

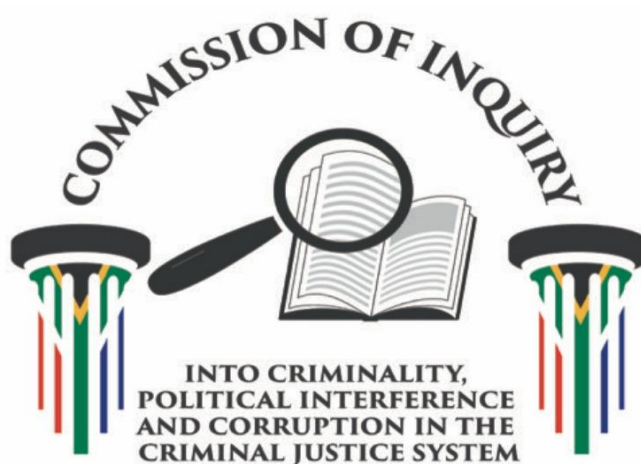
JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM

HELD AT

BRIGITTE MABANDLA JUSTICE COLLEGE

12 NOVEMBER 2025

DAY 31



PROCEEDINGS ON 12 NOVEMBER 2025

CHAIRPERSON: Ms Mohlasedi?

ADV MOHLASEDI: Good morning. Good morning, Chair.

CHAIRPERSON: Good morning to you too, ma'am. Good morning, Mr Nciza.

MR NCIZA: Good morning, Commissioners.

CHAIRPERSON: Thank you.

EXAMINATION BY ADV MOHLASEDI (CONTINUES): Good morning, Mr Nciza.

10 **MR NCIZA:** Good morning, Ma'am.

ADV MOHLASEDI: Yesterday we closed off with a discussion of Annexure PN2. Actually, before we go there, Mr Nciza, please confirm that you still have both files, the witness statement and the annexure bundle in front of you?

MR NCIZA: Yes, I do.

ADV MOHLASEDI: Thank you. If we could then pick up with your witness statement, we were on page 11, paragraph 27. Page 11, paragraph 27, please let me know when you are there.

20 **MR NCIZA:** I am there.

ADV MOHLASEDI: When we closed off yesterday, we had worked through Annexure PN2, which is in your Annexure bundle. It contained screenshots of a discussion between you and your superior, Ms Gxasheka.

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Thank you. I do not need us to work through that again, but we can perhaps just provide a recap of where we closed. In summary, the WhatsApp conversations reflect the discussion you had with Ms Gxasheka on the 20th of February 2023. Is that correct?

MR NCIZA: Yes, it does.

ADV MOHLASEDI: Thank you. Wherein she raised with you a need for security in light of the disciplinary action that you intended to take, at least the suspension that you
10 intended to take with respect to the Brigadier? Is that correct?

MR NCIZA: Yes, yes. It was in respect of the suspension.

ADV MOHLASEDI: Thank you. If you...

ADV BALOYI SC: May I just ask this? Good morning, Mr Nciza.

MR NCIZA: Good morning.

ADV BALOYI SC: I had meant to ask yesterday, and it is because of what happens later, and in particular the circumstances in which Mr Mkhwanazi's suspension was
20 uplifted, and then he was told to come back. So it is in that context that I ask the question. Where you say that Ms Gxasheka expressed that, and if I do not want this thing, do something about it. You remember that evidence?

MR NCIZA: Yes.

ADV BALOYI SC: Did you understand her to be reluctant

or not to want to be part of the suspension decision and process? What did you understand of that?

MR NCIZA: Thank you, Madam Commissioner. Indeed, my understanding was that she was reluctant because of the risk associated with the suspension itself. I did not understand her to be reluctant in respect of the substance of the issues that pertained to the suspension, but it was the risk issue that she expressed more concern about. She did not express concern about the allegations themselves.

10 **ADV BALOYI SC**: Thank you.

ADV MOHLASEDI: Thank you, Commissioner.

ADV KHUMALO SC: May I just follow up on that? On page 12 in the bundle, PN2.

MR NCIZA: Yes, Commissioner.

ADV KHUMALO SC: Are you there? PN2, page 12.

MR NCIZA: Yes, yes, I am.

ADV KHUMALO SC: You say that we need to strategize around it. Our subordinates have horror stories.

MR NCIZA: That is not me.

20 **ADV KHUMALO SC**: Is it not you? That is her?

MR NCIZA: That is Gxasheka, yes.

ADV KHUMALO SC: Okay. And did you know what she was referring to? Because, I mean, at this stage, all you are dealing with is the suspension of a brigadier. Why would there be concern about safety of yourself or

Gxasheka or other people at that stage? Forget about what happens later on.

MR NCIZA: The concern about safety, if you read the commencement of the WhatsApp engagement, you know, I had expressed a view that this matter is not going to be a simple disciplinary matter, you know, because it involves a character who is outside of the institution, who is in the news, and is in the news for wrong reasons.

So, we also – she also responded to say that,
10 indeed, this is a very delicate issue, you know. Now, on page 12 you would see that she had firstly requested, or rather asked whether indeed there was a risk assessment conducted as per the WhatsApp on page 11 at 11:03. So the risk assessment was a key issue to her, but then she expresses another concern at 11:07 on page 12, where she says:

20 “But I do not want people penetrating my private space. I am too private for Lama VIP who reports issues to some of our subordinates.”

So, what she is talking about here, in the institution, under the Specialised Services unit of EMPD, we have got a VIP protection unit that then would have guards, or they call them inspectors, so everybody that is a VIP protection unit member is an inspector. Those inspectors are then

allocated principals. Now, what Ms Gxasheka was raising is to say these people have tendencies of relating the private life of their principals.

So, she says to me that I am a private person, I do not want to be guarded by these people because my issues will be known in the institution, and that is what she is trying to deal with. And hence, her response to my 11:09 message that talks about strategies is informed by that concern that she has, you know, with regards to intrusion of
10 her private life.

ADV KHUMALO SC: Thank you.

ADV MOHLASEDI: Thank you, Commissioner. Thank you, Commissioner.

ADV KHUMALO SC: Yes.

ADV MOHLASEDI: Mr Nciza, let us just make two important points here. If I could ask you to turn to page 9 of that exchange, page 9.

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: You send a message at three minutes
20 past 11, the number of which is you confirming that despite the security challenges, you are going to send her the pre-suspension letter within the next 15 minutes. Is that right?

MR NCIZA: Yes.

ADV MOHLASEDI: Thank you. If you then just turn over the page to page 10.

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: At four minutes past 11, Ms Gxasheka asks you:

“Have they done EMPD preliminary investigation though?”

And you respond immediately:

“Yep.”

MR NCIZA: Ja.

ADV MOHLASEDI: Correct. So you respond in the affirmative to say that EMPD has at that stage, where you are on the brink of issuing the pre-suspension letter, a preliminary investigation has been done.

MR NCIZA: Yes, I responded in that manner, Counsel, because you will recall that I had indicated in my testimony yesterday that I had a session with Commissioner Spies and Lt-Col Erasmus, where indeed they had indicated to me the assessment that they had conducted, what I called some form of a desktop analysis of the registrations and the likes. So when she asked me that, my response was in respect of the discussion that I had with Spies and Erasmus.

ADV MOHLASEDI: Thank you. Could I then ask you to stay in the annexure bundle and just flip over the page to Annexure PN3? PN3. The actual document itself will begin on page 13 of your annexure bundle.

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Just to locate us in your witness statement, you are now at paragraph 28 and the annexure we are looking at now is PN3 that starts on page 13.

MR NCIZA: Yes, I am there.

ADV MOHLASEDI: Thank you. Could you just confirm for the Commission what is the title of that document at the top of the page in bold?

MR NCIZA: The document is titled, Intention to Suspension Letter.

10 **ADV MOHLASEDI:** So please confirm that that is the letter you were referring to in your WhatsApp communication with Ms Gxasheka as discussed.

MR NCIZA: Yes, it is.

ADV MOHLASEDI: Thank you. Right. At the top left corner of the page is a date. Do you confirm that that is the 20th of February 2023?

MR NCIZA: It is the 20th of February 2023.

ADV MOHLASEDI: Thank you. If we have regard to the box, the details in the box just under the heading of
20 Intention to Suspension Letter, the suspension letter relates to which employee?

MR NCIZA: Mr Julius Mkhwanazi.

ADV MOHLASEDI: Who at that time occupied what designation?

MR NCIZA: Director of Specialised Services/Brigadier.

ADV MOHLASEDI: Thank you. Sorry. If we just go through some key aspects of this letter, it reads:

“Sir, the municipality has received allegations of serious misconduct against yourself. The allegations that have been received by the municipality relate to the following issues.”

And it lists six issues under there.

MR NCIZA: Yes, ma'am.

10 **ADV MOHLASEDI**: Okay. Mr Nciza, the third paragraph then, the paragraph beginning, the employer has reasonable cause to believe.

MR NCIZA: Yes.

ADV MOHLASEDI: Are you there? Thank you. Could you set out briefly for the Commission what are the reasons that motivated the issue of this Intention to Suspend Letter?

MR NCIZA: The suspension letter started off, of course, by enumerating the issues in terms of the allegations that existed at the time against Brigadier Mkhwanazi. Then the
20 employer would – this is the standard that we took from the collective agreement, that if you are going to suspend an employee, you must articulate that your suspension is in relation to these factors as per the collective agreement.

So, the factors that would inform the suspension would be, one, that his presence:

“You may jeopardise the investigations that are required to be conducted on the matters raised above or herein.

2. You may interfere with potential witnesses.

3. You may commit further acts of misconduct.”

Yes.

ADV MOHLASEDI: Thank you. And the paragraph right
10 beneath ...[intervenes].

CHAIRPERSON: And, Mr Nciza, what informed number three?

MR NCIZA: Mr Chair, our experience is that, indeed, when an employee who is facing allegations of misconduct, especially allegations of misconduct of this nature, the nature of these allegations was such that they might be continuous in the very, you know in the conduct of the employee.

The registration of the vehicles, yes, had been
20 done, but the fact that the registration continued, you know, he might do certain things, and he indeed did do certain things that I will talk to further on, to misconduct himself further. You know, it might happen, I mean, there are issues about dishonesty and if indeed an employee interferes with documentation, you know, that is a

perpetuation of the dishonesty. So, that is why we always have this to say, is there a potential for this employee to commit further acts of misconduct, which might be linked to the allegations themselves, or even his presence in the workplace might actually expose the institution to further acts of misconduct?

CHAIRPERSON: Thank you.

ADV MOHLASEDI: Thank you, Chairperson. Mr Nciza, the final paragraph at the foot of that page invites the relevant
10 employee to provide representations on why he or she should not be placed on precautionary suspension. Do you see that?

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: And it invites them to provide those representations by the 22nd of February.

MR NCIZA: Yes.

ADV MOHLASEDI: Okay. Can I ask you then to flip over the page?

MR NCIZA: Yes, ma'am.

20 **ADV MOHLASEDI:** All right. Paragraph 5 at the top of the page requires the relevant employee to vacate the premises of the employer with immediate effect. Do you see that?

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Thank you. Could I then ask you to identify the first signature that appears under yours

faithfully?

MR NCIZA: The first signature of Commissioners is my signature, Xolani Nciza Employee Relations.

ADV MOHLASEDI: Followed by the signature beneath, please, belonging to?

MR NCIZA: The second signature belongs to Linda Gxasheka, who at that time was the acting HOD HR.

ADV MOHLASEDI: And then please identify the final signature, the third from the top on page 14.

10 **MR NCIZA**: The final signature on the document is an acknowledgement of receipt signature. The person had printed his name, JD Mkhwanazi, and had signed and also dated the document.

ADV MOHLASEDI: Please provide the date.

MR NCIZA: The date is the 21st of February 2023.

ADV MOHLASEDI: Thank you.

ADV BALOYI SC: Are you leaving the letter?

ADV MOHLASEDI: Yes.

20 **ADV BALOYI SC**: Okay. Maybe then let me ask my question. In the first page at 13, page 13, you have got Roman figure 3 and 4, and the allegation of gross dishonesty and possible corruption by receiving a donation in excess of the limits prescribed by Council. And then the second one says allegations of violating Council policy by not declaring the donation. Now, the evidence so far that

we have had that relates to a donation is about printing material of about R300 000 by CAT VIP. Is that what this refers to, or is it different in your recollection? I realise it was in February 2023 when you signed this. If you can recall, was this something different to this printing material for cadets in the amount of about R300 000?

MR NCIZA: The allegation that was brought to our attention was framed in these terms, Madam Commissioner. Remember, at this point, we as the Labour Relations or
10 Employee Relations Unit and HR per se were not seized with the actual investigation report that would have then detailed what exactly the donations were about. But on this day, when we drafted this letter, it was on the basis of the submission from the department to say that was a donation, but the nature and form of the donation was not clarified at that particular point.

ADV BALOYI SC: And then secondly, in page 14 where you say he is required to vacate the premises, that last paragraph there, the paragraph does not say to him, which
20 we have had happen to Chief Mapiyeye and to Commissioner Spies, it does not say to him he must surrender his tools of trade, his firearm and his computer. Does that mean he was allowed to keep this when the other two were told to hand in even their firearms? What does this mean?

MR NCIZA: Perhaps, Madam Commissioner, I can start off by indicating that what happened with Chief Mapiyeye and Commissioner Spies was not a standard process, you know. This is a pre-suspension letter. It is not a suspension letter. The person is not suspended, you know. This is a letter that says there is a view that the employer has taken that we should suspend you. However, we must give you an opportunity to present, you know, make representations why you should not be suspended. So at this point, you are not
10 suspended. So there is no basis for me to say hand over things when you are not suspended, you know.

And we use this paragraph on page 14, you know. We remove you indeed from the premises so that you go and actually concentrate on crafting your representations, but also to ensure that there is no malfeasance that happens in the process, because the minute a person receives this, and again, it is experience, you know, we give an employee this and then you hear from witnesses or from other colleagues to say that, hey, you know what, this
20 person was doing this, this person was at the office looking for files and all sorts of things.

So we prefer that you move away. But taking tools of trade is premature, you know. Hence, I would not put that in a pre-suspension letter because you are not suspended. The minute I take tools of trade, I have

effectively now prejudged, you know, the representations that have not yet been made. It has happened in instances where a person makes representations and then he convinces us that there is no basis to suspend, you know. We can still continue the investigations once the person is at work.

ADV BALOYI SC: And is the procedure, was the procedure that all suspensions must be preceded by a pre-suspension notification such as this, inviting them to make
10 representations? Was that how it works?

MR NCIZA: It is like that. It is clause 16 of the collective agreement. Even not the ...[indistinct] regulations for senior managers, clause 5 of the Regulations, I mean clause 6 of the Regulations speaks to that. There must be an opportunity provided to the employee to make representations.

ADV BALOYI SC: And senior managers in this case would include even Chief of Police and his deputies?

MR NCIZA: The Chief of Police, like I indicated yesterday,
20 you have three categories. Senior managers would be the Chief of Police, HODs, and the City Manager, as per the Municipal Systems Act. And then your divisional heads, like Spies, who was on the same level as I was, would then be the category that is the middle strata. And then everybody else falls under the Bargaining Unit of the Bargaining

Council and therefore they are regulated by the collective agreement.

ADV MOHLASEDI: And you confirm that that pre-suspension process did not happen with Chief Mapiyeye and Commissioner Spies?

MR NCIZA: I was not involved, Madam Commissioner. I know about the processes and I have listened a bit to the testimony that both gave. The process that happened is exactly as stated in the collective agreement, I mean in the
10 Regulations for Chief of Police, provide an opportunity for representations to be made, you know. And my understanding is that that did happen.

ADV BALOYI SC: Okay.

MR NCIZA: But what I find fault with what happened is the issue of them taking tools of trade before a determination is made.

ADV BALOYI SC: Okay. Well, we have heard from Commissioner Spies yesterday that he had attended an arbitration as a witness for the employer and then it is at
20 that that he was told you are on suspension. So it sounds like with him at least, I do not remember Chief Mapiyeye's evidence on this issue and will accept you saying it happened there, but Commissioner Spies seems to have had a completely different experience. Do you have any personal knowledge of that?

MR NCIZA: Like I say, by the time all of this was happening, I was no longer in the institution.

ADV BALOYI SC: Okay.

MR NCIZA: But if it happened that way, it was wrong.

ADV BALOYI SC: Okay, thank you. Thank you, Ms Mohlasedi.

ADV MOHLASEDI: Thank you. Thank you, Commissioner. Mr Nciza, we have then wrapped up with respect to Annexure PN3. Could I ask you to stay in the annexure
10 bundle and then proceed to the next annexure, PN4, which begins on page 15? Are you there, please?

MR NCIZA: I am there.

ADV MOHLASEDI: Thank you.

MR NCIZA: I am there, ma'am.

ADV MOHLASEDI: And for context, we are now in paragraph 29 of your witness statement on page 11. Again, my apologies, please identify the title of the document on page 50.

MR NCIZA: The title of the document is Suspension Letter.

20 **ADV MOHLASEDI**: Okay. And the date reflected there, Mr Nciza, according to your witness statement, there is a slight correction you would like to make?

MR NCIZA: Yes. This is a suspension letter that I drafted on the 24th of February. Unfortunately, it is reflecting 20 February on the letter itself, but it was actually on the 24th

of February. And you can also discern that from even the contents of the letter. The letter could not have been drafted on the 20th because the letter refers to an event or process that had occurred on the 22nd.

ADV MOHLASEDI: Okay. I will take you to that specific part of the letter now, but can you confirm that the suspension letter relates to Mr Julius Mkhwanazi?

MR NCIZA: Yes, it does.

ADV MOHLASEDI: Thank you. Mr Nciza, the first
10 paragraph of the letter, could I invite you to read that first paragraph, please? Beginning the notice of?

MR NCIZA:

“The notice of intention to suspend you issued by the municipality on the 21st of February 2023, as well as your written representations dated the 22nd of February 2023.”

ADV MOHLASEDI: So we can glean from that first
20 paragraph that Mr Mkhwanazi made written representations in response to the pre-suspension letter?

MR NCIZA: Yes.

ADV MOHLASEDI: On the 22nd of February 2023?

MR NCIZA: Yes, indeed.

ADV MOHLASEDI: And therefore, the date of the suspension letter therefore could not be the 20th of

February 2023? Is that correct?

MR NCIZA: It most definitely could not.

ADV MOHLASEDI: Okay. In paragraph 2, the letter then responds, or the letter then says:

“The notice served upon yourself called for submissions of written representations in respect of a determination of whether to suspend you or not.”

10 Do you see that?

MR NCIZA: Yes.

ADV MOHLASEDI: Okay. Please read the contents of the third paragraph.

MR NCIZA: The third paragraph, the submissions?

ADV MOHLASEDI: Indeed, yes.

MR NCIZA:

20 “The submissions received from yourself do not in any shape or form provide reasons why the employer should not place you on suspension.”

ADV MOHLASEDI: And you then cite the authority for that in the next paragraph. Is that correct?

MR NCIZA: Yes.

ADV MOHLASEDI: My apologies. And in paragraph 5, paragraph 5 provides that:

“the employer hereby suspends you from work pending the investigation and conclusion of any possible disciplinary proceedings that may ensue in terms of the provisions of the Disciplinary Procedure Collective Agreement.”

Is that correct?

MR NCIZA: Yes.

10 **ADV MOHLASEDI**: Okay. And you then set out the reasons there warranting the suspension?

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Okay. Paragraph 6 then at the foot of the page sets out the conditions that apply in respect of the suspension?

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Thank you. Can I ask you to flip the page then to page 16?

MR NCIZA: Yes, ma'am.

