy with him that he is repeating the fact that you gave General Sibiya impalas, or what was your issue actually?

MR MATLALA: No, just by talking about it because...

CHAIRPERSON: Please, the gentleman recording there, from yesterday already we have been hearing noises from around that corner. May that be stopped, please? And it is not the first time we are hearing it today, so today it is two or three times. Yesterday, and I just kept quiet and assumed that the gentleman would take care of that and

stop it or make sure that it stops. It is continuing every day now. Please.

ADV KHUMALO SC: Thank you, Chair. Mr Matlala, if you can just try to be clear so that we understand you correctly and we do not run the risk of misunderstanding you? So you testified that once you saw the pin location, you knew that the impalas were delivered to General Sibiyas' place.

MR MATLALA: Yes.

ADV KHUMALO SC: That part is clear. And then at some point you had an issue with Mr Brown Mogotsi because he was repeating the fact that you caused impalas to be delivered to General Sibiyas' place. I do not want to confuse the residence with the plot because I do not know which is which. Let us just call it General Sibiyas' place. So what was your issue with Mr Brown Mogotsi?

MR MATLALA: No, I wanted to know what was he trying to make out of it.

ADV KHUMALO SC: So you were upset that he is using that information for other purposes?

MR MATLALA: No, I wanted to know also, not for other purposes. I wanted to know what was he trying to make out of that statement?

ADV KHUMALO SC: Okay. And then, just before we go back to Advocate Pooe, Sergeant Nkosi testified before this Commission, and in his transcript, it is in File 9 on page

122, he says:

> "Mr Matlala sent me the voice note. I sent the same voice note to General Sibiya. General Sibiya sent me feedback. I sent it to Mr Matlala, but I did not take part in the said arrangement, as you are saying I have arranged."

So according to him, this was an arrangement between you and General Sibiya, and he was just the middleman. He was passing the message between the two of you.

MR MATLALA: But, Commissioner, if it was like that, I would not ask the location from Mr Nkosi, so I will just tell the driver to go straight to General Sibiya.

ADV KHUMALO SC: No, no. He says he was passing it on to you as the middleman. So ...[intervenes].

MR MATLALA: Passing what?

ADV KHUMALO SC: Passing on the messages between you and General Sibiya as the middleman. In other words, you wanted to know whether impalas were to be delivered. He asked General Sibiya. General Sibiya told him, and then he told you. So he was passing the messages between the two of you.

MR MATLALA: \Yes, my take is, if I knew where the impalas were going, were to be delivered by then, I would not include Sergeant Nkosi. I would just tell the driver,

because now I have to forward the message that I already know where the impalas are going, so it would not...

ADV KHUMALO SC: But remember yesterday you said you were not communicating with General Sibiya directly. You were communicating with him via Sergeant Nkosi ...[intervenes].

MR MATLALA: Yes, so ...[intervenes].

ADV KHUMALO SC: So why is this unusual that even where it related to where the impalas were to be delivered, you would ask Sergeant Nkosi to ask General Sibiya, and General Sibiya would answer Sergeant Nkosi, and Sergeant Nkosi would give you the answer?

MR MATLALA: That is what I am also saying, that if I knew where the delivery was supposed to be, I would not ask. So even if he was a middleman, but at that point he was not.

ADV KHUMALO SC: Okay.

MR MATLALA: So it is not like he did – what I made out of this, I thought that he wanted to impress his boss that he could get in some animals. So, but at that point, I just realised it after only when I got the pin location. So what he is saying is one thing, but I would not...

ADV KHUMALO SC: So we will make with his evidence what we make, but we can leave it here for now that at some point you became aware that the impalas were for

General Sibiya.

MR MATLALA: Okay.

ADV KHUMALO SC: Yes. Sorry, one last thing, and General Sibiya knew that the impalas came from you.

MR MATLALA: Obviously he knew from the chat, yes.

ADV KHUMALO SC: Yes, because he testified in this Commission and he denied that you gifted him impalas. So was he not being truthful?

MR MATLALA: No, I even heard from one of his friends that I think that they were dying like every day, so.

ADV KHUMALO SC: I want you to focus on his testimony before the Commission. He denied that you gifted him impalas. So was that testimony not truthful?

MR MATLALA: It was not truthful because they were delivered.

ADV KHUMALO SC: Okay.

ADV POOE: Thank you, Commissioner Khumalo. Just to pick up on the answer that you gave that he confirmed to one of his friends that they were dying. Commissioners, if we can go to the Sibiya bundle, which would still be File 5? If we can go to page 36? My apologies. In fact, before we go to page 36, if we can start at page 34. And just for the record, Commissioners, this is a supplementary affidavit that we received from General Senthumule. And at paragraph, I think it is paragraph 11.1, and there she says:

> "We have heard of Mr Matlala buying Lieutenant General Sibiya impalas in the testimony of Witness F. It was raised by the Evidence Leaders. I then recall that Lieutenant General Sibiya once sent me pictures of two dead impalas. I inquired from him where the pictures were taken, what killed them, and if they were his. He responded that these were at his place and clarified how they died."

Then we can go to the annexures that she provides to the Commission, that at page 36. The version that ...[intervenes].

CHAIRPERSON: Sorry, before we project, sensitive viewers ...[intervenes].

ADV POOE: Chair, it is redacted for ...[intervenes].

CHAIRPERSON: Should avert their vision.

ADV POOE: Chair, it is redacted for purpose of display, so it will not show.

CHAIRPERSON: All right.