20 **ADV MOHLASEDI**: Where I will ask you to again identify the respective signatures on that page.

MR NCIZA: The signatures that are on page 16, Commissioners, myself, Xolani Nciza Employee Relations, Ms Linda Gxasheka, Acting HOD Human Resources and acknowledgement of receipt by JD Mkhwanazi with his

signature and the date that he had received, which is the 24th of February 2023.

ADV MOHLASEDI: Mr Nciza, if I may confirm then, the date of signature of the suspension letter would then be the 24th, correct?

MR NCIZA: Yes.

ADV MOHLASEDI: Right. And the subject matter of the investigations at this stage is based on a preliminary investigation at this point. Is that correct?

10 **MR NCIZA**: Sorry, ma'am?

ADV MOHLASEDI: I mean, the allegations under consideration at this point are based on the preliminary, yes, the allegations that make up the subject matter of the suspension at this point are based on the preliminary investigations that have been reported to you at this point.

MR NCIZA: Yes.

ADV MOHLASEDI: Thank you. Could I then ask you to turn to page 12 of your witness statement? Could we go back to that file? Page 12 of the witness statement, and
20 you are in paragraph 30?

MR NCIZA: Yes, I am. Thank you.

ADV MOHLASEDI: And in paragraph 30 you indicate that Brigadier Mkhwanazi was suspended for three months in terms of clause 16 of the DPCA, that is the collective agreement referred to in the suspension letter, which

suspends him from work pending the investigation and conclusion of any disciplinary proceedings. Is that right?

MR NCIZA: Yes, it was.

ADV MOHLASEDI: So, if his suspension date was effective from the 24th of February, the suspension would then be effective for the next three months up to May, correct?

MR NCIZA: Yes, 24 May.

ADV MOHLASEDI: Thank you. Please then take the
10 Commission through the subsequent developments after the issue of the suspension letter. You are now at paragraph 31 of your witness statement.

MR NCIZA: 31?

ADV MOHLASEDI: 31, 3-1, on page 12.

MR NCIZA: So, just for clarity, I need to take the Commission and the subsequent developments on this matter of Mkhwanazi?

ADV MOHLASEDI: Indeed, following the issue of the suspension letter.

20 **MR NCIZA**: Commissioners, yes, I proceeded to, of course, deal with my other duties in the institution, which was involving all departments in the institution, but there is an acknowledgement that I have always had, that EMPD had the highest number of disputes in the institution, disciplinary matters, I think, because of the nature of the

work that is performed by Metro Police officials.

They are working with the members of the public, so you would have all sorts of allegations that get raised, whether it is issues of assault, it is issues of bribery, it is issues, you know, that concern the conduct and behaviour of the Metro Police officials. So, I would then regularly engage with the department on matters that impact that discipline in the department.

So, we had a number of briefings that ensued in
10 respect of, especially the investigations in Brigadier Mkhwanazi's unit, the investigations into the Blue Lights scandal, but they also raised issues with me regarding other investigations that were underway, inclusive of investigations against McKenzi, Stols and Twala, you know, who were constables. They are working in the Specialised Unit section.

Now, during those briefings that I would receive, I would say that I received what I can only term and describe as horror stories, you know, about what was happening
20 within the unit, and I was kept abreast of even engagements that the Chief of Police was having with IPID regarding these officials, Mkhwanazi, McKenzi, Stols and Twala.

So, ja, I received a lot of information about the cases that were dealt with, you know, issues of copper theft, you know, issues of even murder, extortion. There is

a number of issues that they briefed me about regarding these individuals.

ADV KHUMALO SC: The information you received relating to these three other officers was just as serious as the information relating to Brigadier Mkhwanazi. Do you know why they were not suspended or even issued with a letter that requires them to make representations regarding why they should not be suspended?

MR NCIZA: My recollection, Commissioner, is that indeed
10 they were suspended. There is a point where we suspended them. There is a point where I recall that I even instituted disciplinary proceedings against them, you know. I did institute disciplinary proceedings. I appointed the Disciplinary Tribunal Committee, and the process was to commence, and I later learned that indeed there were problems with regards to the processing of their case. At some point they were arrested, you know. So the action was taken against these three. It is just that it was not taken forward, you know.

20 But my office had instituted proceedings against them, but I understood later on that there was a problem with the presiding officer because he was not paid by the municipality for other matters that he had done for the municipality. So he had served some notice to the attorney to say that he was not going to be able to proceed if he

does not get paid for his services that he had rendered to the municipality. That was a big problem, of course, the payment of attorneys for services rendered. But action was taken against these three.

ADV MOHLASEDI: Thank you, Commissioner.

ADV BALOYI SC: If I may? According to the evidence so far, the conduct or the misconduct of these three officers came to light because of IPID's report. Once there was engagement with IPID. Now, internally in the municipality, 10 at least up to the time that you were there, was there a process or a mechanism where employees can report concerns about the conduct of people such as this, the conduct that subsequently came to light through IPID? Was there a mechanism for employees to do that and to do that in a safe way?

MR NCIZA: The municipality, Madam Commissioner, has a whistleblower policy, you know. I am the first to admit that it had not been used or utilised by the municipality to its fullest, but the municipality has the whistleblower policy. It 20 is even on the internet of the municipality. There were campaigns at some point by our communications department to promote, you know, accessibility to whistleblower processes and we have had a number of instances in the municipality where we have had whistleblowers. We investigated the issues that were raised by whistleblowers.

And indeed, action had been taken against officials on the basis of whistleblower processes.

Now, on these specific ones, you are correct that indeed we came to know about their activities as I was briefed through IPID, you know. But what happens is when we have got matters that concern Metro Police officials, you would have two types of investigations. You would have the internal affairs investigation or integrity and standards and also have an IPID investigation.

10 Now, if you have an IPID investigation, the department would then do a cover letter in that form. That is if you have got this investigation with these annexures, therefore bring it to me, but I would need something from the department because the department has to take ownership. Even if it is an IPID investigation, the department must take ownership. So then the Chief of Police would then bring to me a request for a disciplinary tribunal and in that request, they would indicate that here is an IPID report that has a negative recommendation against
20 this officer.

So therefore, as Labour Relations or Employee Relations, you need to take this forward. There would be that request to initiate disciplinary proceedings against that particular employee. So if my recollection serves me well, that is what would have happened here. They would have

provided me with an investigation report and then I instituted a disciplinary tribunal.

ADV BALOYI SC: Thank you.

ADV MOHLASEDI: Thank you, Commissioner. Just to close off this aspect of your evidence, Mr Nciza, at the end of paragraph 34, the last sentence then, you confirm that you were informed that in addition to investigating these criminal offences, the ones discussed above, IPID was also investigating the role of Brigadier Mkhwanazi in the Blue

10 Lights scandal, is that correct?

MR NCIZA: Yes, I was.

ADV MOHLASEDI: And that in the paragraph above 33, you were informed that even though, you know, your discussion related primarily to the issue concerning the blue lights, the IPID discussions had revealed that there was a broader problem involving further police officials.

MR NCIZA: Yes.

ADV MOHLASEDI: And that was brought to your attention.

MR NCIZA: Yes, it was.

20 **ADV MOHLASEDI**: Thank you. Mr Nciza, we are then beginning a new subheading entitled Disciplinary Tribunal. This is paragraph 35 of your statement. We are still on page 13. Once you are at paragraph 35.

MR NCIZA: I am there.

ADV MOHLASEDI: Thank you. Could you please describe

to the Commission the developments of that day?
Paragraph 35.

MR NCIZA: Thank you, thank you, Counsel. On the 12th of April 2023, Chief Mapiyeye, Commissioner Spies and Lt-Col Erasmus came to my office and they presented to me what they termed a docket that contained an investigation report onto the allegations that were levelled against Brigadier Mkhwanazi.

We went through the report and, of course, I
10 engaged them on the content to say, but, you know, they are talking about this letter of October 2021, you know, what are the issues? And then I approved that a disciplinary tribunal be constituted. You know, because in my view, the investigation report had ticked the relevant boxes that would convince an HR practitioner that there is a basis for this employee to answer to these allegations that have been levelled.

So, indeed, after we had consulted, I appended my signature to the disciplinary tribunal initiation form. And
20 then we also then discussed how to handle the process, you know. They raised issues with me to say as much as they had briefed me on several occasions around the matters that concerned Mkhwanazi, McKenzie, Stols and Twala, and there was also some process that had started with regards to the other three, they indicated that IPID was confident

and convinced that there were imminent arrests that would be made, which would include Brigadier Mkhwanazi.

So, they requested that instead of proceeding, as much as I have approved the disciplinary tribunal, but I must provide them and provide IPID with an opportunity to conduct these other processes, and then we will then assess the situation. If, indeed, there are arrests that are made, then it might not be prudent for me to institute and appoint a disciplinary tribunal, you know, because there are
10 timelines.

The minute you have appointed a disciplinary tribunal, there are timelines that must comply with in respect of the collective agreement. So, we need to play this in a manner that we are able to ensure that we do not incur even some fruitless expenditure, because it appoints a disciplinary tribunal for a matter like this and then people start working, and then the person gets arrested, you cannot even proceed with a disciplinary inquiry and still be expected to pay for the services that you would have sort of
20 incurred from attorneys and the likes. So, that was the discussion of the day.

And lastly, in the discussion we decided that they must actually keep the docket because of the contents thereof, and I did not want it to lie around in my office. I just needed it to be kept in a safe arrangement.

ADV MOHLASEDI: Thank you, Mr Nciza. Commissioners, before we proceed on this issue, I am going to request that these documents are handed up to you by our attorney, please. They somehow seem to have not made it to the annexed file, but we will attend to sorting that out over tea. Thank you, Commissioners. The documents presented to you are numbered 15A and 15B, and we will paginate them properly and insert them at the right place in your files. For now, we are going to make reference to them in this course
10 of Mr Nciza's evidence. Mr Nciza, could you confirm that you are in possession of the two documents handed up to the Commissioners? 15A is titled Directive for Implementation of the new DPCA. Do you have that document?

MR NCIZA: Dated the 15th of February 2018?

ADV MOHLASEDI: Thank you.

MR NCIZA: Yes, I have it.

ADV MOHLASEDI: Thank you. And then the second document is a document from the South African Local
20 Government Bargaining Council, Circular Number 1 of 2008. Do you have that document?

MR NCIZA: 2018.

ADV MOHLASEDI: 8th of February 2018?

MR NCIZA: Ja, I have it.

ADV MOHLASEDI: Thank you. Thank you,

Commissioners. Mr Nciza, could we then turn to, if we could take a few steps back and return to paragraph 36 of your witness statement where you say:

“I concluded that there was indeed a case warranting that a disciplinary tribunal be constituted.”

Can you confirm that?

MR NCIZA: Yes.

ADV MOHLASEDI: Thank you. If I could ask you to have
10 regard to Circular Number 1 of 2018? That is the DPCA itself.

MR NCIZA: Yes, I have it.

ADV MOHLASEDI: Thank you. You will see that there is an index describing the issues that are regulated by this document. Could I...

MR NCIZA: Yes, I am there.

ADV MOHLASEDI: Are you there? Thank you. We are going to focus specifically on clause 7, which relates to disciplinary procedures. In this case, as they regulate a
20 municipality, but I would ask you to please turn to clause 4 which is on page 4 of that document.

MR NCIZA: I am there.

ADV MOHLASEDI: Thank you. So, clause 4 would regulate the period of operation, right? So, the DPCA, as it applies, sets out the period in which it operates. Could you

just record for the record what that period is?

MR NCIZA: On clause 4.1 of the agreement, the period of operation is from the 1st of February 2018 and it will remain in force and in effect until the 31st of January 2023.

ADV MOHLASEDI: Thank you. Are you able to confirm to the Commission its status here today? So, does it still apply?

MR NCIZA: Yes, it does. Because after the date of the 31st of January 2023, it then says, thereafter, the
10 agreement shall continue indefinitely in respect of the parties to the agreement.

ADV MOHLASEDI: Thank you. And for completion in respect of this document, the DPCA is the same document that you reference in your witness statement as providing for the suspension. In particular, you cite the letter of suspension cited clause 16. Is that correct?

MR NCIZA: Yes, it is.

ADV MOHLASEDI: Yes. So, the document regulates several processes from a Bargaining Council level and we
20 will consider specifically the issue of disciplinary procedures. Is that right?

MR NCIZA: Yes.

ADV MOHLASEDI: Okay. Mr Nciza, I am then going to ask you to turn in the same document to clause 7, which begins on page 5, clause 7.

sort of decentralised the processes in terms of our delegations matrix. So in terms of 7.1, it would be the Head of Department as an authorised representative.

ADV MOHLASEDI: Thank you. Paragraph 7.2 reflects a principle then that disciplinary proceedings are to proceed promptly without undue delay. Is that correct?

MR NCIZA: Yes.

ADV MOHLASEDI: Indeed. Then paragraph 7.3 provides that:

10 “If the Municipal Manager or his authorised representative is satisfied that there is a *prima facie* cause to believe that an act of misconduct has been committed, he may institute disciplinary proceedings against the employee concerned.”

Is that correct?

MR NCIZA: Yes.

ADV MOHLASEDI: Okay. Could you just briefly explain
20 how that applies in practical terms to the Commission?

MR NCIZA: In practical terms, this would be you have an allegation of misconduct that has been received in the department. The department then, in terms of the consideration of the allegation, the department would then institute an investigation. And having instituted the

investigation, having then received the outcome of the investigation, the investigation would show that there is indeed a *prima facie* basis for you or a *prima facie* cause for institution of a disciplinary process. So, then the department would submit to my office. Once they have got that *prima facie* cause, then they would submit. They would not themselves institute the disciplinary process.

ADV MOHLASEDI: Could I ask you to turn to the next page, clause 7.4, which provides that:

10 “The disciplinary hearing shall commence as soon as reasonably possible, but no later than three months from the date of the Municipal Manager or his authorised representative's decision to institute disciplinary proceedings.”

MR NCIZA: Yes.

ADV MOHLASEDI: Thank you.

MR NCIZA: So, once indeed the investigation has been
20 concluded and the submission is made, in terms of the initiation of a disciplinary process, the authorised representative has got three months within which to constitute disciplinary proceedings.

ADV MOHLASEDI: Thank you.

MR NCIZA: The Disciplinary Tribunal.

ADV MOHLASEDI: The next two paragraphs then posit two options that are available in the event of misconduct. Paragraph 7.5 regulates misconduct that appears to be less serious. Is that correct?

MR NCIZA: Yes.

ADV MOHLASEDI: Indeed. And then paragraph 7.6 regulates misconduct that appears to be sufficiently serious.

MR NCIZA: Yes.

10 **ADV MOHLASEDI**: Indeed. And what is the course or avenue to be followed, according to clause 7.5, where the act of misconduct is one that appears to be less serious?

MR NCIZA: Where indeed the act of misconduct is less serious, like I had explained, this is an instance where a probable sanction would be a written warning, you know, therefore would either have a counselling session or else just issue a written warning to the employee. That is handled as a departmental inquiry, it is handled internally by the department, you know, it does not really require that
20 I establish a disciplinary committee. So that can be handled by the department at the departmental inquiry level.

ADV MOHLASEDI: And where the act of misconduct is one that is more serious, what is the route that is then followed?

MR NCIZA: The route that is then followed is that the

department having submitted the investigation report and if indeed having applied my mind, I consider that indeed this matter requires a disciplinary tribunal, I would then authorise that a disciplinary tribunal be constituted and having authorised that it be constituted, I then have to move forward to implement the appointment processes for the disciplinary committee.

ADV MOHLASEDI: And those processes are set out in clause 7.6.1. Do you see that, Mr Nciza?

10 **MR NCIZA**: Yes.

ADV MOHLASEDI: Thank you. And could you just briefly explain the contents there of who is to be appointed and the alternative appointment that is available in the event that a disciplinary tribunal is authorised?

MR NCIZA: Thank you, Counsel. You would find, Commissioners, that 7.6 and even 7.7, how it is structured, it has a default position. The default position in the constitution of the disciplinary committee is that in the first instance you shall appoint a person internally, you know.

20 And in respect of this, what we did as an institution in my tenure as the Divisional Head, we had a panel of people that were trained as presiding officers as well as employer representatives.

So if we get a request from a department to constitute a disciplinary tribunal, we would look at firstly the

merits of the matter, you know, what type of case is it, what is involved, the level of the employee and the likes. And then we would then look at our panel, you know, are we able to find a suitably qualified person in our panel to deal with this matter? Now ...[intervenes].

CHAIRPERSON: And you are still talking the default position there?

MR NCIZA: Yes, that is the default position.

CHAIRPERSON: So the panel would be people within the
10 municipality?

MR NCIZA: The municipality. Our panel is people that we have trained in the municipality. And I need to admit that as much as we have done much in terms of building the necessary capacity internally, you would find that your senior people, your senior people from Divisional Head and HOD level, you know, really do not have time. They simply do not have time.

Their demands on their jobs are much higher and therefore they would not automatically be available or
20 readily be available to firstly go for training and even if they do go for training, a whole lot of them, even if you appoint them, I promise you, you know, you are just simply not going to get the person to give you time. You know, they have got a whole lot of things, service delivery, imperatives, which take precedence.

Now, the collective agreement at 7.6.1 is clear. When you appoint a presiding officer, the person must be at least two levels above the person that you are intending to charge, the accused employee. So you need then to zoom into this particular matter. If you were to appoint a person internally, you would have to appoint an HOD because the brigadier level, and you will see in the suspension letter, it states that it is a C17.

The C17 in terms of our job evaluation processes in
10 the municipality was the highest level that was evaluated for your Bargaining Unit employees, for your permanent staff establishment ...[intervenes].

CHAIRPERSON: I am sorry to interrupt you, Mr Nciza. Ms Mohlasedi, do we want to discuss the terms of this agreement as generally as we are now or do we want to zoom in on what was relevant to the case of Brigadier Mkhwanazi?

ADV MOHLASEDI: Thank you, Chair. Yes, our aim is to
20 discuss two of the documents in the context of what was relevant here in two respects. Firstly, the constitution or rather the appointment of an external chairperson and an external prosecutor, which will become relevant during the course of Mr Nciza's evidence.

The second important issue is who exercised or who bore the power to determine whether to constitute a

disciplinary tribunal and the documents are relevant for that assessment. I will endeavour to be very brief. I will pose direct questions to him.

CHAIRPERSON: Yes, I am asking for example because as I understand the evidence here, people external had to be appointed and I think that focus on the appointment of external people and why it had to be external people should be enough without us getting into the situation where internal people would be used and why. Do you see what I
10 mean?

ADV MOHLASEDI: I follow. Thank you, Chairperson.

CHAIRPERSON: Thank you.

ADV MOHLASEDI: We will direct the exchange in that manner.

CHAIRPERSON: Thank you.

ADV MOHLASEDI: Thank you. Mr Nciza, my final question with respect to the collective agreement would be in respect of clause 7.6.3. You have indicated then that as a general rule, when constituting a disciplinary tribunal, the effort
20 would be to obtain an internal candidate to act as a chairperson or as a prosecutor. Is that correct?

MR NCIZA: Yes.

ADV MOHLASEDI: Indeed. And then where that is not available, where an internal candidate is not available or not possible, there are certain circumstances where you

would obtain a chairperson or a prosecutor who is an external person.

MR NCIZA: Yes.

ADV MOHLASEDI: Correct. And in paragraph 7.6.3, 7.6.3 reads that:

10 “Where there is a lack of suitably
qualified persons or where the
presiding officer is threatened or
intimidated, the Municipal Manager or
his authorised representative may
appoint a suitably qualified external
person.”

Is that correct?

MR NCIZA: Yes.