ADV POOE: It is only in your files.

CHAIRPERSON: All right.

ADV POOE: So those are WhatsApp chats between the Generals Sibiya and Senthumule, and you will see there, there is pictures of dead impalas. And if you go to the next

page at page 37, he says:

"Two died."

She asks:

"Where is this, General?"

General Sibiya responds and says:

"My place."

General Senthumule says:

"Haibo, Jane, are they yours? If yes, what killed them?"

And she also says:

"The manner of death seems odd. It is like their necks were broken."

And his response is:

"One was trying to run away and ran into a dam. Another one was found dead this morning."

And they go on to – General Senthumule responds with sad faces, and he also further explains one was trying to run away and ran into a dam. Another was found dead, and says:

"Oh, sorry, General. Just hope the kids are not traumatised."

Now, when you say you heard he told one of his friends that they were dying, is this what you are referring to?

MR MATLALA: No, no, no.

ADV POOE: Which friend are you referring to?

MR MATLALA: I am referring to a friend of his called Serge.

ADV POOE: Serge Cabonge?

MR MATLALA:

ADV POOE: Thank you, Mr Matlala. Now, when you find out that these are General Sibiya's impalas, you still proceeded to send the impalas to General Sibiya. You have confirmed that. Why would you do that?

MR MATLALA: No, it is a WhatsApp location. So for you, you must open the WhatsApp and check. So I forwarded it, and then after a while, I just check where they were going.

ADV POOE: So you finding out that it is for General Sibiya does not happen on the day. On the day, you just forward the communication. You find out after?

MR MATLALA: Honestly, I cannot remember if it happened the same day, or I cannot recall that.

ADV POOE: All right. In your conversation between yourself and Commissioner Khumalo, you indicated that you just thought that Sergeant Nkosi was trying to impress his boss once you found out that the impalas were for General Sibiya. Is that correct?

MR MATLALA: Yes.

ADV POOE: Okay, and you were not expecting anything from either one of them?

MR MATLALA: No, no, no.

ADV POOE: Okay. Thank you.

ADV BALOYI SC: Mr Matlala, considering that at this point, you have already, at this point of the impalas, you have already given him R500 000 and another amount, I think R50 000, it is fair to say that it would not have mattered even if you had found out that these impalas were going to General Sibiya, you would have given them anyway, because you already have a relationship with him where you have given him money ...[intervenes].

MR MATLALA: The...

ADV BALOYI SC: Ja.

MR MATLALA: Sorry.

ADV BALOYI SC: Ja, I am saying you have already given him R550 000 by this point, and there are these impalas on your account. You were going to give them to anybody. It did not matter where they landed because there were so many of them. They were breeding and you were just getting rid of them. So it would not have mattered whether it was him or not. You would have given them to him even if you were told these are for Sibiya.

MR MATLALA: Commissioner, I think the impalas were delivered before the money.

ADV BALOYI SC: Is that so?

MR MATLALA: Ja, I think so, yes.

ADV BALOYI SC: Okay.

ADV KHUMALO SC: So just to be clear, the impalas are March 2024, and then I understood you to be saying much later that year the R500 000 and the R50 000 were given to him.

MR MATLALA: Yes, yes.

ADV BALOYI SC: My point stands anyway, even with that sequence, that given your explanation for giving these impalas away and not caring who they were going to, even if you had known that it was General Sibiya, it would not have made a difference. You would have given them anyway.

MR MATLALA: Ja.

ADV BALOYI SC: Is that not a fair proposition?

MR MATLALA: Yes, to whoever, yes.

ADV BALOYI SC: You would have given them to whoever?

MR MATLALA: Whoever, yes.

ADV BALOYI SC: Thank you.

ADV POOE: Mr Matala, I just want to test your answer. If we can go back to File 5, which is that Sibiya bundle we have been dealing with. If we can go to page 3, in fact page 2. Let us start at page 2. At page 2. My apologies, it is the Sibiya bundle, which is File 5 at page 2. You will see at chat 9, this is now a conversation between yourself and Sergeant Nkosi that happens the day before the

communication about the impala transpires. Now you will see ...[intervenes].

MR MATLALA: Chat 9?

ADV POOE: Chat 9 at the bottom of page 2. You will see there that you sent to him a case number. Can you see that?

MR MATLALA: Yes.

ADV POOE: Now if you go to the next page, page 3, he asks:

"Which station?"

Your response is at chat 2. You say:

"Mamelodi East."

And that is on the 20th. On the 21st, there is first a call that you make, and thereafter chat 4, you say to Sergeant Nkosi:

"Call me."

And then you will see at chat 5 is the call, and then at chat 6 it is that voice note that we dealt with earlier. Still on the same day at chat 7 is another call, and at chat 8 you say:

"You did not send anything here."

And there is a couple of emojis. And then on page 4, you will see at chat 1 is a screenshot, right? So I am just going to request that we go to the screenshot, which is on page 5. And you see there that that is the same case number that you sent to Sergeant Nkosi the day before and you see it is station unit is Mamelodi East, and that is one of those

internal SAPS databases that gives you the details of the investigating officer who is investigating that case, and it tells you the movement of the docket internally within SAPS. Can you see that?

MR MATLALA: Yes, I see that.

ADV POOE: Now, do you recall what this case is about?

MR MATLALA: No, I do not.

ADV POOE: Do you recall why you were asking Sergeant Nkosi about this case?

MR MATLALA: No, I do not recall it.