ADV MOHLASEDI: Thank you.

MR NCIZA: Yes.

20 **ADV MOHLASEDI**: And is it then fair to say that that
exception or that alternative applies to the appointment of a
chairperson as well as to the appointment of a prosecutor in
a disciplinary tribunal?

MR NCIZA: Yes, it does. It is just that with regards to the
appointment of a prosecutor, the collective agreement
provides for additional considerations.

ADV MOHLASEDI: And what would those be, briefly?

MR NCIZA: Whereas the collective agreement does not

10 speak to the presiding officer in respect of legal practitioners, it speaks to legal practitioners in respect of a prosecutor and the fact that if you are to appoint a legal practitioner, then there should be an agreement between the parties, or alternatively you should then apply to the presiding officer for the legal practitioner to represent the municipality.

ADV MOHLASEDI: Thank you. And just to confirm then, that even with respect to a prosecutor where a suitably
10 qualified person is not available or there is an issue, a concern around a threat or intimidation, an external prosecutor may be appointed.

MR NCIZA: Yes.

ADV MOHLASEDI: Thank you. Mr Nciza, I would then ask you to have regard to the document numbered as 15A.

MR NCIZA: Which one is that?

ADV MOHLASEDI: It is the document with the subject directive for implementation of the new disciplinary procedure collective agreement.

20 **MR NCIZA:** I have the document, but it is not numbered.

ADV MOHLASEDI: My apologies. You can just number that 15A. It should not be, it is all right. We will handle it for you over the tea break. It is all right.

MR NCIZA: I am on it.

ADV MOHLASEDI: Thank you. And just to confirm, that

document is a memorandum issued to all HODs and employees and it cites their two unions. Do you confirm that?

MR NCIZA: Yes.

ADV MOHLASEDI: Indeed. Please confirm where the document originates from.

MR NCIZA: It originated from the HOD HR, Head of Department HR.

ADV MOHLASEDI: Thank you. And the emblem on the top right of the document reflects that it applies to which particular entity, please?

MR NCIZA: City of Ekurhuleni.

ADV MOHLASEDI: Thank you. And the date is?

MR NCIZA: The date is the 15th of February 2018.

ADV MOHLASEDI: Thank you, which is subsequent to the circular you have just taken the Commission through.

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Thank you. Could you just explain briefly what the purpose of this document is and how it is to be considered in light of the circular we have just discussed?

MR NCIZA: This document talks to the internal arrangements that I had spoken to earlier on, in terms of how we as the City of Ekurhuleni implement the disciplinary procedure that is contained in clause 7 and other clauses of

the collective agreement.

ADV MOHLASEDI: Thank you. Mr Nciza, could I ask you to turn to paragraph 5 of that document, please? Paragraph 5.

MR NCIZA: Yes, I am there.

ADV MOHLASEDI: Paragraph 5 is entitled, the following principles shall underpin the implementation of this DPCA.

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Paragraph 5.1 reads:

10 “An allegation of misconduct against an
employee shall be brought in writing to
the City Manager or his authorised
representative.”

Is that right?

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: And the authorised representative in this case applies to whom? You indicated that it might change in certain contexts, but here, within the context of an allegation of misconduct, who is ...[intervenes].

20 **MR NCIZA**: It would be the HOD, Head of Department.

ADV MOHLASEDI: And based on our current facts under discussion today, that would be, for example, Chief Mapiyeye.

MR NCIZA: Chief Mapiyeye, yes.

ADV MOHLASEDI: Thank you.

CHAIRPERSON: Continue.

ADV MOHLASEDI: Thank you, thank you, thank you, Chairperson. Paragraph 5.2 then reads:

“A supervisor or another employee investigates the allegation of misconduct and submits the investigation report with a recommendation to the relevant HOD.”

MR NCIZA: Yes, ma'am.

10 **ADV MOHLASEDI**: And in the context of the facts under discussion today, who would be the supervisor or employee tasked with the investigation of misconduct here?

MR NCIZA: Under these circumstances, the employee would be Lt-Col Erasmus.

ADV MOHLASEDI: Thank you. Who you confirmed earlier is from the Integrity and Standards Division.

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Thank you. Paragraph 5.3 then sets out the next step, and it says:

20 “Upon receipt of the investigation report, the relevant HOD...”

Who I now understand to be Chief Mapiyeye:

“...shall complete and submit the disciplinary initiation request form to the DH Employee Relations for the

initiation of the disciplinary proceedings.”

Is that right?

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Thank you. So in terms of this paragraph, Chief Mapiyeye should then – it contemplates that Chief Mapiyeye shall then complete and submit the disciplinary initiation request form to the DHER, who is?

MR NCIZA: Myself.

10 **ADV MOHLASEDI**: Thank you.

MR NCIZA: And critically, it says initiation request.

ADV MOHLASEDI: Indeed.

MR NCIZA: Yes.

ADV MOHLASEDI: Indeed. And then for completion on this note, paragraph 5.4 says:

“The office of the Divisional Head ER shall identify and appoint a presiding officer and employer representative.”

Is that right?

20 **MR NCIZA**: Yes, ma'am.

ADV MOHLASEDI: Thank you. So Mr Nciza, these documents then read together set out a procedure for the institution of a rather, let me say, the constitution of a disciplinary tribunal. Is that correct?

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: With the idea that an allegation is presented to an HOD who then appoints someone to investigate the allegations and submit a report and that that report is then accompanied by a request to yourself for the initiation of disciplinary proceedings. Is that a fair reflection of the content of the documents?

MR NCIZA: Spot on.

ADV MOHLASEDI: Thank you. On that note, could I then ask you to turn, have regard to your witness statement
10 again where we are now on paragraph 38? Paragraph 38, please.

MR NCIZA: Yes, I am there. Page 14.

ADV MOHLASEDI: And at paragraph 38 you say there:

“On the same day I signed the approval
of the recommendation to constitute
the tribunal within three months.”

Is that correct?

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Thank you. You make reference there
20 to an Annexure PN6 on page 288 of the annexure bundle.
PN6.

MR NCIZA: I am there.

ADV MOHLASEDI: Thank you. On page 288 of the annexure bundle. I will just ask you to put your finger there so that we can place the full document on record. If you flip

one page back to the front of the document.

MR NCIZA: On page?

ADV MOHLASEDI: 287.

MR NCIZA: 287?

ADV MOHLASEDI: Yes, please. 287, one page back, is the first page of the document and it is titled Request for Disciplinary Tribunal. Is that correct?

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Thank you. At the top of the page, it is
10 directed to yourself. Is that correct?

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: It originates from the Chief of Police, Mr Isaac Mapiyeye. Is that so?

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Who you have identified as the HOD referenced in the documents we have discussed.

MR NCIZA: Yes.

ADV MOHLASEDI: Thank you. The document then sets out that an accusation of misconduct is brought in terms of
20 the disciplinary procedure against Mr JD Mkhwanazi as the employee. Is that correct?

MR NCIZA: Yes.

ADV MOHLASEDI: Thank you. Importantly, Mr Nciza, the document continues to identify the nature of the alleged misconduct, but I would ask you to return to page 288, to

flip over to page 288.

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Thank you. Under recommendation at the top of the page.

MR NCIZA: Yes.

ADV MOHLASEDI: The document provides for two options. The first option one is a request for permission to hold a departmental inquiry, and option two is a request for the establishment of a disciplinary tribunal. Do you see that?

10 **MR NCIZA**: Yes, ma'am.

ADV MOHLASEDI: Thank you. And at the bottom is a straight line that makes provision for a signature. Could you identify the signatory there, please?

MR NCIZA: The signatory there is one of Chief Mapiyeye.

ADV MOHLASEDI: Thank you. And just above, as contained in that box, what is the recommendation that Chief of Police Mapiyeye made or sought and directed towards you?

MR NCIZA: Chief Mapiyeye had ticked the second box,
20 which is for a request for the establishment of a disciplinary tribunal.

ADV MOHLASEDI: Thank you. At the foot of the page, you will see then a signature. Could you identify the signature? Who signed there, the signatory?

MR NCIZA: The signature at the bottom of the page is

mine.

ADV MOHLASEDI: And of the – could you identify the content of the boxes just above the signature?

MR NCIZA: There are three boxes above the signature. There is further investigation, departmental inquiry, and disciplinary tribunal.

ADV MOHLASEDI: Thank you. And which of the boxes did you tick in indication of an approval?

MR NCIZA: Disciplinary tribunal.

10 **ADV MOHLASEDI**: Thank you. For completion, Mr Nciza, yesterday you engaged with Commissioner Baloyi about the options available to the Head of Employee Relations once they receive an investigation report, a so-called docket, and you indicated that there are three of those options.

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Having gone through the contents of the collective agreement, you have explained that a departmental inquiry is suitable in instances where the allegations of misconduct are of a less serious nature. Is
20 that right?

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Whereas a disciplinary tribunal is more suitable where an employee is facing particularly serious allegations of misconduct.

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Did that distinction then affect the decision that you ultimately took when considering this request from the Chief of Police?

MR NCIZA: That distinction always affects the decision that one makes because you have to weigh the evidence and the merits of the case as presented in the investigation report before you go and tick the box.

ADV MOHLASEDI: And in considering the, you know, the weighing up of the evidence that was provided to you, you
10 annex at paragraph 37 of your statement, you annex the investigation report that was provided to you. Do you see that? Paragraph 37 of your statement on page 13, right?

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Thank you. If I ask you to flip over the page, you then informed the Commission that upon receipt of that report, you considered its contents and then you signed the approval to constitute a tribunal.

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Indeed. And in the paragraph
20 immediately thereafter, you set out briefly the justifications for why you were minded to sign the recommendation to constitute the disciplinary tribunal.

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Thank you. Now, Mr Nciza, the Commission has over the course of the past few days heard

extensive evidence from Commissioner Spies as well as Chief of Police Mapiyeye about their view as to why the allegations as they related to Brigadier Mkhwanazi were warranted and therefore justified the taking of disciplinary steps. But you also set out in your own view what motivated your decision to constitute that disciplinary tribunal. Could I ask you then to turn to paragraph 39.1, paragraph 39.1 of your witness statement? Are you there?

MR NCIZA: Yes, I am there.

10 **ADV MOHLASEDI**: Thank you. If I can assist you, please turn to page 36 of your annexure bundle, page 36.

MR NCIZA: 36?

ADV MOHLASEDI: Yes, please.

MR NCIZA: I am there.

ADV MOHLASEDI: Thank you. So, to locate this discussion in the context of your annexure bundle, you have annexed Annexure PN5, which is the investigation report.

MR NCIZA: Yes, ma'am.

20 **ADV MOHLASEDI**: Thank you. You have confirmed that that is the report that was provided to you on the 12th of April?

MR NCIZA: Yes.

ADV MOHLASEDI: Thank you. And that it is the report that was provided or rather prepared by Colonel Erasmus. Is that correct?

MR NCIZA: Yes, it is.

ADV MOHLASEDI: Thank you. You do not need to go there, but on page 21 of the annexure bundle it sets out a list of documents that are relied upon in the compilation of the investigation report.

MR NCIZA: Okay. Ja.

ADV MOHLASEDI: Okay. So, if at any stage you require assistance in navigating those documents, I will assist you.

MR NCIZA: Okay.

10 **ADV MOHLASEDI:** Great. I will also note for you, Mr Nciza, that the docket or the investigation report provided to you is some 250 pages, so it is a comprehensive document. But you have done the task of isolating several documents that you wish to talk through today. Is that right?

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: So, with that overview provided, could you then go to page 36 of your annexure bundle? Page 36.

MR NCIZA: Yes, ma'am.

20 **CHAIRPERSON:** Is there not, Ms Mohlasedi, a more legible copy of this?

ADV MOHLASEDI: I apologise, Chairperson, that is the quality as provided to us.

CHAIRPERSON: I see.

ADV MOHLASEDI: Yes, indeed.

ADV KHUMALO SC: Is the one on page 54 the same as the one on 36? 54 seems to be much better. Not by much, but slightly.

ADV MOHLASEDI: Thank you, Commissioner. It is larger. That is much better. Thank you. Mr Nciza, you have been graciously assisted by Commissioner Khumalo. Please turn to page 54 of the annexure bundle. Page 54.

MR NCIZA: Ja, got it.

ADV MOHLASEDI: Thank you. All right. Now, in
10 paragraph 39.1, 39.1 of your witness statement.

MR NCIZA: Yes.

ADV MOHLASEDI: Yes. You set out briefly there one of the considerations that motivated you to constitute a disciplinary tribunal. Could you please take the Commission through that?

MR NCIZA: Thank you, Counsel. Commissioners, my reflection on this letter was what jumped out first and foremost is the usage of two titles. You know, at the bottom of page 54, you will find that there is JD Mkhwanazi with a
20 signature and then it is Acting Deputy Municipal Police Commissioner/Brigadier.

Now, I have been in HR management for more than 20 years. That does not happen. When you are acting in a position, you perform both functions, you know, of the substantive post and the acting position. So if I am going

to write a letter in a capacity as Brigadier Mkhwanazi, you write the letter and you sign it as Brigadier Mkhwanazi because the delegations, the authority that are in the position of brigadier are clearly defined and you can exercise authority up to a particular point as Brigadier.

But then when you are acting in your superior's position, you then assume the delegated authority that resides in that position. So if you are going to write a letter, you must distinguish who is writing the letter. Is it a
10 brigadier who is writing the letter or is it the acting commissioner who is writing the letter? Because then if tomorrow there is litigation about the letter ...[intervenes].

CHAIRPERSON: Mr Nciza?

MR NCIZA: Yes?

CHAIRPERSON: But he still was a brigadier, was he not?

MR NCIZA: He was a brigadier.

CHAIRPERSON: Are you not reading too much then into this? Was he not merely indicating his rank, that he is a brigadier?

20 **MR NCIZA**: With all due respect, Commissioner, it does not work like that. It does not work like that because, like I say, different positions carry different authority. So if I am the Manager of Collective Bargaining and I am acting as DH Employee Relations, if I write a letter that is within the scope of my function, my substantive position as Manager

of Collective Bargaining, I would indicate that this because it talks to my substantive position. But if I am writing a letter that speaks to the acting position that I am busy with, that I am acting in, then I must indicate that. The acting policy of the municipality states very clearly that when you are acting, you perform both roles. You must perform the role of the manager as well as the commissioner.

CHAIRPERSON: But would you completely discount the possibility that he could merely have been indicating his rank and nothing more? Would you completely discount that possibility?

MR NCIZA: I would not completely discount the possibility. It is just that the content of the letter then brings me to this. To say that, in my view, this was intended to obfuscate the roles. It was creating this – because at the end of the day, if, for instance, I am to deal with the actions of the employee and if I am to say, but you acted outside of your scope, you know, I need to understand exactly in which scope were you acting. Were you acting as the brigadier or were you acting as a commissioner?

CHAIRPERSON: All right, I will leave it there.

ADV BALOYI SC: Would you have had the same concern if he had signed, as he did there, if he had said Brigadier JD Mkhwanazi? If that is the first line, because he just says JD Mkhwanazi. If he had said Brigadier JD Mkhwanazi and

then in the next line say Acting Police Chief, the way that he has done, would you still have the same concern that you are raising?

MR NCIZA: Which lines are those?

ADV BALOYI SC: So that same signature earlier the Chair is discussing with you, so he has got just JD Mkhwanazi. You see where I am referring to?

MR NCIZA: Yes.

ADV BALOYI SC: Okay. I do not know how people sign in
10 the municipalities, so my question comes with that. If he had said at the bottom there, if he had said Brigadier JD Mkhwanazi, so he describes himself, title and name, Brigadier JD Mkhwanazi, and then in the next line he then says Acting Deputy Police something, because I cannot see a thing at all here, would that still have raised the same concerns that you are raising?

MR NCIZA: It would have, but perhaps it would have been a bit different in the sense that, remember, and I think that the previous witness has testified on this, you have the rank
20 of brigadier, and then you have got a post designation in terms of your organisational structures.

Now, if he had said Brigadier Mkhwanazi and then said underneath he called himself Brigadier Mkhwanazi, and then underneath indicated that he is Acting Deputy Chief of Police, again, it still creates the challenge from an HR point

of view to say exactly who has signed, but it could easily be dealt with by what we are raising. Say that, okay, fine, he is Brigadier Mkhwanazi, but he is acting. So the person who is actually signed is the acting, as opposed to both, you know.

ADV KHUMALO SC: I would understand your point if he had signed as both Acting Deputy Municipal Police Chief and Director of Specialised Services, but here it is clear that he is referring to only one role, and the Brigadier is the
10 rank he holds, and that is the Chairperson's point. That it is the rank, whereas the role is that of Acting Deputy Municipal Police Commissioner.

Now, if he had said Acting Deputy Municipal Police Commissioner/Director of Specialised Services, then that would be different because those are two different roles, but his rank does not change whether he is acting in one role or the other. He remains Brigadier Mkhwanazi.

MR NCIZA: I get the point.

ADV KHUMALO SC: That is really the Chair's point.

20 **MR NCIZA:** I get the point. If you put it that way, I get the point that you are raising. Ja, thank you, Commissioner.

CHAIRPERSON: So I failed in putting across my point.

MR NCIZA: I get the point. Thank you, Commissioner. So that is the issue that jumped out, but nonetheless, the contents of the letter themselves, you know, the author of

the letter says that there is a memorandum of understanding that is signed with CAT VIP. Now, there is no memorandum of understanding that existed between the municipality and CAT VIP.

You know, when I looked at the docket, there is no signed memorandum. There is no memorandum that has been entered into. So this is grossly dishonest in my view to say that there is a memorandum when such does not exist. The fact that there is a draft, a draft is just simply
10 that. It is a draft. There is no actual memorandum that existed. But this letter, you know, makes a representation that there is a memorandum of understanding between this company and the municipality when such does not exist.

ADV MOHLASEDI: Thank you, Mr Nciza. You then make a concluding remark at the end of paragraph 39.1 where you say that this representation or this was intended to clothe this arrangement with some form of regulatory standard standing where there was none. Is that correct?

MR NCIZA: Yes.

20 **ADV MOHLASEDI**: Thank you.

MR NCIZA: And that is basically because he did not have the authority to issue such a letter in any event.

ADV MOHLASEDI: Thank you.

ADV BALOYI SC: So something else in that first paragraph, it may or may not be significant. He says:

“The letter serves to confirm that the
EMPD...”

And this is the part that I just want you to confirm the
correctness of:

“...under the command of Acting
Deputy Municipal Police
Commissioner.”

So as Acting Deputy Municipal Police Commissioner, did the
EMPD fall under his command?

10 **MR NCIZA**: No. The EMPD falls under the command of the
Chief of Police, even if he was not acting.

ADV BALOYI SC: Yes.

MR NCIZA: Even if he was not acting. Remember,
structurally, the EMPD had various divisions. So the
Deputy Municipal Police Commissioner is the Head of a
Division. He is not the Head of the Department. He is the
Head of the Division. I cannot say as the Divisional Head
of Employee Relations, you know, human resources is under
my command. It is not. You know, I am just the head of the
20 unit. So it was incorrect for him to say that EMPD under his
command.

ADV BALOYI SC: So it was a misrepresentation.

MR NCIZA: It was a misrepresentation. That is the first
misrepresentation right at the – just off the blocks. But
then another misrepresentation is made, the

misrepresentation about an endless working relationship. Firstly, there is no working relationship, let alone an endless one. You know, he had his working relationship. Not the municipality. Not the EMPD. What became clear in terms of the investigation is that, indeed, there was some working relationship, but it is not a working relationship of the municipality with CAT VIP.

It is not a working relationship of EMPD with CAT VIP. It is a working relationship that he has constructed, 10 you know, outside of regulatory framework, outside of the policies of the municipality, outside of legislation. He constructed that relationship. And hence, perhaps, he terms it as an endless working relationship because he has every intention of not separating from CAT VIP, you know, whereas the municipality enters into all forms of relationships, but they are defined. They are defined. There is a process to enter into a relationship and there is a period of a relationship.

ADV MOHLASEDI: Thank you, Commissioner. Mr Nciza 20 ...[intervenes].

CHAIRPERSON: Please remind me, Mr Nciza, for whose consumption, again, was this intended? I see there is no specific addressee. It says to whom it may concern.

MR NCIZA: That is another worrying factor, Mr Commissioner, Mr Chair. Because when we address an

official letter, we address a letter to a specific individual or entity. This is addressed to whom it may concern. So the bearer of this letter can then claim that I am there whom it may concern. And therefore, note that I have this relationship with this state entity and my actions are covered under this letter.

It is just too wide and it has potential to create serious problems. We do not know, even up to today, who actually then had this letter and what did they do with it. I
10 have not come across any information that says the people that got this letter, you know, if it was CAT VIP people, what did they do with this letter? And that is a scary thought that a letter of the municipality can be in the hands of individuals so that even if they get into a roadblock, even if they get into all sorts of other situations, they will not be checked. They just simply say, but we are in a relationship with the EMPD. You cannot touch us.

ADV BALOYI SC: And when you say they, it is these vehicles.

20 **MR NCIZA:** Yes.

ADV BALOYI SC: So this letter lists vehicles.

MR NCIZA: Yes.

ADV BALOYI SC: So if any one of these vehicles got into a situation such as you are describing, they would show this and say, I am that vehicle, I am ...[intervenes].

MR NCIZA: I am this vehicle and therefore ...[intervenes].

ADV BALOYI SC: I am working for the municipality.

MR NCIZA: I am clothed with this, what you call protection, if you want to call it. But effectively, because I have got this relationship and therefore I work with the EMPD and I do these things with the EMPD, so who are you therefore to obstruct me? It would be as if you are obstructing police.

CHAIRPERSON: Let us adjourn and resume at 11:15.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Ms Mohlasedi.

EXAMINATION BY ADV MOHLASEDI

(CONTINUES): Thank you, Chairperson. Mr Nciza, we were in the annexure bundle.

MR NCIZA: Yes, Ma'am.

ADV MOHLASEDI: We were on page 54 of the annexure bundle, and we were wrapping up your discussion as it relates to paragraph 39.1 of your witness statement.

20 **MR NCIZA**: Yes, Ma'am.

ADV MOHLASEDI: A concluding question on this aspect. In your exchange with the Commissioners, you indicated that one of the concerns you had concerning this document was that it was essentially a bearer document, meaning it applied in the hands of whoever possessed it, and that it

was therefore purported to bind the municipality to an endless working relationship in that context. Is that a fair reflection of your concern there?

MR NCIZA: Yes, Ma'am, it is.

ADV MOHLASEDI: Thank you.

MR NCIZA: Just before we stop, can I just indicate one more concern?

ADV MOHLASEDI: Please do.

MR NCIZA: This letter, Commissioners, if you recall during
10 the lockdown period on COVID-19, we had similar letters, but these are letters that were given to essential services workers for them to go to work. What those letters did is that even if you met the army, the police, and everybody else, you issued this letter, they let go of you. They do not even search your car they do not do anything. And you would note that indeed one of the biggest problems is a lot of trafficking of illicit goods.

So, a person bearing this letter would be able to traffic goods and all sorts of things. This really raised that
20 concern because this was done in 2021, and we were still as a country still dealing with issues that related to COVID-19. And now all of a sudden you have got people that are saying these cars, wherever they move, they move inside and outside of the jurisdiction of the municipality. They have a right to do as they please, so to speak. And they

will not be subjected to the same scrutiny that other vehicles would be subjected to. That was a serious concern as well.

ADV MOHLASEDI: Thank you, Mr Nciza. In paragraph 39.2 of your statement, paragraph 39.2, we are still on page 14, you then there set out your concerns as they related to the memoranda of understanding as concluded between the municipality and Medicare, and the municipality and CAT Security and protection services. In order to facilitate your
10 evidence on this score, could I ask you to turn to page 134 in the annexure bundle?

MR NCIZA: Yes, Ma'am.

ADV MOHLASEDI: Thank you. This document was also part and parcel of the investigation report presented to you. Please then - yes, page 134. Please then share with the Commission the concerns you had as they relate to this document on page 134 as set out in paragraph 39.2 of your witness statement.

MR NCIZA: Thank you, counsel. The first point of call that
20 you need to appreciate is that as a manager, you operate within a very strict regulatory framework. A municipality is a creature of statute. And as a creature of statute, you know, a municipality functions in a set delegation of authority system. I think this is in terms of section 59 of the Municipal Systems Act.

So, you cannot willy-nilly have such documents. You simply cannot. You know, before you get to the point of generating a document of this nature, there should be a report that speaks to the need that has been identified. Before you even get to the point of crafting a memorandum of agreement or a memorandum of understanding, you should first, as an official of the municipality, working, of course, within that delegation's matrix, you should then firstly craft a report that says, in my functional space, these
10 are deficiencies that we have noted.

And as a result of noting these deficiencies, there is a need for us, because we do not have the necessary capacity and resources internally, there is a need for us then to engage external sources for us to capacitate the institution to meet these needs. Then that report must then be approved internally in the department by the senior management team.

Then the HOD takes ownership of that, submits it to the other structures of the municipality, submits it to the
20 city managers, SMT, it goes to your mayoral committee and the likes. So that indeed the institution then is able to enter into that particular arrangement with an external source. So you cannot have a situation wherein there is a memorandum of agreement at any given point.

That has not gone through the due processes of the

municipality. Even an HOD would not have the authority to, out of nowhere, craft a memorandum of understanding with an external source and say, this is what is going to happen. So that is the first point. Before even going to the content of the memorandum, the existence thereof is questionable. Now, when you then go through the memorandum, the most important thing, remembering that there is a letter that says there is a memorandum that is in existence.

Then you go through the memorandum. The
10 memorandum is signed by one person at page 139. And when you look at the signature on page 139, and the signature that we have just dealt with now on page 54, just through the naked eye, without necessarily one being an expert in this particular field, but through the naked eye you could see that it is the same signature.

CHAIRPERSON: He is saying that it is questionable, not an understatement. He is saying that the existence of the MOU is questionable, not an understatement. Because all that you have is the signature of the person purporting to
20 support, and then thereafter there is supposed to be approvals. And as I look at this, at least two, and there is not a single one. So, it was just the person who supported, and that was it. So, no indication of approval at all.

MR NCIZA: There is no approval at all. So, you are correct, Chair, that indeed, to say that the existence might

be an understatement. This was not just a mere misrepresentation. It is gross in its nature, because in the letter of October, it says there is a memorandum of understanding that is in existence, when there is no memorandum of agreement in existence, because it has never been approved.

That is, without necessarily talking to the issues about the legalities that are contained, but just on that score, from an HR point of view, you cannot have a
10 memorandum of understanding, even if it was signed. I need to make this point. Even if this memorandum of agreement was signed by Mzolo and Mapiyeye, in the absence of a report approving it, it cannot be a binding memorandum. It cannot be a memorandum that is owned by the municipality.

CHAIRPERSON: But on that, I want to posit this scenario. Let us say there were internal discussions within the municipality involving all relevant role players, and the person who would ordinarily have had to prepare the
20 document that you are referring to was also present at those discussions, and an agreement was reached at that level. Would there be anything that mattered if what then followed was a memorandum of agreement without what you refer to as a document motivating for the MOU? Would there be any problem with what I am positing to you?

MR NCIZA: Mr Chair, we do not work that way. We do not have mere discussions, and discussions result in binding agreements. We are an institution, like I say, we are a regulated entity, and therefore, even if there were discussions, those discussions must then be reduced into a report, which report must go through the hierarchy of the institution, if indeed the delegated authority for approval of that report resides with the city manager, then the city manager must approve, and there must be a letter, or rather
10 a document, where the city manager has approved.

If the approval resides with the committee of council, then it must go to that council, there must be a resolution. Remember, the municipality operates on the basis of resolutions, so in the absence of a resolution, you cannot have an official saying that I had discussions. Hence, I was saying, even if, indeed, Ms Mzolo and Mapiyeye had signed this document, in my view, the document would not have the force of law in the absence of a resolution that permitted the existence of the document.

20 **ADV MOHLASEDI:** Thank you. Thank you, Chairperson. And, Mr Nciza, when Colonel Erasmus presented you with this investigation report, the outcome of his investigation, upon your assessment of it, did you ever identify any resolution or any report that purported to give credence to the memoranda of agreement cited?

MR NCIZA: None at all.

ADV MOHLASEDI: Thank you. Can I ask if there are any further remarks or concerns you would like to identify as it relates to the Medicare memoranda, which you have just been discussing with the Commission?

MR NCIZA: I think, I mean, the issue is that, like, that talk to HR processes, I have engaged them. I do not want to actually get into whether EMS was involved, because, I mean, it talks about emergency services work, you know, and there is no - because, at the end of the day, as much as this memorandum purports to be an EMPD memorandum, but the contents of the memorandum itself also talk to emergency services, and there is no aspect, or rather line, where emergency services head was also to approve.

Like, I think Commissioner Spies spoke to an issue of red lights being an emergency services function. Now, if indeed we are going to do this, then emergency services must be involved, you know, must be involved, and you cannot take – you cannot have a memorandum that speaks to two different departments that are regulated. Both these departments are regulated. There are legal prescripts that actually regulate how you must do this function as a municipality. Then you conclude a memorandum that conflates the two. It is just yes there is just a lot that is wrong with this.

ADV BALOYI SC: Was any investigation done to determine whether any members, any police members of the EMPD utilised this Medicare services that seemed to have been intended to be agreed here, and whether any payments in relation to this memorandum or this purported memorandum were ever made by the municipality to this company?

MR NCIZA: No, Madam Commissioner. I do not recall any such investigation having been conducted. The only thing that this investigation showed is that, firstly, we only
10 became aware of this memorandum when the investigation was conducted. You know, there was no evidence of this having been utilised anywhere else. We just became aware because Brigadier Mkhwanazi, in trying to sort of defend himself, raised the issue to say, but I submitted a request for approval of this memorandum and these particular processes. But outside of that, I am not aware of any.

ADV BALOYI SC: At least as of the date that you stopped working, you are not aware of any investigation done to determine whether services were provided and whether
20 payments were made?

MR NCIZA: I am not aware.

ADV BALOYI SC: Thank you.

ADV MOHLASEDI: Thank you, Commissioner. Mr Nciza, turning back to paragraph 39.2 of your statement, you also describe the concerns you have as regarding the

memorandum of understanding with CAT Security and Protection Services. Would you please turn to page 141 in your annexure bundle? 114.

MR NCIZA: I am there.

ADV MOHLASEDI: Thank you. And what is the title of that document in bold at the top?

MR NCIZA: It is a memorandum of agreement entered into between the Ekurhuleni Metro Police Department, duly represented, and CAT VIP Protection.

10 **ADV MOHLASEDI**: Thank you.

MR NCIZA: Duly represented by Mr Matlala.

ADV MOHLASEDI: Thank you. I will invite you at this juncture to detail to the Commission the notable concerns you had upon consideration of this document.

MR NCIZA: The concerns are by and large similar. You know, both agreements indicate, for instance, on the front page of each agreement, that the EMPD is duly represented by a blank in both the Medicare document as well as the CAT VIP document. If indeed you are to enter into an
20 agreement, even our contracts in the municipality, a mere contract of employment would stipulate that this contract of employment has entered into between the City of Ekurhuleni and Xolani Prince Nciza.

The City of Ekurhuleni is duly represented by the City Manager as per resolution taken on this date, which

would be the date that the City Manager has appointed. So, it would not just simply say duly represented. Any agreement that we entered into, it would say duly represented by this individual, and this individual is empowered by this resolution. So, there must be that linkage.

So, you cannot just simply have a memorandum of agreement that is represented by a blank. In this instance, it is a blank. But both agreements in respect of the service
10 provider are represented. The Medicare is represented by Mike Van Wyk. The CAT VIP Protection is represented by Vusimuzi Matlala. That is one of the things that you just pick up about the crisis that this thing was. But the CAT VIP one, similarly, you have on page 143 the signature of J Mkhwanazi as the Director of Specialised Services with a date.

And interestingly, Commissioners, when one is due regard to the date, that is on page 143, then you look at that in relation to the letter on page 54. You know, this was
20 purportedly signed by Brigadier Mkhwanazi on the 13th. Now, I am aware that Brigadier Mkhwanazi was then appointed on the 15th of October 2021 to act as the Deputy Chief of Police Operations. So, this purportedly was signed two days before he acted in the position. And it is a funny coincidence. He gets appointed to act on the 15th, and then

on the 16th he issues a letter that there is a relationship.

And when you look at that relationship, that relationship is based on a memorandum of agreement that is only signed by himself, purportedly three days before he issued the letter. And again, similarly, the Medicare Memorandum of Agreement, the effective date of these agreements is not stipulated, save to say it is some date in October 2021. But the actual date when these things were supposed to come into effect is not indicated. And also, 10 when you look at it, it says, /10/2021, then there is a dash, which in my view would depict the intended conclusion date. And again, that is not also stipulated, maybe because it was supposed to be an endless working relationship.

CHAIRPERSON: And it is not signed even by Mr Matlala.

MR NCIZA: That is another thing that is also interesting. This one is a bit worse, because when you look at page 143, you have got support signed, and then page 144, you have got approved by Matlala. Then 145, you have got approved by Mapiyeye. So, this suggests that the person 20 that was to approve was Matlala before Mapiyeye approved.

ADV BALOYI SC: Is it not another remarkable anomaly that at 143, the Director of Specialised Services in Mkhwanazi supports, so he is the initiator, right? He indicates, I support this at 143, and then he indicates, as you have said, Matlala would approve, but I am more

interested in where he is the initiator. And this is on the 13th of October 2021. And then you see he gets appointed on the 15th to be an acting police chief. And then on the 16th at page 54, the person who supported is now the acting police Commissioner, and he is the one that is approving what he was recommending. Do you have any comment about that?

MR NCIZA: Let me start off by indicating, Commissioners, that when we draft reports or memoranda that requires approval, you as the person that drafts the memorandum that requires your boss's approval, you are the recommender. You know, you recommend because you have articulated that this is, you would have indicated the problem statement, and then you would have indicated what is it that you are proposing your superior must do to resolve the problem statement.

So, then you recommend. You cannot be the supporter. It commences with a recommendation, the person who is recommending. Then if you are having, like, in this situation, Mkhwanazi was supposed to be recommending, Mkhwanazi's supervisor, who was Mzolo, would have then been the one who supports the recommendation. Then the Chief of Police, Mapiyeye, would be approving. So that should be the line that must be followed. Recommend, support, approve.

Now, he says he is supporting when he is the initiator. So that also has got its own issues in terms of the processes in the municipality. But you are correct. It raises eyebrows to say there is a memorandum that is purportedly signed on the 13th, two days before he gets appointed to act. And then a day after he got appointed to act, he issues a memorandum saying this is the situation. In his capacity as the acting now. And whereas the person who is in the position, the person who holds the Deputy
10 Chief of Police position, Mzolo, had not supported anything. We do not have evidence of Mzolo supporting, let alone Mapiyeye approving. But when you assume Mzolo's position, he then says this is what is happening, under my command.

ADV BALOYI SC: Thank you.

ADV MOHLASEDI: Thank you, Commissioner.

CHAIRPERSON: Mr Nciza, I think I heard you pronounce it that way. So, the K is not really silent. You say the recommender would sign as a recommender and the
20 immediate supervisor would sign as a supporter, and the head would then approve. Where would someone like Mr Matlala in this one feature in that process?

MR NCIZA: And that is one of the things that is problematic. If this was a proper memorandum of agreement, the person that must sign on behalf of the

municipality would be the person who must appear on page 134. On page 134, duly represented must have a name and underneath that name before the end you must indicate duly authorised. You know, duly authorised by council resolution this and this and that.

Now, once we have it that way, Commissioner, at the end, at the signatory page, the only person that must be there is the duly represented. Any other person becomes a witness if indeed you are going to have witnesses to the
10 agreement. So, the agreement must then be entered into between two people only. The duly represented representing the municipality and the duly represented representing CAT VIP Protection Services. Those are the people that actually enter into the agreement. Any other person becomes a witness. So, the framing of this entire agreement is just totally, you know, out of sync with how the municipality operates.

CHAIRPERSON: So, what you mean is the signature of the recommender, the signature of the supporter, and the
20 signature of the person approving would all be in the document you referred to earlier, which kickstarts the process. But once you get to the agreement entered into and between, there, the signatures that you have are only those of the two people concluding the agreement.

MR NCIZA: Exactly.

CHAIRPERSON: Thank you.

MR NCIZA: So, in this instance, if indeed ...[intervenes]

CHAIRPERSON: So, we ought not to have had these signatures at all in this document.

MR NCIZA: At all.

CHAIRPERSON: It is just a total mess.

MR NCIZA: At all.

CHAIRPERSON: Okay, I get the picture.

ADV KHUMALO SC: You mentioned something in your
10 response to the Chairperson, which raises a different
question now. You said somebody's signing on behalf of
the municipality. Now, these two documents refer to the
EMPD as a counterparty. My question to you is, in terms of
the prescripts of the Ekurhuleni Municipality, does the
EMPD have contractual capacity? Can the EMPD as a unit
enter into contracts on its own, or must those contracts be
concluded by the municipality?

MR NCIZA: Let us take the example of a supply chain
management process, to answer you Commissioner. Where
20 there is a tender process that has been engaged upon by
the municipality, it is a tender that comes from the EMPD.
It goes through a process of evaluation and adjudication.
Once it is concluded, as much as it is a tender in the EMPD,
the city manager then approves the tender.

There is an agreement that must then be entered

into with the service providers that are appointed in terms of that tender. It is not the chief of police that enters into that agreement. It would either be the CFO or the city manager. So, you ordinarily would not have a contractual dispensation between the EMPD and what you call a service provider.

You would not. But, since this thing was not your norm, this did not go through any process of the municipality, you know, and clearly this would not, in my
10 view, it cannot be anything that binds the municipality. It cannot be anything that speaks to the municipality. But, ordinarily, as much as it is an issue that concerns the EMPD, it would be the city of Ekurhuleni and the service provider.

ADV BALOYI SC: In fact, is it not fair or so that document at page 134, it is not an agreement, a memorandum of agreement between Ekurhuleni and Medicare, even on the best, generous interpretation, if you look at page 139, page 139 clearly is an internal process. So, 139 is a page that
20 has support, approved, approved. So, that is your internal document, right? Which is the last page attached to the supposed memorandum of agreement. So, there is no signature anyway by the municipality purported by the municipality to create an agreement with Medicare, because this document does not do that.

MR NCIZA: Yes.

ADV BALOYI SC: And the same with the one that starts at 141. It is exactly the same thing.

MR NCIZA: Exactly.

ADV BALOYI SC: Thank you. So, any services that may have been rendered on the basis of these two purported agreements, we know from the evidence that one of the state of the nation, state of the city, rather, addresses, there were people there who were later identified to have
10 been from CAT VIP Protection, that they could not have been provided in terms of these, because this is not an agreement.

MR NCIZA: It is a non-agreement.

ADV BALOYI SC: Thank you.

MR NCIZA: It is a non-agreement, not only because of the lack of signatures, it is a non-agreement because it does not comply with the regulatory framework.

ADV BALOYI SC: And the requirements of an agreement, anyway, at law.