ADV POOE: And was this facilitation of the impalas at all related to you seeking information about this case from Sergeant Nkosi?

MR MATLALA: No, no.

ADV POOE: So is it purely coincidental that this happens after you were asking Sergeant Nkosi for information related to this case?

MR MATLALA: What is this case for?

ADV POOE: You will see there in the screenshot it merely lists the various detectives that were all there. Can you see that?

MR MATLALA: I see, yes.

ADV POOE: So I do not know what the case was about, but it is a case that you were interested in.

MR MATLALA: Ja, but like I am saying, I do not recall this

thing.

ADV POOE: And the fact that this conversation about him getting information related to this case happens at the same time as the facilitations of delivery of impalas have nothing to do with each other?

MR MATLALA: Is it the same day that the impalas were delivered?

ADV POOE: Yes. Like I said, if you check at the beginning of the conversation, the day before you asked for that, you tell him the case number. He asks you about the station. The following day, you ask him to call you. Then you sent through the voice recording. Then there are further calls. Thereafter, he sends you the screen, this picture with the details regarding this docket.

MR MATLALA: Sorry, I will ask maybe still a stupid question, but I want to be clear. The same day that I sent him this voice recording, is it the same day that I sent also the case number?

ADV POOE: I am saying it is the day before, on the 20th.

MR MATLALA: The day before.

ADV POOE: You sent the case number.

MR MATLALA: The following day I sent ...[intervenes].

ADV POOE: Ja. The following day, he asks you the station. Following day, you sent him the information regarding the impalas, and then he sends you this. I am

asking whether the two are connected or if it is purely coincidental that it transpires on this ...[intervenes].

MR MATLALA: No, they are not connected, but I just wanted to understand where does this thing come from. So, but they are not connected, but I do not recall the case, unfortunately.

ADV POOE: All right.

ADV KHUMALO SC: So do you know why you were enquiring from Sergeant Nkosi about this case number and why he would give you a screenshot that contains internal SAPS details?

MR MATLALA: I do not remember why I – this entire conversation, I do not remember it, so I would not know what was it for.

ADV POOE: All right, thank you, Mr Matlala. Let us move from the topic of impalas and deal with the next paragraph, which is paragraph 65. We are still on page 16. Can you please read paragraph 65?

MR MATLALA: Yes, I did.

ADV POOE: And can you confirm the contents?

MR MATLALA: Ja, but not the last sentence.

ADV POOE: Okay, so the first sentence is fine?

MR MATLALA: Yes.

ADV POOE: And then what do you want to correct or delete about the second one?

MR MATLALA:

"He made it possible for Medicare to be awarded the medical contract."

ADV POOE: Okay, so should it read:

"I felt obligated to do so considering his position."

Full stop?

MR MATLALA: Yes.

ADV POOE: All right. So it says:

"I reiterate that at all material times I complied with all the requests that I received from Sibiya. I felt obligated to do so considering his position."

Is that correct?

MR MATLALA: Yes.

ADV POOE: Now, this follows on from this discussion about the impalas and suggest at least, from when you look at the construction, that even the impalas were a request from Sibiya that you felt you were obligated to meet.

MR MATLALA: Yes, but it has nothing to do with the impalas.

ADV POOE: Okay. So even though it follows on from the conversation of the impalas, you are saying that this has nothing to do with the impalas?

MR MATLALA: Yes.

ADV POOE: What requests of General Sibiya that you were receiving did you comply with at all material times?

MR MATLALA: I just explained earlier.

ADV POOE: You can explain them again. Or perhaps are you referring to the two requests for money?

MR MATLALA: No, I am referring to that we said we can deal with it in another forum.

ADV POOE: You see, when you say earlier, then I do not know which earlier. So you are saying that that is something you can respond to in a different forum for safety and security reasons.

MR MATLALA: Yes.

ADV POOE: All right. Thank you. And then now, if we can continue to paragraph 66? Can you read that? Mr Matlala, are you done with the paragraph?

MR MATLALA: Yes, I am done.

ADV POOE: Okay. Now let us deal with that paragraph. Do you confirm the contents of that paragraph?

MR MATLALA: Yes, I confirm.

ADV POOE: Okay.

MR MATLALA: But not the entire paragraph.

ADV POOE: Okay, let us then deal with the parts of the paragraph you do not agree with. Maybe let us just go sentence by sentence. The first sentence you – no, which parts?

CHAIRPERSON: No, rather let Mr Matlala indicate what he does not agree with.

ADV POOE: Yes. Which parts do you not agree with?

MR MATLALA: I think the second and the third sentence.

ADV POOE: The second and the third?

MR MATLALA: Yes.

ADV POOE: Okay. The second reads:

> "I informed him that I did not have sufficient funds to do so immediately, however that I would only be able to do so in due course and upon receipt of payment from SAPS."

Is it incorrect? Should it be deleted or do you want to amend it?

MR MATLALA: No, I do not want to amend it. It is incorrect.

CHAIRPERSON: You never said that at all?

MR MATLALA: Yes.

ADV POOE: So this was another one of those things inserted by IDAC?

MR MATLALA: Yes.

ADV POOE: Okay. And with regard to sentence number three?

MR MATLALA: Yes, also sentence number three.

ADV POOE: Again, is it something that was inserted by

IDAC?

MR MATLALA: Yes.

CHAIRPERSON: So that is the sentence that says:

> "He then asked that I pay for the said plot as and when I receive payment from the SAPS and/or as the funds came in."

Mr Matlala, can you confirm that that is the one that you want us to also?