20 **MR NCIZA:** Yes.

ADV BALOYI SC: Thank you.

ADV MOHLASEDI: Thank you, Commissioner. Mr Nciza, if we turn back to the memorandum of agreement on page 141, that is between the EMPD and CAT VIP.

MR NCIZA: Yes.

ADV MOHLASEDI: If I could ask you to have regard to page 143, please. Page 143.

MR NCIZA: Yes, Ma'am.

ADV MOHLASEDI: And do you see the effective date there?

MR NCIZA: Yes.

ADV MOHLASEDI: Stated as?

MR NCIZA: It is /10/2021.

ADV MOHLASEDI: Thank you. Could you then tell the
10 Commission what is the date of signature of the Director of Specialised Services at the bottom of the page?

MR NCIZA: The date is recorded as 13-10-2021.

ADV MOHLASEDI: Could I ask you then to flip the page to page 144 and identify the intended date or so of signature for Mr Matlala set out there?

MR NCIZA: The intended date of signature for Mr Matlala is the 15th of June 2021. I mean 2022. Sorry, Commissioners.

ADV MOHLASEDI: Could I ask what do you make of that
20 difference in between the dates as they regulate the Memorandum of Agreement?

MR NCIZA: Again, this is very anomalous. If indeed there was to be an agreement reached, it can be reached some one-party signs in October this year, the other party signs some eight months thereafter. It does not make sense

unless there is something that was intended by putting this date in. Remember the date on page 144 is a typed-in date. That also creates a problem for me. If this is one document, this is one document, why would the one part be a typed-in date and the other one is a handwritten date in one document and a year apart if indeed this was one document?

ADV KHUMALO SC: My observation is that this date of 13 October 2021 on page 143 was a poor attempt at trying to
10 regularise the contents of the letter on page 54 because without this you cannot explain why you say there is an endless agreement the source of which is a memorandum of understanding. So, he needed this 13 October 2021 date to precede that letter on page 54. That is my observation.

MR NCIZA: If indeed, if I may be allowed, Commissioner, to take that theory further. When unfortunately, I am running ahead of you counsel.

ADV MOHLASEDI: Please proceed.

MR NCIZA: When you look at then the letter of
20 commitment that is now on page 146, the letter of commitment on page 146 of the bundle aligns with the date on page 144. So, if indeed this ...[intervenes]

CHAIRPERSON: For the record, which is 15 June 2022.

MR NCIZA: 15 June 2022. The letter of commitment on page 146 is dated 15 June 2022 coming from CAT VIP

Protection. The date on page 144 of the supposed memorandum of agreement with CAT VIP is dated 15 June 2022. So, if I were to take what Commissioner has raised now as part of this regularisation process, my sense is that they needed to do this because this is post the state of the nation, I mean state of the city address. The 15th of June is posting the state of the city address. But now there is a question raised around what happened. So, they needed to do this and unfortunately this is just a hypothesis that one
10 is raising. They needed to then cover their tracks. I do not even believe that this letter was actually generated on the 15th of June 2022.

ADV MOHLASEDI: Thank you, Commissioner. Mr Nciza, before we turn to the discussion of the letter of intention to commit on page 146, are there any concluding remarks you would like to make as they relate to the Memorandum of Understanding?

MR NCIZA: I think we have traversed them enough. I should think I am okay with what I have said on that.

20 **ADV MOHLASEDI**: Thank you.

ADV BALOYI SC: Maybe one last observation Mr Nciza. At that page 143, effective date, you said that it does not say when it starts and when it ends in fact. Maybe that is consistent with Brigadier Mkhwanazi saying it is an endless working relationship. There is some consistency at least.

MR NCIZA: You are correct Commissioner. Indeed, if there were dates that were inserted on page 143, then it would not be an endless working relationship. And remember, this is an endless working relationship with no start date. It does not say in his memorandum, this is an endless working relationship that commenced when. And hence even the effective date on page 143 does not indicate effective from when and when it is supposed to end. You do not know. Maybe it commenced on the day
10 that he wrote the memorandum.

CHAIRPERSON: And also, just one observation relating to the letter of intention to commit. The subject in so many ways refers to 'an intention'. Now and this is on 15 June 2022 as you have said. Then one wonders what was happening between October 2021 and 15 June 2022. One would have understood if this letter instead of referring to 'an intention', because you can talk about an intention if you have not begun doing that which you intend to do.

So, it means they are suggesting in this letter that
20 they have not started doing what they intend doing and that it will be from some point from the 15th of June 2022 that they will start doing whatever it is that they want to do. So, I would have understood if this letter said something like, not that what they were doing would have been correct, no. But I would have understood the letter better if it said

something like a recorder of the services being rendered by CAD VIP Security Services. Just an observation. Do you wish to comment on that?

MR NCIZA: It is spot on, Chair. That observation is spot on. It is one of the things that one had noted to say this talks about an intention. This letter says I intend to commit. However, Brigadier Mkhwanazi's letter says there is a relationship. But Matlala says no, no. There is a future occurrence. It is an intention to commit, therefore
10 there is a future occurrence.

Whereas Mkhwanazi says there is a living process. It is an ongoing process. So indeed, you are correct, Chair, that the two I am sorry, but this was just a form of disingenuous attempt at covering up whatever people were doing you know. They knew that their actions will be caught out, so they needed to do all sorts of backdating. Because to me this was just an attempt to backdate you know. But they were not aligned. They were not aligned. At least they should have sat in the same room and then crafted the
20 two letters from the same room and compared the letters.

ADV MOHLASEDI: Thank you, Chair. In continuing your discussion relating to the letter of intention to commit, you set out further concerns in paragraph 39.3 and 39.4 of your witness statement. Please take the Commission through those.

MR NCIZA: And I think counsel, what the Chair has raised, you know, in terms of the intention it is even though I have not captured it succinctly in the statement, but it is an issue, you know, that one considered when now we have to deal with the actual registration of the vehicles. You know, because this letter gets used as a donation letter. You know, whereas there is no donation that the letter says I am doing.

It says I intend to commit and as part of that
10 intention, there shall be a donation. But there is no letter that actually donates in terms of the processes that had happened. So indeed, this letter again raises the MOA, the Memorandum of Agreement. You know, and that is where the problem starts, you know, because it says CAT VIP Protection under the leadership of Mr Vusimuzi Matlala has signed a Memorandum of Agreement with the Ekurhuleni Metro Police Department.

There is no signed Memorandum of Agreement, you know. At least Mr Mkhwanazi who gave us these
20 documents, they have not given us a signed Memorandum of Agreement. And we have not in any of the processes that we conducted in the investigation come across a signed Memorandum of Agreement. So, the premise that this thing refers to sorry the premise that this thing refers to is absolutely incorrect.

It is a misrepresentation. You know, it says we have entered into a process that does not exist. And again, it is worrisome that we would have a private company saying that it has intentions of enhancing the state's efforts in crime fighting. This is a private security company and says no, we have intentions to enhance your efforts in crime prevention and to assist in VIP protection. This for me honestly was just a question of trying to plug the gap that they needed to explain about the state of the city address
10 processes.

ADV MOHLASEDI: Mr Nciza, you detail further concerns with the process in paragraph 39.4.

MR NCIZA: Yes, the municipality has a gifts and donations policy. One of the aspects or provisions of that policy is first before you can receive a gift the municipality has to scrutinise the donor. We need to find out who is the donor, what standing the donor has, are there any issues that actually as a government entity we should be concerned about the donor. Not the donation yet.

20 Before you even get to the point of the donation, you have to look at who is the donor. Because you do not want a situation wherein as a government entity you are then aligning yourselves with persons or institutions or entities that are questionable. So that is what the donations policy prescribes. But before we even talk about

the donation, let us look at who is donating.

So, clearly it would have been unlawful for the municipality to just get a donation without having done its due diligence in respect of the donor itself. Secondly, the donation that is intended in order again, Chair, I must emphasise that as a regulated body a municipality everything we do must be recorded. It must be recorded. If there is an offer to donate something to the municipality not to the individual to the municipality there must be a report.

10 And in that report, one would have expected - one would have expected that the report would then talk to these issues that are raised in page 146. That report must say, as a municipality we have got a problem of capacity in terms of our crime prevention efforts. We do not have enough vehicles. We do not have enough personnel. We do not have the necessary skills and competences you know in terms of maybe technical training and whatever else that is raised here.

 There must be a report that talks to these issues.

20 If I was Brigadier Mkhwanazi as the person that is in charge of a specialised unit a specialised unit mine was then to do that assessment of our capacity submit a report to the senior management team of EMPD and ask that we as EMPD approach council for council to provide us with the necessary resources to plug the gap.

That is where you start. You do not start by going to some company outside and then look at all sorts of arrangements. You do not. If indeed this thing is above board, if this thing is done honestly, you know you must submit a report. Identify the gaps. Identify all the challenges that are facing. Then make recommendations on how to plug this.

But the default position is to ask council to provide with the capacity. Council, if indeed this is an issue that
10 requires the municipality to get funding, council will then take a resolution to submit something to national treasury to assist government. So, all these issues that are raised in this letter these are things that should first be dealt with internally in the municipality.

CHAIRPERSON: Are you suggesting that there can be no donation if there is no gap that is sought to be plugged?

MR NCIZA: That is just the thing. Why are you donating to government? Out of nowhere.

CHAIRPERSON: I assume that I am a billionaire and I
20 want to donate to you a few billions for service delivery.

MR NCIZA: Well, I do not know, Chair, if indeed such a situation will arise, but still, we need a report. In everything that we do, there must be a record that indeed this was identified or this person approached us and wants to enter into this particular partnership or wants to donate

these resources to the institution. Because there are contingent issues that arise out of a donation, especially a donation of an asset that is to be utilised.

You as the donor will give the municipality this vehicle, but once the vehicle now becomes an asset of the municipality the vehicle must be funded by the municipality in order for us to use it. You must make sure that there is petrol, tyres must be changed, all sorts of things. So, now your donation, nice as it is, creates a burden on the
10 municipality because now we must service it, we must do this, we must do that.

So, we must create funding that will not come from you but must come from the coffers of the municipality in order for us to utilise that donation. So that report must talk to those issues. That report must talk to those issues that if we accept this donation, these are the contingent issues that then come with it, that we will need to get funding. So therefore, finance must then identify a vote number that will be able to be utilised for the purposes of
20 us accepting the donation and therefore be able to utilise it going forward.

ADV MOHLASEDI: Thank you, Chair.

ADV BALOYI SC: Does council play a role, have a role in the acceptance, in the decision to accept or reject a donation?

MR NCIZA: It does.

ADV BALOYI SC: How does it come about? What happens? You make a submission?

MR NCIZA: A report. Everything, unfortunately, requires a report. The report then goes through the structures. The report, of course, will go to other departments that will be involved. The donation to EMPD, fleet department must be able to make their own comments on the report in terms of how this particular asset will be utilised. Finance
10 department must be able to make their comment on the funding for the utilisation of that particular asset, and then it goes on to the structures of council. Especially, I mean, this type of donation, this is easily going to millions. Vehicles of this nature probably go into millions in terms of their value. Then council must be in a position to take that view, having, of course, done the due diligence around the donor, but council must resolve to accept the donation.

ADV BALOYI SC: Thank you.

ADV MOHLASEDI: Thank you, Commissioner. Mr Nciza,
20 in addition to the issue you have raised about a lack of a report, can I ask you to have regard to paragraph 39.4 of your witness statement? Paragraph 39.4. In the second sentence of paragraph 39.4, you raise a further concern. Please detail that to the Commission.

MR NCIZA: Now, you have this letter of commitment, and

then we get to learn that the donation was affected, and I am saying effected, or the donation in quotes, and effected in quotes as well, in January, by way of the cars registered under the municipality. But the Jeff Wiggs query, media query, does not reflect these cars as being utilised by the institution. They were registered. Sorry, Commissioner.

ADV BALOYI SC: You can tell them you are in the Commission. They must not disturb you.

MR NCIZA: Sorry, it is my 12 o'clock alarm for prayer. I
10 pray at 12. Sorry. I am sorry about that. It is one of the things that I want to switch this thing off. Apologies.

CHAIRPERSON: No, no need for an apology. In fact, you should have prayed for all of us.

MR NCIZA: Anytime, Commissioner. Anytime. So, you have the so-called donation occurring in January 2023 by registration of the vehicles under the municipality. But the media query from Jeff Wiggs conclusively shows that these vehicles were utilised by the donor. So, there is no benefit that the institution then derived from the donation. I make
20 the example, Commissioner, that if I am to give you my laptop and donate my laptop to you and then we input your details on the laptop so that the digital footprint is ...[speaking in vernacular], but then I retain the laptop.

I continue to use the laptop. So, if tomorrow there are issues that arise out of the laptop, the digital footprint

will say, well, Madlanga's laptop did this. But I continue to use the laptop, so whose laptop is it? So, was there a donation? No, there was no donation. Because if you donate something, you must hand it over. It then becomes that person, the beneficiary's asset. But in this instance, there was no handover. Actually, we did not even know about the donation until the media query.

So, yes, that is one of the issues. There was no handover. And in that two months period where these
10 vehicles were under the municipality's name, we do not know exactly what would have happened or what happened. What type of transactions these vehicles were used in. What is it that was ferried through these vehicles? We do not know that. But what we do know is that if these vehicles encountered any form of scrutiny by any law enforcement agency, that law enforcement agency probably would have said they are municipal vehicles and therefore let me back off.

ADV BALOYI SC: Is it fair to suggest that perhaps the
20 registration period, January to and then deregistration, well, the donation period and registration period and deregistration from you may well indicate or may suggest that in that period that cover that is provided by the municipality may well have been required for a specific purpose. Because they get registered in January or given

to you in January and then deregistered in March. So, it may well be there was a specific purpose for it and once it was achieved the vehicles were then deregistered.

MR NCIZA: I can only postulate Madam Commissioner that had it not been for Jeff Wiggs whatever the purpose was would have continued. Because the deregistration process happens as a result of Jeff Wiggs. Remember we did not know as a municipality. So, if Jeff Wiggs then did not raise the alarm whatever it is that the vehicles were doing would
10 have continued. I do not know for how long.

So it might be that indeed there might have been a purpose an underlying purpose why this scheme was generated. But that underlying purpose could not have been for a the shortened because we are talking about a month and a half from around the 18th of January to the 6th of March, so we are talking about a month and a half or so where these vehicles were registered under the municipality.

So, whatever the scheme was you know it is
20 probable that it was a much larger intention than March, because the evidence that we gathered shows that when now Mkhwanazi gets suspended, then it then raises the issue with fleet to say, hey, let us give me the documents, let us do the deregistration process, you know, because the donation process is cancelled. So, yes.

ADV BALOYI SC: Maybe those epaulettes should have been given to Mr Wiggs then.

MR NCIZA: Pardon?

ADV BALOYI SC: I say maybe those epaulettes and gorget should have been given to Mr Wiggs.

MR NCIZA: We owe him a huge gratitude.

ADV BALOYI SC: It sounds like that.

MR NCIZA: We owe him a huge gratitude as an institution. We do not know exactly what the name of the municipality
10 would have been taken through. I mean, can you imagine a situation where indeed any of these vehicles gets entangled in some criminal activity and the law enforcement agency that is dealing with that criminal activity picks up that this vehicle is an Ekurhuleni vehicle.

You know, it would then have meant that our vehicles are used in a criminal enterprise. Yes, it is depressing to even think about. But what I also raise in 39.4 Commissioners is another serious concern. All things being equal, if these vehicles indeed were registered under
20 the municipality, properly registered, and the donation process had been properly done and assumed that these became municipal assets, because now on the 18th of January, the vehicle BMW is now on the system an Ekurhuleni asset.

If that had been done and we were to accept that a

donation had occurred, the process of deregistration raises even another problem because now you have got a municipal asset. There is a process that you must now invoke in order to dispose of a municipal asset. Because once these things are now in the register of the municipality, and I am not suggesting that they were in the register of the municipality, they were just on the eNATIS system, but they were not on the register of the municipality.

10 But the fact that now they are called Ekurhuleni Metro Police Municipality vehicles, they are now assets of the municipality. In order for you to dispose of a municipal asset, again, you need a report. You need a report, and that report goes all the way to the municipal council, and council must then resolve that such asset must be disposed of.

 An asset like a motor vehicle, and I am raising this because a number of reports had existed where indeed motor vehicles would be disposed of by the municipality,
20 can only be disposed of by a public auction. If the municipality wants to dispose of an asset, it must advertise such a disposal process and call upon members of the public to come and bid in a public auction for them to buy that asset.

 Remember, this is an asset of society, because the

government exists for the people. So, then the people must then be given an option to gain that asset. We do that even with regards to land. So, this instance, you have a municipal asset that is now disposed of without following through the process again.

ADV MOHLASEDI: Thank you. Mr Nciza, in your earlier exchange with Commissioner Baloyi, you mentioned the name of a Mr Steyn. I am going to ask you to turn to page 156 of your annexure bundle, please. 156 of your annexure
10 bundle.

MR NCIZA: I am there.

ADV MOHLASEDI: Just in order to provide context to you, Mr Nciza, we are still dealing with the contents of that investigation report that was provided to you. And one of those documents is this one titled memorandum on the top left. Do you see that?

MR NCIZA: Yes, Ma'am.

ADV MOHLASEDI: Thank you. Please identify to the Commission who the document is from.

20 **MR NCIZA**: The document is from Mr Chris Steyn from Fleet Department.

ADV MOHLASEDI: Thank you. and it is directed to?

MR NCIZA: Chief Mapiyeye.

ADV MOHLASEDI: Thank you. And the subject of the document is?

MR NCIZA: Donation of vehicles.

ADV MOHLASEDI: Thank you. Please just describe to the Commission what is fleet, what is the role of fleet management in the municipality, before you go through the letter.

MR NCIZA: Commissioners, we have a department in the municipality called Transport and Fleet Management. That department has got two critical roles. In respect of the lack of transport, they deal with the regulatory framework for
10 public transportation within the jurisdiction of the municipality. Your buses, your taxis, and the likes. That unit deals with basically that.

Then fleet, fleet is now internal transport arrangements. All the vehicles of the municipality, you know, from buying vehicles, services of vehicles, repairs, even when a vehicle is involved in an accident, fleet gets contacted, they come. So, they become the custodians of the vehicles of the municipality. You know, everything that concern vehicles, fleet are the people that must deal with it.

20 Yes, Ma'am.

ADV MOHLASEDI: Mr Nciza, could I ask you to look at paragraph two of that memorandum? It starts in December 2022. Do you see that?

MR NCIZA: Yes.

ADV MOHLASEDI: Could I ask you to read that, please?

MR NCIZA:

“In December 2022, Director Mkhwanazi from EMPD came to see me about a donation of vehicles to EMPD. I indicated, okay, indicated to Director Mkhwanazi that the licencing department are closing for December holidays and that he has to come back in January 2023.”

10 **ADV MOHLASEDI:** Please continue.

MR NCIZA:

“In January 2023, I indicated to Director Mkhwanazi that there must be a letter of donation from donator to EMPD. In January 2023, Director Mkhwanazi brought me the documents and vehicles registration documents to me at my office in Primrose. They will be registered in COE as per donation. I gave the documents to my admin representative to register the vehicles as per donation to EMPD.”

20

ADV MOHLASEDI: In paragraph 4 of that letter, Mr Steyn continues to set out - Mr Steyn explains his position then in response to the request from Mr Mkhwanazi. Could I ask

you just to explain to the Commission what he says in paragraph 4?

MR NCIZA: Well, he says Mkhwanazi is a senior officer who approached him, Steyn, with a donation letter and he did not see anything wrong. And all he requested was a formal letter on the donation of the vehicles. And he takes the view that indeed a donation would assist EMPD as the department are currently struggling with no enforcement vehicles. Then he says this is the norm, as my
10 understanding, a CID programme, seizure programme, and how they give vehicle donations were donated only on a donation letter.

ADV MOHLASEDI: And what does he continue to say then, paragraph 5, in February 2023?

MR NCIZA:

“In February 2023, Director Mkhwanazi contacted me and informed me that the donation is cancelled, and he will send people to collect the documents to
20 change it back to the donator.”

ADV MOHLASEDI: And the final paragraph of that memorandum, paragraph 6?

MR NCIZA: Then he said:

“See attached letter of donation from CAT VIP Protection and memorandum

of agreement.”

ADV MOHLASEDI: Thank you. Now, Mr Nciza, could Mr Steyn rely on the documents mentioned in paragraph 6, in light of the concerns that you have expressed to the Commission this morning, and particularly as they relate to the letter of donation?

MR NCIZA: With all due respect, it is mind-boggling that Steyn would write this letter. You know, it is just, firstly, he says he relied on the letter that is on page 157 to page 158,
10 which is the letter that we had dealt with earlier on from CAT VIP Protection. The letter is even unsigned, and again, the letter is an intention, there is no actual letter where CAT VIP is donating. You know, even if indeed this so-called norm existed, which I refute, such a norm does not exist, it could not exist in a government institution, that a simple letter would effectively generate financial implications for the municipality, as I have earlier explained. But nonetheless, his reliance on the letter as well as the memorandum is just, yes.

20 **ADV MOHLASEDI**: Mind-boggling, as you say.

MR NCIZA: Yes, it is mind-boggling. I mean, none of the documents that he refers to are signed by anybody. I mean, the memorandum is, is supposedly, must be approved by Mapiyeye, but it is not approved by Mapiyeye. You know, the memorandum of agreement is not approved by

Mapiyeye. Matlala has not signed his letter of commitment, or so-called donation letter. You know, so even if I was to give him the benefit of the doubt, that would have to be premised on signed documents from authorised people. None, none of the documents that he gave to, to the investigator actually have got anybody's signature.

ADV BALOYI SC: But also, the, that letter of intention to commit that he seems to, that he says he relied on, does not even specify the vehicles. It just says BMW, Mercedes-
10 Benz, Volkswagen Golf. How does he know that whatever he is given, these are the vehicles?

MR NCIZA: Honestly, Commissioners, because this is an issue that we, we had raised, and of course there was an intention that this must be taken up with fleet for them to investigate Chris's actions in this particular regard. Because this, this just, this simply did not cut it. It, it, it cannot.

ADV BALOYI SC: Did anything come of that intention to, for fleet, to, to instruct fleet to, to investigate? Did
20 anything happen?

MR NCIZA: Not to my knowledge.

ADV KHUMALO SC: The fleet department and the licencing department, are they part of EMPD or are they a separate division?

MR NCIZA: Licencing department is part of EMPD. Fleet

is different. Fleet is Fleet and Transport. It is a separate. Remember, fleet looks into the entirety of the fleet arrangements in the municipality for all departments.

ADV MOHLASEDI: Thank you, Commissioner. Mr Nciza, if you have regard to paragraph 5 of Mr Steyn's memorandum, he details there that he was contacted by Director Mkhwanazi and informed that the donation is cancelled. Do you see that?

MR NCIZA: Yes.

10 **ADV MOHLASEDI**: Thank you.

MR NCIZA: Can I just comment a bit?

ADV MOHLASEDI: Yes, please do. Particularly with reference to the concerns you have expressed about proper cancellation as opposed to deregistration in this context.

MR NCIZA: Commissioner, especially paragraph 4, Stain is effectively saying, I took Mkhwanazi, Mkhwanazi's word. Okay, fine, I have got these documents that are unsigned, but I mean, I was approached by Mkhwanazi as a senior EMPD officer, and I did not see anything wrong. So
20 effectively, I did not concern myself with due process. I did not concern myself with council policy and processes.

The fact that this senior person came to me sufficed for me to process this thing. Essentially, that is what he is saying. Then on this one about cancellation, even then, if indeed these vehicles were now registered

under the municipality on the basis of the donation letter, and let us assume that the donation letter was proper and it had followed all due processes, how do you then effect processes to cancel on the basis of a simple phone call?

I was contacted, I am not sure whether I went to him or he phoned him, but the bottom line is there is nothing, there is no paperwork. When he was supposed to do the registration, he said, give me the donation letter. And he got the donation letter and did the registration. But
10 now when there is a cancellation, he does not demand the cancellation letter. You get my point? For the one to come in, I require something, but to go out, it is fine, let it go out. You know, that is also disconcerting. That is a rather very placid way, a manner of dealing with municipal processes and what would have then become a municipal property. And it just gave him the documents to cancel.

ADV BALOYI SC: Are these policies not, for example, the donation policy, how, what is involved, what is the process and the approvals required, are those things not widely
20 available to employees?

MR NCIZA: They are on the internet.

ADV BALOYI SC: So, every employee ...[intervenes]

MR NCIZA: They have been there, for instance, the donation policy, the Madam Commissioner has been on the internet. I mean, it is a policy, if I recall, that was approved

way back around between 2006 and 2008, round about then.

ADV BALOYI SC: So, you would expect - would you expect that Mr Steyn, who receives donations and he makes reference to heavy vehicles and other donations, that he would be aware of that policy and what it requires?

MR NCIZA: It is obligatory of him to be ofay with the policy.

ADV BALOYI SC: Thank you.

ADV MOHLASEDI: Thank you, Commissioner. Mr Nciza,
10 that is then your final sub-paragraph under paragraph 39,
where you were taking the Commission through the factors
that motivated you to sign the approval to constitute the
disciplinary tribunal against Director Mkhwanazi.

MR NCIZA: Yes.

ADV MOHLASEDI: Are there any further remarks or
concluding remarks you would like to make on that topic?

MR NCIZA: Well, I think I have remarked enough, I have
remarked enough.

ADV MOHLASEDI: Great. And in that case, then, please
20 have regard to paragraph 40 of your witness statement. We
are on the same page. And so having made that decision to
sign, you set out there the subsequent developments in that
meeting of the 12th of April. Please take the Commission
through that.

MR NCIZA: Yes, Commissioners, this was an alarming

issue that was raised in that meeting. Remember, I testified that Chief Mapiyeye and his team would brief me on a regular basis about other investigations that they had been working with IPID on, or they had been informed by IPID. Then they raised this one about an investigation that IPID engaged them on regarding a murder of a shop owner, which they suspected that it was an extortion gone wrong. And again, the names of the three officers were raised with me, McKenzie, Stols and Twala, as well as the involvement
10 of Brigadier Mkhwanazi in respect of this particular matter, to do some form of cleanup of the scene and disposal of the body. They raised those issues. And indeed ...[intervenes]

CHAIRPERSON: Mr Nciza, up to this point, the witnesses who came before you avoided mentioning the names, the reason being they were not quite sure whether the officers had actually appeared in court. You have already mentioned them now. Perhaps going forward, if you could also just avoid any repeat of it.

MR NCIZA: Apologies. Apologies, Commissioner. Yes, so
20 they mentioned several EMPD officers who allegedly took part in the torture and the murder, as well as the disposal of the body. And they then indicated that in terms of the chief's engagements with the executive head of IPID, there was a sense that there were some imminent arrests that would be made by IPID that involved colleagues in the

EMPD, inclusive of the brigadier.

ADV MOHLASEDI: Please proceed to paragraph 41.

MR NCIZA: We then, of course, having received that information, we then discussed the challenges of now we have approved a dismantling tribunal, what then? If indeed there is these processes that are underway, how then do we move forward? We engaged and the sense that the chief provided me is that perhaps let us provide IPID with an opportunity to do their work and indeed effect the arrests,
10 because it would impact the processing of the disciplinary process should we immediately institute the disciplinary proceedings.

My judgement call that I made at that particular meeting was to say, in terms of the collective agreement, from the date that I have made a determination to the commencement of the disciplinary hearing, I have got three months. So, I took the view that indeed let me afford the department that latitude in terms of working with IPID and dealing with the issues that they need to deal with to deal
20 with the criminal aspect. Once that criminal aspect has been dealt with, then I can then engage on the HR issues.

ADV MOHLASEDI: Mr Nciza, you set out in paragraph 41 some of the concerns you had about immediately preceding to constitute the disciplinary tribunal. Could you please expound on that?

MR NCIZA: The issues that I have reflected on, firstly indeed, at the point when we took a view that the disciplinary tribunal must be constituted, and looking at the level of the employee, and of course what I explained earlier on this morning about the default position in terms of the collective agreement and the panel that I had at my disposal, and the complexity of the issues that pertain to this matter, the potential for victimisation of your internal disciplinary committee, we took the view that indeed we
10 might require that we get legal representation.

Now, if indeed I am going to appoint attorneys to deal with the matter or even instruct an advocate to deal with the matter, from the moment that they receive their appointment letter, they start working on the matter, you know, and now we find that they work on the matter and then the matter is not able to proceed because people are arrested, you know, so it would not actually assist the institution. Perhaps let us await, because we do have this period in terms of the collective agreement, let us let those
20 other processes unfold, so that indeed we appoint a disciplinary committee at the appropriate time, and they are able to process the disciplinary hearing in a manner that will ensure that the hearing itself continues and it gets finalised.

ADV MOHLASEDI: And in the course of that meeting, what

was then resolved, you know, on what basis did you conclude a way forward?

MR NCIZA: The conclusion that was reached was that firstly, I made the decision that I would not constitute a disciplinary hearing immediately, but I would constitute it within the period that is envisaged in the collective agreement, which is within three months, in light of the fact that there was this possibility of arrest. We also agreed that Chief Mapiyeye would regularly liaise with IPID for
10 updates and also update me, so that indeed I am kept abreast and then I can be in a position to make a considered view on the appointment of the disciplinary committee.

We also decided that for security reasons, you know, remember, Commissioners, at this point, unlike other matters in my unit, I would involve my managers that reported to me, I mean, I had a unit that actually deals with discipline management, but at this point I had not involved them. You know, I honestly kept this matter, especially
20 given the other issues that were also involved. I kept it with myself, and I only dealt with the Chief of Police, Spies and Erasmus, and no one else regarding it.

So, I then took a view that if this docket remains in my office, you know, it can have a potential of being exposed to other individuals within my unit. So, we then

decided that Erasmus must keep the docket because he had a safe in his office where he keeps sensitive documents. So, we decided that let him keep the docket and then secure it at his premises, at his office and the like, so that indeed we do not incur any breach of the process that we are involved with.

ADV MOHLASEDI: And on the basis of that resolution, that then concluded your meeting of the 12th of April.

MR NCIZA: Yes, Madam.

10 **ADV MOHLASEDI**: But turning to paragraph 43 on page 17, please detail to the Commission the events subsequent to that meeting.

MR NCIZA: Now, of course, we would have these engagements with the Chief of Police, I mean almost on a weekly basis. But what was becoming clear is that IPID is not making the imminent arrests that they had promised. So, in May, the middle of May 2023, Erasmus approached me. I think it was one of the instances where he would come to my office to deal with ongoing investigations. Then
20 he indicated to me that, hey, there is a problem that we are going to encounter because Brigadier Mkhwanazi's suspension was going to expire on the 24th of May.

So, there is a likelihood that then he would then come back, and we have not processed this discipline. So, I advised him to say if, as a department, they feel or they

have got evidence to suggest that indeed Brigadier Mkhwanazi's return would interfere with witnesses and would interfere with the running of the disciplinary hearing, the investigation of the disciplinary hearing, then they should motivate. They should do what we normally do. I mean, it is a process that we have been engaging for a while in the municipality where indeed a department would submit a motivation that would be signed by the head of department and addressed to the head of department, HR
10 Gxasheka, which of course they then did.

ADV MOHLASEDI: Please then continue to paragraph 45 and 46.

MR NCIZA: Yes, so we did indeed receive the extension request from the chief of police and I discussed it with Gxasheka, the HOD HR, and she agreed. She agreed that indeed we shall affect the extension of the suspension and that the request was provided to Gxasheka on the 22nd of May 2023. On the night of the 23rd of May 2023, I saw that on my WhatsApp I had a missed call from Doctor Mashazi,
20 the city manager.

This would have been because the timestamp on my phone still has it as 18:13 and then I would have called back Doctor Mashazi about 30 minutes thereafter, around 18:45 or so. When I called her, she picked up the phone, and she just came at me. Raised the issue of the extension

of Mkhwanazi's suspension. She said, yes, you guys hate Julius, you and your friend, Chief Mapiyeye, you hate Julius. You know, we must leave Julius alone.

I am like, no, no, no, what is this about? No, no, no, Julius, you are not going to extend his suspension. When you must stop this thing of yours. Firstly, I do not. I explained to her that, but firstly, I do not take decisions about suspensions or extensions. You know, mine is to advise upon receiving a request from a department. Mine is
10 to advise the person that must take that decision, which is Gxasheka. I, well, she was like, no, we are lying.

You are the one that take these decisions. Really, that is just simply science. But that is not how the process works. And I was told that I was targeting Brigadier Mkhwanazi. I was personal towards him. And Commissioner, honestly, this was not a calm discussion. My boss is effectively shouting at me and lambasting me. Then she told me during that particular call, that when you ...[speaking in vernacular].

20 **ADV MOHLASEDI**: Please translate that for our ...[incomplete].

MR NCIZA: You think this is your municipality. I do not understand how do I think this is my municipality. Yes, you think you can do anything you want in the municipality. My attempts, of course, of trying to calm down Doctor Mashazi

did not succeed. She was genuinely angry that there was even an attempt or even talk of extending the suspension of Mkhwanazi.

Now, she indicated that, of course, she is going to call Gxasheka to deal with this and tell Gxasheka that Mkhwanazi must be back at work the very next day. At the end of the call, she instructed me to facilitate the return of Mkhwanazi to work. And I must update her by 11 am the next day. But Mkhwanazi is back at work. I have known
10 Doctor Mashazi since 1999, when I was in the trade union movement. I met her at Springs when she was a manager in the health department. I had never experienced such hostility from her.

ADV KHUMALO SC: I just want to understand something. So, this is now May 2023?

MR NCIZA: Yes.

ADV KHUMALO SC: Up to that point, your discussions were with Chief Mapiyeye and the head of HR. You had never discussed the Mkhwanazi issue with the municipal
20 manager?

MR NCIZA: We did. Remember, we discussed the Mkhwanazi issue with the municipal manager on the 16th of February.

ADV KHUMALO SC: In February.

MR NCIZA: When we briefed her that we were going to

engage in a process to investigate the allegations as per the Jeff Wiggs media query, and also potentially institute disciplinary proceedings, and also suspend Mkhwanazi. All of that was discussed, and we had her support on the 16th. After the 16th, I had never discussed the issue with her. Because there was no need, so far as I was concerned, because my processes are clear.

Now, this came out of the blue, and I interacted with Doctor Mashazi on a number of issues. I would be in her office she would contact me. At no point was there ever even a request for an update to say, by the way, how far are you? What is happening there? Nothing. So, you could imagine that I have never had a discussion with Doctor Mashazi after the 16th of February. Now, the 23rd of May comes this call. You know, and at the end of the call, I am told that they are going to hell at Julius. You know, you leave Julius alone. So yes, it was quite a shocker. It was quite a shocker, and I do not know, should I proceed?

ADV BALOYI SC: So, before this incident, had Doctor Mashazi ever intervened in a disciplinary matter with you directly?

MR NCIZA: Yes.

ADV BALOYI SC: In what circumstances?

MR NCIZA: It was not at the level of a disciplinary hearing. In 2017, there is a case that had arisen in our

communications and also - sorry, Customer Relations Management Department, CRM, where the head of department at that time had caused an investigation to be conducted against the activities of a divisional head. Now, when that came to Mashazi's attention, that head of department had requested security and loss control unit of EMPD to conduct this investigation about nepotism and all sorts of other problems regarding contract management.

When that came to Mashazi's attention, she then
10 instructed that we can that investigation, and at that point, the investigation report was out. We can that investigation and do not appoint a disciplinary tribunal, and then she instructed me to draft a new directive on how investigations are to be conducted in the municipality. And that directive must be the effect that no investigation shall be conducted against a divisional head without the city manager being informed and the city manager approving.

Now, I did not have a problem with that concept or that particular principle because divisional heads are not
20 covered by the DPCA. So, I did not have a problem with that, we crafted that. But she stopped a disciplinary hearing from proceeding even though we had not yet appointed.

ADV BALOYI SC: In this case, in the case of Brigadier Mkhwanazi, she, other than to say you are being personal

and that stuff that has nothing to do with the merits of the disciplinary action, did she provide a reason based on the merits of the suspension itself?

MR NCIZA: The entire conversation, at no point was I asked as a custodian of disciplinary management processes in the municipality whether there was a basis, in my view, for the extension of the suspension. And remember, at this point, we are not even discussing the actual investigation report. There is not even a question about it. Therefore, I
10 was not even given an opportunity to raise the fact that I actually have an investigation report that says something is wrong. And therefore, this employee must be disciplined. That does not arise in this conversation. This conversation was a vitriolic attack on me, on Commissioner Mapiyeye as the chief of police. It was a very personal engagement. It had nothing to do with municipal processes.

ADV BALOYI SC: When you spoke to her in February, where you say she supported the proposed course of action, did you explain what the nature of the allegations, even if
20 not in detail? Did you explain to her the reason why suspension is a likely path that you are taking?

MR NCIZA: Yes.

ADV BALOYI SC: Did she become aware of all of that explanation?

MR NCIZA: We explained that these are the allegations.

We explained the media query. We explained the Matlala connection. We explained the issue of the registration of the vehicles. We explained the issue of the operational plan. That we are not even aware that there was CAT VIP involvement in the state of the city address. She expressed shock because she was the city manager at that time. She was also not aware that there was CAT VIP that was involved in that particular state of the city address. So, we explained everything. And honestly, she responded like
10 what a chief executive officer would do. The allegations of serious misconduct, investigate them, suspend the employee, ensure that your processes are implemented.

ADV BALOYI SC: Did you ever become aware, or do you have a possible explanation why the change in her position? From the seriously supportive as you described in February and this kind of engagement and instruction to discontinue. Did you ever come to know why there is that change or at least have a view about what would explain such a drastic change to the other extreme?

20 **MR NCIZA:** I can only express a view because I do not have evidence of it. But what became clear even when I engaged the chief, you know, remember in February when we took a view that let us go and engage her, one of the things that the chief raised with me was the proximity between herself and Mkhwananzi. So, the only thing that in

our assessment we could come to is that Mkhwanazi would have gone to her to indicate that this is what is happening.

And therefore, she intervened because there would have been a request. Because in terms of EMPD, nothing official had gone to her office. In terms of HR, nothing official had gone to her office. In terms of Gxasheka and my engagements with Gxasheka, there was nothing. So, the only person that would be a factor in this entire situation would be Mkhwanazi.

10 There is no engagement with chief, there is no engagement with HOD HR, and at this point there is not even an engagement with the legal HOD. At this point, the only person that in our view would have had that particular access, would have convinced her to take this posture, is the person that is the subject of the telephone call.

ADV BALOYI SC: Your answer suggests that when you spoke to her in February, Mr Mkhwanazi had not spoken to her. Because my question is really about that. That you have at the beginning support, and then later on you have
20 the opposite effect that undoes that support you had. Does your answer suggest that in February when you did the first approach, that Brigadier Mkhwanazi would not have spoken to her at that time?

MR NCIZA: Exactly.

ADV BALOYI SC: Thank you.