MR MATLALA: Yes, sorry, yes, the third, yes.

ADV POOE: Yes, okay. And then the remainder of that paragraph is correct? The next sentence:

> "I was together with Sibiya when we met with the seller of the plot he situated in Midrand."

MR MATLALA: Yes, meeting the seller and the plot, yes.

ADV POOE: Okay.

MR MATLALA: But the position to make payment is not.

ADV POOE: Excuse me, the what to make payment?

MR MATLALA: The last – I only confirm that I may be able to point out the plot, and the seller knows me, and the seller does not know me. He says the seller knows me.

ADV POOE: So the seller does not know you?

MR MATLALA: Maybe, okay, maybe by now he might know me, but he saw me, but it is not like knows me, not meaning someone that he – I saw him that day, but not like I suspect

that by now he will know me.

ADV POOE: Okay, so he would have seen you that day and he may remember you?

MR MATLALA: Now, with these things ...[indistinct].

ADV POOE: Okay, and then you say ...[intervenes].

CHAIRPERSON: Just a minute, I am very sorry, Ms Pooe. So when you say, or rather deny what is in sentences two and three, or rather, you deny those two sentences. And here is what I want to ask. Was there any discussion at all about payment? If there was, what was that discussion?

MR MATLALA: Not about payment, but there was a discussion about buying the plot.

CHAIRPERSON: All right, thank you.

ADV POOE: Okay. In that sentence we were just dealing with where you say he cannot know. You wanted to change the part about the seller knowing you. It goes on to say:

> "He also attended my office to make follow-ups on when I would be in a position to make payment."

MR MATLALA: Yes, that is the part that I said is not true.

ADV POOE: So the whole sentence from then is not true?

MR MATLALA: Yes.

ADV POOE: Okay. And then the last one:

> "It is right there and then that I realised that the extortion that I was being

subjected to will not end and decided not to buy the plot for Sibiya."

MR MATLALA: Yes, I can agree with this one.

ADV POOE: Okay, so at some point General Sibiya asked you to buy the plot?

MR MATLALA: Yes.

ADV POOE: All right. Now, just if we can go to File 2 where Witness C's documents are at page 442?

CHAIRPERSON: In my File 2, there is no 442.

ADV POOE: File 2 with the seized evidence. I am going to ask that we display it. Yes. Now, if we can just look at line 17, where Mr Matlala says:

"I do not know it ...[indistinct] a lot of money, but I cannot prove what I bought. What I know is a farm in Midrand."

This was in response to when the investigators were asking about things bought for General Sibiya. Now, it goes on to say, male speaker says:

"A farm?"

That is at line 20. Mr Matlala:

"Yes, not a farm, it is a plot."

Male speaker 1 says:

"Is it the one where you said you gave him R2 000 000?"

Mr Matlala:

"No ...[indistinct]."

Male speaker:

"Ja. Mr Matlala said he bought another plot."

Male speaker 1 says:

"In Midrand, is it the way you gave him R2 000 000?"

And says:

"Mr Matlala, yes, yes ...[indistinct] the wife."

Male speaker 1:

"The wife?"

Mr Matlala:

"Yes."

Male speaker 1:

"The farm in Midrand, yes."

Mr Matlala:

"Yes."

Male speaker 1:

"Registered the wife."

And Mr Matlala:

"That is what he told me, that he is going to register it in his wife's name."

Then male speaker 1 says:

"Okay, this one you gave him R2 000

000."

Mr Matlala:

"Yes. When was it? January?"

Mr Matlala:

"Ja."

And then goes on to say:

"So you gave him money every week.

You would give him money."

But in the exchange that I read there, you told the investigators that you had given General Sibiya R2 000 000 to buy a plot that was then registered in the wife's name. Do you recall that?

MR MATLALA: No, I do not recall that, and that can be easily verified even, so there is no such thing.

ADV POOE: Okay, so it is not related to what you are talking about in the 204 statement?

MR MATLALA: No, this voice recording is not true.

ADV POOE: Okay, thank you. Then if we can proceed? If you can read paragraph 67?

MR MATLALA: Yes, I did.

ADV POOE: Do you confirm the contents of this paragraph?

MR MATLALA: No, I do not confirm them.

ADV POOE: Okay, which parts of it do you not confirm?

MR MATLALA: Okay, I only confirm that I gave him the

bank card, but I do not confirm the entire thing.

ADV POOE: So at no point did General Sibiya ask you to take care of Sergeant Nkosi?

MR MATLALA: I knew Sergeant Nkosi before General Sibiya even.

ADV POOE: I understand that. I mean, in this instance they are talking, because as the statement suggests, Sergeant Nkosi knows about your relationship between, the relationship between yourself and General Sibiya, that you take care of him so that he does not expose what he knows of the relationship. So I am asking, at any point did General Sibiya ask you to take care of Sergeant Nkosi in that manner?

MR MATLALA: No, he never did.

ADV POOE: All right.

CHAIRPERSON: Now, if you did not give Sergeant Nkosi the card in the context of General Sibiya having asked you to take care of him, what were the circumstances of you giving Sergeant Nkosi the card?

MR MATLALA: Chairperson, Sergeant Nkosi, he was someone like my, I would say, I took him as a younger brother, I would say that. Whenever he would need help, if I do not have cash, I would give him a card and he would bring it back. So he would now and then, when he need to, need money for whatever. Sometimes I will give him cash

even if I have.