ADV MOHLASEDI: Thank you, Commissioner. Chairperson, I am noting that it is just a minute before 1. It might be an opportune moment for lunch.

CHAIRPERSON: Let us adjourn and resume at 2 pm.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Ms Motlhasedi.

ADV MOTLHASEDI: Thank you. Thank you, Chair. Mr Nciza, just to confirm you are still in possession of your two
10 files?

MR NCIZA: Yes, yes, Counsel.

ADV MOTLHASEDI: Thank you. We were at paragraph 48 of your witness statement on page 18. Paragraph 48.

MR NCIZA: Yes.

ADV MOTLHASEDI: Just before the lunch break, you gave testimony about a telephone conversation between you and the City Manager, Dr Mashazi, where she told you in no uncertain terms, Limutlohele Julius, and directed you to facilitate his return to the office.

20 **MR NCIZA**: Yes, Mam.

ADV MOTLHASEDI: Thank you. In light of that evidence, I wanted to pose a few questions to you, particularly in light of our discussion this morning concerning the collective agreement. In terms of the collective agreement, Mr Nciza, which official in the City has the power to suspend and

extend suspensions of employees?

MR NCIZA: Thank you. Commissioners, like I indicated yesterday, how the system works is that the Municipal Manager has got the overall authority, but then the Municipal Manager has appointed an authorized representative. So the authorized representative would then be seized with the process of suspensions will be the Head of Department, HR, Ms Linda Gxasheka. So as much as the Municipal Manager has overall authority, the person
10 seized with the process would have been Linda Gxasheka.

ADV MOTLHASEDI: And so in circumstances where Ms Gxasheka was seized with that authority, on what basis did the City Manager act when she intervened and instructed you to facilitate the return of duty of Brigadier Mkhwanazi?

MR NCIZA: It is a tricky one, because in the absence of a submission by the Municipal Manager, that goes to the merits of the suspension, because the Municipal Manager has a right to say that, but the merits of this suspension are poor and therefore I do not agree that this person should be
20 suspended. So on the basis of that, where there is a rational disposition that exists for the Municipal Manager to intervene based on the merits of the case, then indeed one would say that the Municipal Manager then would be within her rights to then intervene and stop a suspension, but that was not the case in this instance.

You know, as Madam Commissioner had previously asked, whether indeed there was a discussion on the merits, there was none. So that disposition then would not apply in this instance where we would expect that a Municipal Manager would deem it fit to intervene.

ADV KHUMALO SC: So when the Municipal Manager says Limotukhele Julius, did you understand that to relate only to the suspension or the entire process, in other words, the investigation and the initiation of the disciplinary process
10 and the appointment of the panel, as you said. What did you understand that to mean, Limotukhele Julius?

MR NCIZA: At that point in the discussion, this is before of course other processes that would then follow subsequent to this discussion, the discussion was narrow in the sense that it was about Julius coming back to work, there shall be no extension of the suspension, you know. So in a narrow sense, one just took it that this is about the suspension and therefore let me just leave it at that. There was no specific instruction issued regarding the disciplinary case itself.

20 **ADV KHUMALO SC:** The reason I am asking you this is if you go six paragraphs back in paragraph 42, you say:

“After the discussion amongst ourselves, I made a decision to constitute a disciplinary tribunal.”

MR NCIZA: Yes.

ADV KHUMALO SC: Now, let us go back to my question. So it is not just the suspension, it is also the constitution of the tribunal and other things. Now, when she said to you, Limotukhele Julius, did you understand that to mean do not extend the suspension but continue with the constitution of the tribunal and other things?

MR NCIZA: I understood it to mean do not extend the suspension. Remember, I never discussed with the City Manager the issue of the constitution of the disciplinary
10 tribunal, you know. Even during the course of this conversation, there was no engagement about the disciplinary tribunal at all.

And like I indicated, this was a, like she came down at me regarding the suspension. There was really no end or even an opportunity to engage to say but there is this other aspect. That was not her concern. Her concern was Julius must come back to work ...[vernacular] so to speak.

ADV MOTLHASEDI: Thank you, Commissioner. Mr ...[intervenues].

20 **ADV BALOYI SC:** Sorry. In the absence of what you have described as a rational explanation for why the instruction, Limotukhele Julius said she wants him back at work tomorrow, is it not, if you spoke frankly and freely, is it fair to describe it as a simple abuse of authority and power?

MR NCIZA: It was not a simple abuse of authority and

power.

ADV BALOYI SC: No, what I am saying is ...[intervenes].

MR NCIZA: This was abuse of authority and power in the extreme.

ADV BALOYI SC: Okay, yes. Thank you.

MR NCIZA: You know, especially where there is not even an engagement on the merits. Why the extension? There is no, if the conversation had gone along the way of saying, I understand that you intend to extend the suspension, can
10 you give me the basis of that, you see. Then you would say that there is a rational engagement, you know. Now that you have given your superior, your boss, the basis, the boss says, no, no, no, no, that is not sufficient for you to actually do this.

Then if it had flown that way, one would say, you know what, the Municipal Manager acted in accordance with what we would expect of a Chief Executive Officer, but in this instance, it was not.

ADV MOTLHASEDI: Thank you, Commissioner. Mr Nciza,
20 please then go to paragraph 49 and detail those events to the Commission, paragraph 49.

MR NCIZA: Now you can imagine, after the call was dropped, my first instinct was to get hold of the Head of Department. Remember, I had been in this journey with Chief Mapiyeye since he came back from leave in February

and there had been numerous engagements between us regarding this particular matter.

So the first instinct was to get hold of him and to relay that, hey, moena, I have just received this call. And fortunately, I could not get hold of him. His line was busy.

But then eventually he called me back and relayed that, hey, moena, I have just received this call. Instead of me relaying to him that I have received this call, he started off
10 and went at me to say, hey, Umama has called me and this is what she is telling me, that Julius must be back at work tomorrow.

Of course, he was displeased. And then I indicated to him that I also received a similar call. And in sharing our notes over the call, exactly the same thing happened to him as it had happened to me, that the basis of the instruction is that we are personal, we hate Julius, there is nothing wrong with Julius, he must come back to work ...[vernacular].

20 **ADV MOTLHASEDI**: Please then continue to paragraph 50.

MR NCIZA: And given the fact that, indeed, the person that must make the determination to extend or not is Gxasheka. I tried to get hold of her and unfortunately, I could not, and this is now around about 8 or past 8 at night. I could not get hold of her that night.

However, the next morning, when I checked my phone, I discovered that Ms Gxasheka had responded to me at around 10 to 1 in the morning.

ADV MOTLHASEDI: Mr Nciza, perhaps I may assist you. If you turn to page 289 of the annexure bundle, your 289, that is Annexure PN7.

MR NCIZA: Thank you, Counsel.

ADV MOTLHASEDI: And perhaps you can give that evidence with reference to the page.

10 **MR NCIZA**: Thank you. Thank you, Counsel. On page 289, indeed, on the 24th of May 2023, recalling, Commissioners, that my engagements with the City Manager were the previous night just before 7pm and I tried to get hold of Ms Gxasheka, and I could not. Then she sent two messages to me, the first one at 00:49:

“So sorry, I had a loadshedding.
Electricity just came back now.”

And then at 00:50, she said:

20 “Please draft a letter for Julius
Mkhwanazi. He is resuming duties
today. I hope Chief contacted him.”

ADV MOTLHASEDI: And you then responded to say?

MR NCIZA: Because I had received these messages, I saw them in the morning when I woke up at 6:32. I greeted her:

“Good morning HOD.”

And then I said:

“I spoke to Chief. The letter will be ready when we meet.”

And then in response to of course to her loadshedding message, I said:

“Eish, unending crisis.”

Like everybody was experiencing loadshedding.

ADV MOTLHASEDI: Thank you.

ADV KHUMALO SC: If you know that this is wrong, and
10 Chief knows that this is wrong, and the HOD knows that this is wrong, why do you go along with it? Is there no grievance procedure within a Ekurhuleni Municipality that allows you to say, the Municipal Manager is unlawfully interfering in a process, we want to report this thing?

MR NCIZA: Okay.

ADV KHUMALO SC: Ae you not making the situation worse? I mean, you know what the allegations are. You saw how serious they are. There was a report of somebody being murdered. Knowing all of that, the three of you just
20 agreed to draft a letter, he will come back to work, we will move on with our lives. I do not get that.

MR NCIZA: Ja, perhaps let us try and respond like this, Commissioner. I received the call that gave the instruction. I do not agree with the instruction, but nonetheless, It is the instruction of the Chief Accounting Officer. My first point of

call is to talk to the department. The department has received the same instruction. We are both unhappy. But the call now, the person who actually has the authority to extend or not extend is Gxasheka, not us.

At the end of the day, Gxasheka is the one that must make the determination whether to extend or not to extend. We tried to get hold of Gxasheka. I do not get hold of her. But when I wake up, I find that Gxasheka has already issued the instruction that he must come back. So the
10 sense that I had is that clearly, Gxasheka would have engaged with Mashazi. Maybe after the two calls to me and Mapiyeye, Mashazi would have called her. The engagement would have happened between the two of them.

Then Gxasheka issues the instruction for me to draft a letter for Mkhwanazi to come back. Now even if I was to submit a grievance, the only type of grievance that I can submit in terms of the grievance procedure in this instance would be a grievance to the Executive Mayor, you know. Now, I am not the one that actually would be submitting
20 such a grievance, because I am not the one who must actually make the determination on whether there is an extension or not, you know.

The person that must make the determination if he has, she has agreed and I am not privy to the actual discussion that happened between Gxasheka and Mashazi,

but Gxasheka instructs me to say draft a letter to, for Mkhwanazi to resume work. Mine is to then draft that letter. I agree with you that indeed it was wrong.

It was wrong in terms of, the instruction itself was wrong, because it did not have a rational basis. But at the end of the day, the person that was supposed to stand up and say no, it is my authority, you are now usurping my authority and therefore I will not do that. I have been briefed by my divisional head. I have been briefed, or
10 rather the department had motivated And my Divisional Head has briefed me and I have agreed to the extension and therefore I stand by my decision to extend. That was the duty of the Divisional, of the HOD HR who is seized with the power to extend.

ADV BALOYI SC: What did she say is the reason to do a letter for that instruction to you? Did she explain anything to you?

MR NCIZA: When we met in the morning, because I went directly, instead of going to my office I went directly to
20 Germiston In the morning as I was instructed to facilitate, so I would not have facilitated this process from Benoni. I went to Germiston and I engaged Ms Gxasheka on the content of the conversation that I had with Mashazi the previous night and she also indicated that she also received the same call.

Now, what I am going to say to you might be a bit of a shocker but it was the norm. It was our experience. [Vernacular]... Xolani, this lady has shouted at me, I do not want to be further shouted at, do the letter. I am saying it was a norm, because every instance where something has to happen in the Municipality and HR must do something, if you have an issue you will be told that I do not want to be shouted at by Mashazi.

ADV BALOYI SC: Right, thank you.

10 **ADV MOTLHASEDI:** Thank you, Commissioner. Mr Nciza, you were then at paragraph 51 of your witness statement where you detail, you make certain remarks or conclusions on this intervention. Can I invite you to share those with the Commission, please?

MR NCIZA: Yes. I make this remark here, Commissioners, because this was not the first time that we have a situation where there is an extension of a suspension and it certainly was not the last, you know. There is a gentleman that we had suspended who was at a Divisional Head level. That
20 person was suspended in May 2023. An investigation of sorts was being conducted in the department.

At the end of the suspension period in August 2023, Gxasheka instructed that a letter be composed to extend the suspension, and we have got a number of other instances where suspensions in the Municipality would be

extended either because the investigation is still underway, or at times the disciplinary proceedings have commenced but have not been concluded and then a view is taken that indeed the suspensions be extended. So the manner in which this was handled was out of kilter with how others were handled.

ADV MOTLHASEDI: And so you are saying in that example in paragraph 51 that even in the context of a suspended employee where the allegations against him were at that stage still preliminary, an extension of the suspension was granted and the employee was directed to continue staying away from the office.

MR NCIZA: Yes.

ADV MOTLHASEDI: Yes, viewed as against the case of Brigadier Mkhwanazi where the formal internal investigation was completed and a docket was already submitted to your office and yet the extension of the suspension was not granted.

MR NCIZA: Was not granted.

20 **ADV MOTLHASEDI:** Okay.

MR NCIZA: And remember, the point of the matter is that the non-extension so to speak had nothing to do with the actual facts of the case.

ADV MOTLHASEDI: Can I then allow you to conclude on the subject with what is stated in paragraph 53 – 52, my

apologies.

MR NCIZA: Ja, I do not know whether I am allowed to just correct the statement.

ADV MOTLHASEDI: You are welcome, please.

MR NCIZA: Ja, I think, Commissioners, I think my use of the word endangered witnesses is a bit strong and I would not be in a position to actually support that, but rather, I would rather say that this intervention potentially compromised witnesses, because that is one of the key
10 issues that you do not want to see happening with regards to a discipline management process that your witnesses get compromised as a result of the active presence of the accused employee in the institution.

So these potentially compromised witnesses of the Municipality, the documents that would have relied upon at the hearing and even the integrity of the disciplinary process itself, you know.

ADV BALOYI SC: Those were the very reasons that you put for a suspension ...[intervenes].

20 **MR NCIZA**: For the suspension in the very first place.

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

MR NCIZA: In my view those reasons still existed, you know, not only my view but also the view of the department. Those very reasons still existed at that point.

ADV BALOYI SC: Yes.

ADV MOTLHASEDI: And would you then agree, Mr Nciza, that the very risk you were attempting to prevent, the risks identified in paragraph 52, the efforts to prevent them through the use of the suspension were undermined by the upliftment of the suspension.

MR NCIZA: Yes Mam.

ADV MOTLHASEDI: Okay, right. Thank you. Can I then ask you to turn to paragraph 53 and detail the events of the 24th of May, paragraph 53.

10 **MR NCIZA:** So after I had met with Ms Gxasheka at her office and we had agreed that indeed we will do the resumption of duty letter, I mean to do such letters, there is a template so you just craft it, so it is a quick thing. I had to leave her office and go to what is called the administrative precinct. The office would be, if it is on this side, the administrative precinct would be where Counsel is sitting and then the Government precinct would be where you are sitting as Commissioners. So her office is this side, left, then straight.

20 So I had to go to the administrative precinct where the City Manager's office is located. There is a huge parking lot In between, there are two parking lots actually. So as I was walking towards the administrative precinct, I ran into Brigadier Mkhwanazi In full uniform you know, at the parking lot. We greeted each other and then he

indicated as per what is on paragraph 54, try to engage me to say ja, no, Xolani, you know these guys signed documents that they are now accusing me of, you know. [Vernacular]... You know, so like no, these guys have signed but they want to fire me for what they have already signed, you know.

So I avoided the engagement, you know. I was like, okay [vernacular]... you know, I did not want to engage. Remember, I was aware of what is contained in the
10 investigation report and as a matter of principle I do not engage with employees that are the subject of either a disciplinary hearing or investigation on the contents of that particular process.

So I was like, no, I just downplayed it and he was on his way to see Gxasheka at the time, and I just politely sort of disconnected and went on my way and I did not want to engage him on the substance of the matter.

ADV MOTLHASEDI: Please proceed to paragraph 55.

MR NCIZA: Now we have a situation on the 24th where
20 Mkhwanazi is back. I engage the Chief of Police to say, okay, fine, now what, you know? What is the plan in your department in terms of how do you handle this situation? He indicated that, no, it is fine, he is back, but I have redeployed him, I do not want him in the unit where all of these things were happening. I have redeployed him into

bylaw enforcement, because that position was vacant at the time.

And of course, the basis upon which he wanted to redeploy talks to what I have raised even on paragraph 52, ensuring the integrity of the dismantling process you know, is kept. So that was his concern. And I later learned, not on the 24th of May, but sometime in June that another intervention had come about to direct that Mkhwanazi to go back to his substantive position of Director: Specialized
10 Services.

ADV MOTLHASEDI: Thank you. And therefore the efforts of Chief Mapiyeye then to try and keep Brigadier Mkhwanazi outside of his original station were unsuccessful.

MR NCIZA: They were unsuccessful you know, because at the end of the day the Municipal Manager you know, gets involved. She gets involved even though the letter itself that actually directed that Mkhwanazi must go back was from Gxasheka, you know. You ask yourself even how does Gxasheka get to know that Mkhwanazi is deployed to
20 another unit instead of his former station, you know.

So there was just this pressure that was put on Chief Mapiyeye that you know what, you are going to do this thing our way and not the Municipality's way.

ADV MOTLHASEDI: Mr Nciza, with reference to paragraph 56, at some point in May of 2023 it becomes clear to you

that the imminent arrests are not so imminent. Please then tell the Commission what steps you took thereafter.

MR NCIZA: Now this is after the 24th of May. I engaged with the Chief, I engaged with Spies and Erasmus and a view is then taken, because for me my processes still need to run. I have no instruction from anyone that says the process that I have approved in April should not run. So I then engage them and the view is taken that I must now constitute the disciplinary tribunal. My three months is
10 running short, you know. We are already left with less than one and a half month. So we then took that view that indeed I must now process what you call the disciplinary tribunal, let alone the issues of the suspension, because the suspension ja, was dealt with. It is, for me honestly it was a closed chapter you know. I was not going to concern myself with the suspension, I need to deal with the disciplinary tribunal at this point.

ADV MOTLHASEDI: And if I take you back to paragraph 56. In addition to your concern that IPID was not going to
20 arrest anyone any time soon you detail there a further concern that you had about the dynamic in the work environment I would say.

MR NCIZA: Yes.

ADV MOTLHASEDI: Please ...[intervenes].

MR NCIZA: I mean it was clear, it was clear how the

matter of the suspension was handled that Mkhwanazi was being protected by Gxasheka and Mashazi at that point. It was clear to me that you know what, in respect of how the suspension was handled that was the situation you know. But I still needed to ensure that my process is carried through.

ADV BALOYI SC: To your knowledge, Mr Nciza, did the City Manager and/or Ms Gxasheka become aware of the IPID investigations? Were they, as far as you know did
10 they become aware of that at the time that you were given the instruction to withdraw the suspension or not to extend the suspension?

MR NCIZA: The IPID investigations?

ADV BALOYI SC: Ja.

MR NCIZA: My understanding at the time is that Chief Mapiyeye had informed the City Manager that there was an IPID investigation into Mr Mkhwanazi's activities, but the extent of that at this point, because you see there is a lot that happens post May you know. At this point the extent of
20 her knowledge I would not be able to say at this time in May.

ADV BALOYI SC: Thank you.

ADV MOTLHASEDI: Thank you, Commissioner. Mr Nciza, we are then at paragraph 57 where you have explained to the Commission your decision to move ahead with

constituting the disciplinary tribunal. With reference to that, your second sentence in paragraph 57, please just explain what factors motivated the appointment of external lawyers there.

MR NCIZA: As I indicated In terms of how the collective agreement is structured on the default position, now when I look at the default position of appointing a person to preside that is a level or two levels higher than the position, it meant that I would have to appoint a Divisional Head or
10 an HOD. Now there were very few Divisional Heads and even less HOD's that were trained to be presiding officers or even prosecutors.

So already we have had a very limited scope you know. Secondly, experience had proven that in that very limited scope people are very busy, they simply do not have time you know, and that had been reported to the Municipality on numerous occasions that it would always be a challenge to get a Divisional Head to reserve time and not deal for instance one of the people that would have been
20 appropriate for the appointment would be a Divisional Head In the Water Services Department and you have all these challenges with Water Services and then you expect this guy to go and sit in a disciplinary hearing for a week. It is just impossible in the Municipality.