ADV KHUMALO SC: Mr Matlala, in this specific case, why did you give Mr Nkosi or Sergeant Nkosi the bank card, in this specific instance?

MR MATLALA: I said because I did not have cash, like money in cash, so the card is for him to use, then he will bring it back.

ADV KHUMALO SC: So you ...[indistinct] gave him the card?

MR MATLALA: Yes.

ADV KHUMALO SC: So what happened to the story about the card was left in a speedboat, and while he was transporting the speedboat to the farm, the card happened to be there, and that is how he gained access of it, and then he was asked to buy supplies for you, and that was the reason for the withdrawal. What happened to that story?

MR MATLALA: I cannot comment on that story. I know nothing about that story, so.

ADV KHUMALO SC: You know nothing about that story?

MR MATLALA: No, nothing.

ADV KHUMALO SC: And you have never given a version before about that story?

MR MATLALA: No, it is not. I have never left my bank card on the jet ski. I know nothing about that.

ADV KHUMALO SC: You know nothing about it?

MR MATLALA: Yes.

ADV POOE: Then, Commissioners, I am just going to ask that we go to Ad Hoc statement File 1A. You will see there page 42. Just to refer you, this is a conversation while during questioning by Advocate Arendse. You will see there, there is discussions about your relationship with Sergeant Nkosi and biking. I want to draw attention to where Advocate Arendse says to you:

> "You shared a passion for motorcycles and he did a lot of things for you, you said."

Can you see that?

MR MATLALA: Yes.

ADV POOE: And you respond and say:

> "Yes."

He asked:

> "Like what?"

And you say:

> "I remember one time that I asked him to go fetch my bank card and buy me a battery for a speedboat because my battery was dead and bring it to my farm. It was in, I think, in December. I was at the farm."

MR MATLALA: Yes.

ADV POOE: So this incident that you are describing where you asked him to fetch the bank card is not the same incident of you giving him the card that you are describing in your statement.

MR MATLALA: The bank card, I did not give him only once, so I would not know. Yes, I gave him the bank card, but I am saying...

ADV POOE: Okay, so you gave him the bank card on multiple occasions?

MR MATLALA: Yes.

ADV POOE: This is but one of those occasions?

MR MATLALA: Yes.

ADV POOE: And in some instances, he did things for you, like in this instance to buy the battery for your speedboat, and in other instances it was for him to use as he wanted.

MR MATLALA: Also, if I need to buy things for myself, and then I would send him to do things for me and then give him the card to pay.

ADV POOE: All right. So what I want to understand is whether he could use the card for his own purposes.

MR MATLALA: Yes.

ADV POOE: All right, thank you. Now, if we can go to File 10, the one with Dlamini's notes at page 4. You will see – sorry, page 4.

MR MATLALA: Yes.

ADV POOE: Now, just to go through what Mr Dlamini records in that regard, he says:

> "Cat had a farm in Limpopo where he kept a speedboat that belonged to the late Mr Msibi. At some point, he asked Sergeant Nkosi to collect the card from his home and to buy the battery for the speedboat. Cat indicated that Sergeant Nkosi kept the card with him. He further stated that General Sibiya has asked that the card be kept by Sergeant Nkosi. He also indicated that Sergeant Nkosi was withdrawing cash, especially in Pretoria North, Sergeant Nkosi staying in and around Pretoria North, and buy with it as and when it is necessary. The card was with Sergeant Nkosi until December 2024."

And on the next page ...[intervenes].

MR MATLALA: What page are you at? I did not ...[intervenes].

ADV POOE: Page 4.

MR MATLALA: So you are reading Fanni Nkosi, Sergeant Fanni Nkosi?

ADV POOE: No, this is from Dlamini's notes.

MR MATLALA: Yes ...[intervenes].

ADV POOE: Under FNB bank card.

ADV KHUMALO SC: Where it says FNB bank card, the last part, not the first part.

MR MATLALA: I was – okay.

ADV POOE: Sorry.

CHAIRPERSON: Do you want to just quickly read all of that?

MR MATLALA: I will follow it, it is fine.

CHAIRPERSON: All right, all right.

ADV POOE: All right. Then on page 5 says:

> "The WhatsApp message where he was requesting the card and security numbers. He wanted to buy online using the card. The picture on WhatsApp had nothing to do with buying of the battery. General Sibiya might have withdrawn approximately..."

Well, I think it says Sergeant Sibiya there might have withdrawn approximately R70 000 from the card up to the time he had to buy a battery.

MR MATLALA: Sergeant Sibiya, maybe he wanted to ...[intervenes].

ADV POOE: To say ...[intervenes].

MR MATLALA: Nkosi.

ADV POOE: Yes. Now, when you look at from the beginning of this account that the instruction for the card to be kept with Sergeant Nkosi comes from General Sibiya, that account that is captured in Dlamini's affidavit accords with the account that was in the statement, the 204 statement. Can you see that?

MR MATLALA: The 204?

ADV POOE: Yes. You see, remember we dealt with paragraph 67, where it starts with:

> "As a result of this payment I made to Sibiya, he advised me that since Nkosi knows of the relationship I have with him, I should take care of Nkosi by means of giving him money so that he may be managed not to expose our dealings to other people. In this context, I felt obligated and gave Nkosi one of my business cards, to which he would then transact and withdraw monies."

So what I am saying to you is that if you look at that account and the account captured by Dlamini from the consultation, those two are similar. You see that?

MR MATLALA: Okay.

ADV POOE: And so my question to you is, do you still maintain that that is a lie? Remember when we dealt with

this paragraph, you said General Sibiya never asked you to give Sergeant Nkosi the card.

MR MATLALA: Yes, he never asked me.

ADV POOE: So when you said this in the consultation, as Dlamini has captured, were you misleading him?

MR MATLALA: Not misleading. Maybe he made a mistake.

ADV POOE: Not misleading him. He may have made a mistake?

MR MATLALA: Maybe he made a mistake because there is a lot of mistakes that I see here.

ADV POOE: All right, thank you. Then I am going to move past this point. If we can go to paragraph 68 of the 204? If you can read that?

MR MATLALA: Yes, I can. Ja, I read that.

ADV POOE: Can you confirm the contents of this paragraph?

MR MATLALA: No, I do not. I do not.

ADV POOE: Okay. Which aspects do you have an issue with?

MR MATLALA: The entire paragraph.

ADV POOE: So was the entire paragraph inserted by IDAC?

MR MATLALA: Yes.

ADV POOE: And they would have then made up your

relationship with Thema and the parts about Thema having advised you that Rachel, and just to confirm, Rachel they are talking about Ms Matjeng?

MR MATLALA: Yes.

ADV POOE: Was in charge of medical screening. So all of that IDAC made up?

MR MATLALA: No. Yes, they made up. Not to say that it is a lie. She was not in charge of screening. I am saying ...[intervenes].

ADV POOE: No, that they made the entire paragraph up.

MR MATLALA: Yes.

ADV POOE: That Thema told you that? Okay. Now, if we can then move on to the next paragraph, which is paragraph 69 of your affidavit, can you please read that?

MR MATLALA: Yes, I read that, but I need to claim my privilege not to incriminate myself.

ADV POOE: So are you saying that providing any confirmation in relation to this would incriminate you?

MR MATLALA: Yes.

ADV POOE: Okay, then I just wanted ...[intervenes].

ADV BALOYI SC: We are talking about paragraph 69?

ADV POOE: Yes.

ADV BALOYI SC: Ja. I suppose it is fair that you must put to him what Ms Matjeng said about that payment, and it is up to Mr Matlala how he chooses to answer, because we

have had a witness testify that she received payments from him, and he can decide how he wants to deal with it, or whatever she said. She received payment or she did not receive it, whatever she said.

ADV POOE: All right. Mr Matlala, Ms Matjeng testified before this Commission that she received the – well, one, that you requested her to send banking details through which you could send money, and you specifically indicated that it had to be banking details for someone else, a third party. She explained to the Commission that that was because she was in a relationship with you, and you did not want your wife to find out about the relationship, hence the monies had to be sent to a third party. That the three payments were paid to ...[intervenes].

CHAIRPERSON: Please deal with one.

ADV POOE: Okay.

CHAIRPERSON: Please deal with one.

ADV POOE: Maybe then let us start there ...[intervenes].

CHAIRPERSON: The first one, the first one. And also, was it not pursuant to a request for the money by Ms Matjeng? Maybe you should start there.

ADV POOE: Yes, Chair.

CHAIRPERSON: Yes.

ADV POOE: So, Ms Matjeng's file is File 6. I just do not have the references, but I will look at them as we go. The

first thing that Ms Matjeng said was that she made a request to you for assistance. She had a judgment debt against her. Thereafter, you requested her to send – is that, do you recall that? Maybe the first thing is, do you recall Ms Matjeng's request to you for money?

MR MATLALA: Like I said before, I do not want to incriminate myself.

ADV POOE: All right. Ms Matjeng then says you asked for a third party so that the money could be paid through a third party. Do you want – do you recall that?

MR MATLALA: I do not want to incriminate myself.

ADV POOE: She then indicated that the money was – she then sent to you a bank account number of Osizweni Meat Market, Osizweni, and that was an account of a person known to both of you. Do you recall that?

MR MATLALA: I also do not want to incriminate myself.

ADV POOE: She indicated that you made three payments of R100 000 and sent her screenshots of ...[intervenes].

CHAIRPERSON: Into the Osizweni bank account.

ADV POOE: Yes. Thank you, Chair. Do you recall that?

MR MATLALA: I do not want to incriminate myself.

ADV POOE: She then testified that she never received any of the money because you had owed Osizweni for meat they had provided for funerals, she said. Do you recall that? Do you have any knowledge of that?

MR MATLALA: No, I do not want to incriminate myself.

ADV POOE: So finally she testified that she did not receive any of that money and that the money was not paid pursuant to the contract or as a result of anything she was doing in relation to the contract. It was for because you two were in a relationship and she was asking her boyfriend for money, and this was a favour between two people who were in a relationship. Do you want to confirm that or do you want to comment on that?

MR MATLALA: No, I do not want to comment on that. I do not want to incriminate myself.

ADV POOE: Were you in a relationship with Ms Matjeng?

MR MATLALA: I do not want to incriminate myself.

CHAIRPERSON: Perhaps it is a matter of detail. Is it not correct, you will correct me, let me rather direct it to you because I will not – I will probably not get a response anyway. Is it not so that Ms Matjeng said what was meant for her was the first R100 000, and she sort of suggested that the next two tranches were not necessarily meant for her. Am I not correct?

ADV POOE: Yes, Chair, that is correct. She indicated that only the first one was directed to her.

CHAIRPERSON: Yes.

ADV POOE: We did, however, challenge her on that, and more than one of ...[intervenes].

CHAIRPERSON: Ja, ja.

ADV POOE: Was sent to, and she could not explain why she received more than one proof of payment.

CHAIRPERSON: Even though we know the answer you are going to get, maybe you could put the question just, her testimony was that and what you and I have just discussed now.

ADV POOE: Ms Matlala, Ms Matjeng's testimony was that after three R100 000 payments made to Osizweni, only the first was for her. Do you want to confirm that?

MR MATLALA: I do not want to incriminate myself.

ADV POOE: And that the remaining R200 000 was for the butcher itself. Is that true, or do you recall that?

MR MATLALA: I do not want to incriminate myself.

ADV POOE: Now, I want to take you back to a question I asked you regarding your relationship with Ms Matjeng. Your response to me was that responding to that would self-incriminate you. I just want to understand how that incriminates you.

MR MATLALA: Because my relationship with her, I have to answer that same question, I have to answer that in court from the case that I am facing with her as my co-accused.

ADV POOE: Now, I just want to then ask this. It was not included in File 6, but it would have been included in the electronic bundles that were sent to you that contained all

the material, because for purposes of the testimony. So my suggestion is that I am going to ask the attorneys to hand up the relevant page to everybody, and then we can see if we can deal with it, because it was shared as part of the Rule 3(5) process.

It is a minor point. It is one page. You will see there, Mr Matlala, this is a sheet of payments that was tracked from your accounts and payments made to the accounts of Ms Matjeng. Now this predates the Medicare contract. If you look at the page, these payments were made between 2019 and 2021. Can you see that?

MR MATLALA: Yes.

ADV POOE: Can you see that?

MR MATLALA: Yes.

ADV POOE: Do you remember these payments?

MR MATLALA: This same sheet that you just gave me is something that I am going to use in court as evidence, so I do not want to comment on this.

ADV POOE: You mean in the same, the Medicare-related one?

MR MATLALA: Yes.

ADV POOE: Okay. What I wanted to understand from this is just the nature of your relationship with Ms Matjeng, in light of the fact that you had been making payments to her as early as 2019.

MR MATLALA: Yes, my relationship with her and also these payments is what I am going to use in court, so I do not want to incriminate myself.

CHAIRPERSON: Is that about you being incriminated or about your defence? Which is which?

MR MATLALA: I am going to use it as my defence, yes, and I think it might incriminate me if I can use it now.

CHAIRPERSON: Your defence might incriminate you?

MR MATLALA: No, I am saying I think if I can deal with matters that has to do with my case and any evidence that I am supposed to use to defend myself, I might somehow end up incriminating myself.

ADV BALOYI SC: I do not understand that, Mr Matlala. This is payments in 2020, '21, '22 – 2021, sorry, and they indicate, so it is well before the matter with which you are charged, for which you are on trial, and with Ms Matjeng. They indicate, this schedule indicates on those dates payments from your accounts. You either accept that these were payments from your account or not on those dates. It gives account numbers from and to, the name of the payee, it has references, which is your names, and then it has amounts.

I do not understand how you say confirming that these are payments from you in those periods is going to incriminate you in the trial about matters about a tender

that was awarded in 2024. I think you need to explain a little bit more how you see this implicating you, because I do not see it.

MR MATLALA: Yes, you might not see it, but I am going to use this as evidence, and then I do not want to end up using evidence before I appear in court, which might not – by the time now I get to court, the state will know how to counter my defence because they already know how I am going to approach my defence.

ADV BALOYI SC: No, the protection you have before us is not of that kind. It is not that you should not speak because it might disclose what you are going to say. It is not of that kind. It is not available to you in that way. But more importantly here, what is being put before you is what a witness has said about your relationship and payments received from you.

Now, you are being given an opportunity because she has explained it. She says you were girlfriend, boyfriend, all of these payments. In fact, she was emphatic to say the payments to her started well before the contract as proof that you had a prior relationship with her. Now, this is being put to you to give you the chance to admit, yes, you had a relationship, that is what the payments were about, or no, these are not my payments, or yes, they are my payments, but they were for reason A, B, C, D.

Otherwise, we are left with her version, and we must draw conclusions based her version without taking yours into account because you refuse to confirm your bank account, that payments were made from your bank account. And at this stage, at least for purposes of my discussion, it is no more than, what I am asking you is no more than saying, do you confirm you made payments between 2019 and 2021? Do you confirm those are your bank accounts? Do you confirm the payments were to Ms Matjeng? Do you confirm the references and the amounts? At this point, that is all that it is.

So, I have said this, that you cannot – it is not the privilege to refuse to answer questions because you do not want to self-incriminate or to incriminate yourself. It does not go so far as to say you refuse to answer questions because it will disclose to the prosecution what you are going to be saying. It does not go that far before us. It does not go that far.

Two, I do not understand what difficulty you have with confirming these are your bank accounts, these are the payments you made with those references. We are not yet at the point where we say, explain the payments, why. We are at the point where we say, do you confirm what this schedule reflects?

MR MATLALA: Commissioner, firstly, I would like to say

what the other witness has, how she testified here, I do not think that binds me to ...[intervenes].

ADV BALOYI SC: Sorry, you do not think?

MR MATLALA: I am saying what the other witness has testified before in this Commission. So because she testified, and then that is what she wanted to do. But now, because this is a case sitting in court, and any material that I have to use to defend myself in court and anything that can incriminate me, for me it is important that I must not disclose. I must be very careful not to incriminate myself, or even also to disclose my defence strategy.

ADV BALOYI SC: Do you accept, and I suggest the position you are adopting, you must accept, that if we do not accept your explanation that you do not want to speak to this schedule because you do not want to disclose your defence, if we say that that is not sufficient to invoke a defence or the privilege against self-incrimination, it is not good enough for that, and you do not answer, you do not counter what Ms Matjeng has said, do you accept, as I suggest you should, that then we only have version to work with and we must draw our conclusions based on her version, having given you the opportunity to comment and you chose not to comment? Do you accept that is what will happen?

MR MATLALA: Yes, I accept.

ADV BALOYI SC: Okay, thank you. Thank you, Ms Pooe.

ADV POOE: Thank you. Then, Commissioners, I think we should move on to the next paragraph for now. Before we move on to the next paragraph, my apologies, I just want us to go to the Dlamini statement. If we can go to page 8? Now, you will see at page 8, Mr Dlamini deals with the account that you provided during the consultation, and it says there, just going to look at the first two points. The first was that:

> "Brigadier Matjeng was an end user of the contract. She was responsible for the verification and would provide Cat with information about complaints."

And the second:

> "The payments made to Osizweni Butchery were meant for Brigadier Matjeng."

Now, this is Mr Dlamini's recollection of what you said about those payments that were made to Osizweni. Do you want to comment?

MR MATLALA: No, I do not want to incriminate myself.

ADV POOE: All right, thank you. Commissioners, if you can move to the next paragraph, paragraph 70? If Mr Matlala, if you can read that paragraph?

MR MATLALA: Yes, I have read it.

ADV POOE: And can you confirm the contents of this paragraph?

MR MATLALA: What is in this paragraph, and the person who has been mentioned here also is my co-accused, and I do not want to incriminate myself by commenting on this paragraph.

ADV POOE: I am sorry, you just have to repeat that a little louder.

MR MATLALA: I am saying the people who are mentioned in this paragraph, both of them are my co-accused, and I do not want to comment anything related to this to avoid self-incrimination.

ADV POOE: So for this paragraph, you are invoking your right against self-incrimination?

MR MATLALA: Yes.

ADV POOE: Then can I ask you whether or not you have been to Ms Matjeng's house?

MR MATLALA: Yes, I have been.

ADV POOE: Do you recall how many times?

MR MATLALA: I cannot recall.

ADV POOE: Was it a lot?

MR MATLALA: Yes.

ADV POOE: A lot?

MR MATLALA: Yes.

ADV POOE: And when you went to her house, do you

recall when it was the first time you went to her house?

MR MATLALA: I cannot recall.

ADV POOE: Do you recall whether it was just 2024, before 2024?

MR MATLALA: It is a long time, before even 2020.

ADV POOE: So before 2020 you had already been to her house. And prior to 2024, I am not suggesting that after 2024 you engaged about the contract, but prior to 2024, do you recall what you engaged Ms Matjeng about during your visits with her?

MR MATLALA: No, I cannot recall.

ADV POOE: At all, you do not recall at all what you talked to her about?

MR MATLALA: No.

ADV POOE: Okay. And post-2024, do you recall if you discussed the contract with her in your visits?

MR MATLALA: That I cannot comment on. I do not want to self-incriminate myself.

ADV POOE: Thank you. Chair ...[intervenes].

CHAIRPERSON: Just, let us take a break, just a minute, and resume at 16:15.

HEARING ADJOURNS

HEARING RESUMES

CHAIRPERSON: The delay was worth our while because the legal representatives managed to reach an agreement.

We will continue tomorrow. Thank you, thank you. Yes, Ms Pooe?

ADV POOE: Thank you, Chair. Over the short adjournment, I asked the attorneys to reproduce a section of the testimony of Sergeant Nkosi dealing with that Orlando East CAS number 157. It should be on your respective desks. I was just going to request that Mr Matlala considers it overnight just because it records the version that Sergeant Nkosi gave in relation to this and ...[intervenes].

CHAIRPERSON: Mr Matlalal – sorry, sorry.

ADV POOE: Ja, then we can deal with the question ...[intervenes].

CHAIRPERSON: Mr Matlala, you do have this, written 3 February 2026, day 52 at the top.

MR MATLALA: Yes, I do have it.

CHAIRPERSON: Thank you, thank you.

ADV POOE: And lastly, Mr Matlala, I am just going to ask that overnight you also consider the statement closely and mark the areas that you do not agree with, that you want to change and correction overnight, so that tomorrow we can move a little quicker.

MR MATLALA: Must I ...[indistinct] be off overnight?

ADV POOE: Excuse me?

MR MATLALA: I am in a prisoner cell. I cannot overnight.

They switch off the lights, so I cannot.

CHAIRPERSON: Okay.

ADV KHUMALO SC: I think, Mr Matlala, an arrangement has been made ...[intervenes].

MR MATLALA: Before nine, I will do it ...[intervenes].

ADV KHUMALO SC: For you to work with your attorneys. So, your attorneys will explain to you what will happen.

MR MATLALA: Yes.

ADV KHUMALO SC: So let us leave it there for now.

MR MATLALA: Yes, yes.

ADV KHUMALO SC: Ja.

CHAIRPERSON: Thank you. Let me say this before I announce the adjournment. Having indicated that tomorrow we are sitting, tomorrow we will sit until we finish regardless of what time that will be. We will sit until we finish. Now we will adjourn and resume at 09:30 tomorrow. Let us adjourn.

HEARING POSTPONED UNTIL 11 NOVEMBER 2026

HEARING ADJOURNS

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