That is a consideration that talks to the complexity of

the situation but also the complexity of the situation in terms of the merits of the case you know, were such that we are dealing with matters or charges that would involve issues of gross dishonesty. A person that would have to sit at such a hearing must have an acute understanding of the policy regime that governs these processes you know, that were involved here.

And then also not only the policy regime, but also there is legislative issues that will come into play when we
10 are discussing, or rather when we are busy prosecuting a case of this particular nature. So those complexities play a fundamental role in terms of a determination that must be made on who to appoint within the limited scope.

So then it became clear to us that we would have to get external legal services for us to be able to deal with this matter as well as of course the potential given you know, the totality of what was at our disposal In terms of the information on issues that Brigadier Mkhwanazi was implicated in besides just the blue scandal, blue light
20 scandal, blue light scandals, the blue light scandal. That would be a nice one. So besides the blue light scandal you then have to look at ...[intervenes].

ADV BALOYI SC: Maybe it is there somewhere.

MR NCIZA: No, so you will also have to look at it is only responsible for a person who is head of a labour relations

environment where you have got more than 20,000 employees to make decisions that would not only benefit your process but also benefit those that are connected to the process. The potential for victimization or even harassment of the very same people that would be the disciplinary tribunal committee, you know there is that potential that you must look into and given what we had In terms of the activities of this individual and those that are connected to him it would not have been a rational decision
10 for me to insist on having internal people dealing with this matter quite honestly. Hence we then took a view to appoint the external legal representatives.

ADV MOTLHASEDI: Thank you. Mr Nciza, can I ask you to turn to page 290, 290 of your annexure bundle.

MR NCIZA: Yes.

ADV MOTLHASEDI: Are you there?

MR NCIZA: I am there.

ADV MOTLHASEDI: Thank you. You set out in paragraph 58.1 one of the appointments that you made.

20 **MR NCIZA:** Yes.

ADV MOTLHASEDI: Yes, so can I ask you to take the Commission through that paragraph with reference to this document.

MR NCIZA: Ja, I appointed Majang Attorneys, which is a firm of attorneys that is on the panel of attorneys of the

Municipality and in the appointment I mandated them to brief Adv Sanele Sibisi to prosecute Brigadier Mkhwanazi ...[intervenes].

CHAIRPERSON: Is it necessary to mention the names? Is it not sufficient to just say a firm of attorneys and counsel?

ADV MOTLHASEDI: Fair enough, we can do that, Commissioner. Mr Nciza, in the course of giving evidence as it relates to the two appointments that you made are you able to do that without direct reference to the individuals
10 involved.

MR NCIZA: Sure.

ADV MOTLHASEDI: Thank you so much.

MR NCIZA: So I appointed a firm of attorneys that is on the panel and I requested them to brief an advocate, I think he is in the Johannesburg Bar, to prosecute the matter and to prepare the charge sheet.

ADV MOTLHASEDI: Can I then ask you to go to Annexure PN9, which is on page 291, 291 of your annexure bundle and ...[intervenes].

20 **MR NCIZA:** Similarly in line with the determinations that were made In respect of the appointment of the prosecution team I then appointed a firm of attorneys that is also on the panel of attorneys of the Municipality and I requested them to brief an advocate who would then be the presiding officer In the disciplinary tribunal.

ADV MOTLHASEDI: And having constituted your tribunal now through these two appointments, please explain from paragraph 59 the subsequent developments following those appointments.

ADV NCIZA: Just as a matter of note, Commissioners, in both appointment letters you will note that there is a line that says please note that the internal official responsible to this matter is Mr Nciza you know, with the landline telephone number in both instances. So then ordinarily the
10 matter would be allocated to a labour relations officer or a labour relations manager but in this instance, like I had said initially, I wanted the matter to reside with me in my office.

So I then communicated with the firm of attorneys and directed them to say that this is a matter that is in the EMPD and therefore they would need to be in consultation with the EMPD in order for them to get as much as there is a docket but also to get witnesses that would be in a position to testify on the matters that were contained In the docket and which would also assist them in the process of
20 drafting the charge sheet.

So yes, I indicated that. And then I do not know whether I should just continue with how the entire process unfolded.

ADV MOTLHASEDI: Please proceed.

MR NCIZA: Thank you.

ADV MOTLHASEDI: I will ask Mr Nciza that when you give the identities of the Individuals involved in preparing the charge sheet you limit the names of those engaged by the law firm.

MR NCIZA: Sure.

ADV MOTLHASEDI: Thank you.

MR NCIZA: So indeed there were numerous individuals from the department who then got involved with the preparation of the charge sheet. Of course given the nature
10 of the allegations the process itself became a bit more detailed than what one had initially anticipated you know. There were several engagements that were held and I was involved.

Persons from the firm of attorneys were involved and then the investigator that compiled the investigation report, which is Erasmus, and then I involved at this stage, yes, when I then decided that I would also need to involve the manager in my office that deals with discipline processes, because now it is at a stage where the actual facilitation of
20 the disciplinary tribunal must take place and in most cases I would not have sufficient time to be involved directly with the actual disciplinary hearing.

ADV MOTLHASEDI: Yes, please proceed to paragraph 61.

MR NCIZA: The charge sheet was at a later stage amended in order to include additional charges. This would

have been around about the 19th of June when there was an indication, 19th, 20th, June, when there was an indication that indeed the charge sheet did not include matters that pertained to the operational plan and therefore the charge sheet was then amended and eventually the final charge sheet was supplied by the firm of attorneys on the 20th June 2023.

ADV MOTLHASEDI: And that charge sheet is Annexure PN10 which is found on page 292 of your annexure bundle.

10 **MR NCIZA:** Yes, mam, it is.

ADV MOTLHASEDI: With reference then to the charge sheet, Mr Nciza, you have indicated that It contained six charges.

MR NCIZA: Yes, mam.

ADV MOTLHASEDI: Correct. The heading at the top of page 293, could you please read that text highlighted in bold at the top of page 293.

MR NCIZA: -:

20 "Charges: Failure to conduct yourself honestly and thereby Infringing the Disciplinary Procedure Collective Agreement."

ADV MOTLHASEDI: Okay. And you confirm that is the document we went through this morning ...[indistinct].

MR NCIZA: Ja.

ADV MOTLHASEDI: Mr Nciza, I will not ask you to read the entirety of the charges into the record. We have attached them for the - my apologies. I will not ask you to read the entirety of the charges into the record. We have attached them for the convenience of the Commission, the benefit of the Commission. What I will ask you to do is to take the Commission through, you know, sort of a summary of a charge as it is set out there.

MR NCIZA: Thank you, Counsel. Commissioners, the
10 charges that are set out relate first and foremost to the memorandum that we dealt with of the 16th of October 2021 that spoke about EMPD being under the command of the Brigadier and, or the endless working relationship where indeed we were alleging that even the crafting of that particular memorandum amounts to gross dishonesty on the part of the Brigadier.

And then you have the charge number two basically speaks to the issue of the memorandum of agreement, you know, the two memorandum of agreement between,
20 purportedly between the EMPD and CAT Security Services as well as Medicare24 Emergency Services. Again, the issue here is about gross dishonesty, because the allegation is that the Brigadier had made it seem as if there is Indeed a memorandum of agreement that was entered into between the parties and he placed reliance on that, or

rather caused other people to place reliance on that submission.

And then number three effectively deals with the registration of the four vehicles onto the Municipality's name which will be dealt with in terms of the processes that he engaged with Chris Steyn and them, and all those vehicles registered under the Municipality. And again, the allegation is that this amounts to gross dishonesty and abuse of the resources of the Municipality as well as his
10 position of authority.

The fourth charge is about the implications of that memorandum that was issued that effectively means that people can impersonate police officers you know, because they would have a memorandum on the letterhead of the Municipality that states that these people are having this working relationship with the Municipality and therefore you know, as people that are working with the Municipality on these specific issues, those people can then be taken to be members of the Metro Police Department and indeed, by
20 extension, those people can then be taken to be allowed to use blue lights because of the impersonation of a law enforcement official.

Again, the allegation is that indeed this amounted to abuse of his position and gross dishonesty and as well as abuse of the resources of the Municipality. And then the

fifth charge relates to the issue of the donation in terms of the report that he had submitted to Commissioner Spies. In the report that he had submitted he speaks to, I think it is the report that contains the title “Cartels”, that report.

He speaks to a donation that he had solicited and received to the avail of R200,000.00. So this again, is about the non-observance of your Council processes, your Council policy and the likes. Again, this amounted to gross dishonesty, abuse of the resources, insubordination and
10 abuse of the position of authority.

And then the last charge is the one that is now talking to the operational plan and the argument here is that the operational plan that was submitted by Brigadier Mkhwanazi in February 2023 pertaining to the State of the City Address you know, was altered and therefore constituted a fraudulent document that he had submitted.

ADV KHUMALO SC: 2022.

MR NCIZA: 2022. Yes, State of the City of 2022. Thank you, sir.

20 **ADV MOTLHASEDI:** Thank you.

MR NCIZA: Ja, so those, in essence, were the charges, the six charges.

ADV MOTLHASEDI: Thank you. And, Mr Nciza, if I might just turn your attention, for example, to charge 6 on page 294. The last sentence there reads:

“Your conduct amounted to a violation of clauses 1.1, 1.2.3, 1.2.4 and 1.2.5 of the DPCA.”

MR NCIZA: Yes.

ADV MOTLHASEDI: Do you have, are you able to give the Commission a sense of what those clauses in the DPCA relate to.

MR NCIZA: Yes, Commissioners, the DPCA, which is, I do not know what is it marked as.

10 **ADV MOTLHASEDI:** 15.

MR NCIZA: 15.

ADV MOTLHASEDI: B, 15B.

MR NCIZA: Right at the end of the DPCA, I think if you look at the numbers at the bottom where there is the initials. Page 24, the DPCA has got an annexure. After the collective agreement has outlined all the procedures then it has an annexure.

ADV MOTLHASEDI: Just to assist you, Mr Nciza, so we are all on the same page, you have directed us then to 15B,
20 that circular 1 of 2018, the DPCA.

MR NCIZA: Yes.

ADV MOTLHASEDI: You have asked the Commission to turn to annexure A on page 24, is that right?

MR NCIZA: Yes.

ADV MOTLHASEDI: Thank you.

MR NCIZA: Exactly.

ADV MOTLHASEDI: Please continue.

MR NCIZA: So whenever you draft a charge sheet and this, Commissioners, I have experienced not only in Ekurhuleni but in other Municipalities where I have been called upon to assist with discipline management, you have to In the charge put, having outlined what is the charge, then a prosecutor would ordinarily put which clauses of the standard of conduct the employee has violated. In labour
10 relations nomenclature this would be what rule has been broken.

So the first one, and you would see that in almost all the charges, there is a consistency you know, 1.1:

“That there is an expectation to comply in every respect with the conditions of employment and collective agreements and any related regulation, policy and practice of the Municipality and to refrain from any conduct which would
20 give just cause for discipline.”

So that is a standard that the prosecutors put that this, what Brigadier Mkhwanazi had done, give rise to, or rather give rise to a just cause for discipline. Then 1.2.3:

“Perform their tasks and job responsibilities diligently, carefully and

to the best of their ability.”

You know, so effectively the charge also talks to that. All the charges say in what the Brigadier had done there was no adherence to a diligent performance of one's tasks.

1.2.4:

“Obey all lawful and reasonable instructions given by a person having the authority to do so.”

Clearly if a person is going to go and do things that
10 are outside the policy framework, that is a person who is not obeying instructions. 1.2.5:

“Conduct themselves with honesty and integrity.”

So that is what effectively that the prosecutor was, had crafted as the case of the Municipality against Brigadier Mkhwanazi, that his actions are in contravention of the disciplinary procedure collective agreement In relation to that standard of conduct.

ADV MOTLHASEDI: And, Mr Nciza, if we stay in Annexure
20 PN10, just the charge sheet, If we turn to the last page of the annexure.

ADV KHUMALO SC: Sorry, before we go to PN10, the documents you have marked 15A and 15B, should they go into Annexure PN4? Where exactly are they supposed to go in our bundles?

ADV MOTLHASEDI: Under Annexure 15, Commissioner.

ADV KHUMALO SC: PN15?

ADV MOTLHASEDI: Correct.

ADV KHUMALO SC: Okay.

ADV MOTLHASEDI: Correct.

MR NCIZA: Yes, mam.

ADV MOTLHASEDI: On page 296, that is the last page of Brigadier Mkhwanazi's charge sheet, there is a paragraph there drawing attention to the engagement of a prosecutor
10 to initiate the proceedings. Do you see that?

MR NCIZA: Yes, mam.

ADV MOTLHASEDI: Thank you. At the bottom of the page, bottom right corner ...[intervenes].

MR NCIZA: Yes.

ADV MOTLHASEDI: Where it says confirm receipt.

MR NCIZA: Yes, mam.

ADV MOTLHASEDI: What purpose or what utility does that section of the charge sheet serve? What is ordinarily meant to be recorded there?

20 **MR NCIZA:** When you serve an employee with a charge you need to certify that indeed this person has been served and the best way to certify that the person has been served is for the person to acknowledge your receipt of the charge sheet. So what would happen is when you serve, you would have two documents, you would have the charge sheet and

a copy, then you would give the employee and then the employee must sign on the copy that indeed I have received this charge sheet so that even when you go to the actual disciplinary hearing the presiding officer can satisfy himself that there is proof of service on the employee. That is the standard.

ADV MOTLHASEDI: And was there in fact proof of service on the employee, was this charge sheet served?

MR NCIZA: No, the charge sheet was not served.

10 **ADV MOTLHASEDI:** No. Can I then invite you to paragraph 63 of your witness statement.

MR NCIZA: So on the 20th of June, Commissioners, the final charge sheet that all the parties involved were satisfied with, and I am saying all the parties involved, critically for me the case in a disciplinary inquiry must be made out by the department, so it is important for me that the department is satisfied with the charge sheet, because it is the department who are the witnesses, it is the department who are the experts on the policies, on the
20 procedures that must be followed in the department.

So when I say the parties, critically it is the department that had also confirmed that indeed they were satisfied with the charge sheet. Then I instructed my Manager to then process the serving of the charge sheet as per the norm in my office.

So the Manager then came back, I think the final charge sheet was emailed to my office, it was just before 1, it was just before 1, then he had called, or rather he came back to me and reported that he had called Brigadier Mkhwanazi and indicated that he wants to make arrangements for the service of the charge sheet on him. However Brigadier Mkhwanazi had informed him that he is not going to come, he is not going to meet with him and he is not going to accept the charge sheet.

10 And the reason why he was not going to do that was because he, Brigadier Mkhwanazi, had instructions from Dr Mashazi, the City Manager, as well as Ms Gxasheka, the HOD: HR, not to accept the charge sheet, because that case is not going to fly.

Not only did the Manager indicate that conversation with Brigadier Mkhwanazi but there was a further conversation that he had had immediately after having spoken to Brigadier Mkhwanazi. He indicates that he was then called by the Personal Assistant of Ms Gxasheka who
20 informed him that Ms Gxasheka has instructed that he must not even attempt to serve that charge sheet on Brigadier Mkhwanazi. So that is why the charge sheet was not served.

ADV MOTLHASEDI: Mr Nciza, in your engagements with the HR Manager responsible for the service of the charge

sheet, did he ever relate to you the basis for that intervention? So on what authority or on what basis did the City Manager and Ms Gxasheka direct that the charge sheet should not be served or that the Brigadier should not collect the charge sheet?

MR NCIZA: Well, he did not have a basis. He did not relay a basis, because he just indicated that he was instructed not to serve and there was no reason provided to him. Instead he was, he was miffed. You know, he was
10 like, but what is this now? Since when are these individuals part of our process? This is an ER process. We, you have appointed, it is mandatory. Now all of a sudden we get calls that we must not do our work.

ADV MOTLHASEDI: And what did you say to him in, in response to that? So after he updated you about his challenges with serving the charge sheet, what was your response to him?

MR NCIZA: Given my experience the previous month regarding the non-extension of the suspension, you know, I
20 had a sense that, ja, something is afoot here, so I requested him to just simply record in an e-mail what has happened and to inform the prosecutor.

ADV BALOYI SC: And all of this happened without Ms Gxasheka speaking with you?

MR NCIZA: No.

ADV BALOYI SC: Did she not speak to you at all?

MR NCIZA: No one spoke to me. No call from Ms Gxasheka, no engagements with the City Manager.

ADV BALOYI SC: Yes.

MR NCIZA: This was just relayed to my subordinate.

ADV BALOYI SC: Okay, thank you.

ADV MOTLHASEDI: Thank you.

ADV KHUMALO SC: [Indistinct]... [microphone off]
incurred costs employing two advocates and a firm of
10 attorneys to prepare the charge sheet and to act as a
prosecutor and a chairperson of the disciplinary.

MR NCIZA: Yes, Commissioner, I will get to the cost factor, because indeed costs were incurred, but not for the presiding officer. The presiding officer, as much as an instruction was issued, there is no work that the presiding officer has done. The people that would have done work is the prosecution team to prepare the charge sheet and the likes and the consultations that they had with the potential witnesses of the Municipality.

20 **ADV KHUMALO SC:** So all that money was wasted for nothing?

MR NCIZA: Effectively, this meant that the money becomes wasted and there is going to be a discussion about that particular aspect, but I want to indicate that indeed the money became a wasted money because of the intervention.

ADV BALOYI SC: Your policies and procedures, including the collective agreement, do they give the HOD of Human Resources the power or standing to give this kind of instruction?

MR NCIZA: No, not at all. Like I explained the delegations matrix before, the only person that was delegated in the Municipality as of that time to institute disciplinary tribunals is the Divisional Head: Employee Relations and no one else. The Municipal Manager would only institute a
10 disciplinary tribunal in respect of a Council resolution to discipline an HOD, and that is as per the disciplinary regulations for Senior Managers.

The regulations stipulate that if Council has taken a view that there must be a disciplinary process, then the Municipal Manager by way of Council resolution must appoint. But in respect of everybody else, especially people that are governed by the DPCA, the delegation resided with the Divisional Head: Employee Relations and no one else.

20 **ADV BALOYI SC:** Thank you.

ADV MOTLHASEDI: Thank you, Commissioner. Mr Nciza, you make some remarks in paragraph 67 of your witness statement. Can I ask you to briefly share those with the Commission?

MR NCIZA: This, Commissioners, is in line with my

response that I have just given now to Commissioner Baloyi and this is borne out by a process that the Municipality went through, a very painstaking process that the Municipality went through between, I think it started around 2016, that case, until around about 2022.

This LAC judgment that I speak to here, where again, unfortunately, it is in the EMPD, you know, it would seem that this was a problem department, problem child department. It is in the EMPD. When there was an attempt
10 by the then Acting HOD: HR, acting HOD: HR, in a recruitment process where there is a policy framework, and the policy framework provided that if you are going to do some form of exceptional circumstances recruitment, I will say exceptional circumstances recruitment, because there needs to be a deviation from your recruitment and selection policy.

That policy then gave the authority to have those exceptional circumstances processes to be done by the Divisional Head, it was called Workforce Capacity
20 Management, and that Divisional Head that authority, no one else. The policy is clear.

Now in this case, we had a situation wherein the Acting HOD: HR intervened and processed an exceptional circumstances recruitment process. The matter went on. Unfortunately, it was just before the elections in 2016, and

then a new, what you call, administration came in. But then Dr Mashazi was the Acting City Manager, she became the Acting City Manager, and she did not approve the appointment of the person.

We litigated that matter, went to arbitration, the Arbitrator said, but if the Municipal Manager and the HOD: HR have taken a decision, the DH's authority stems from the City Manager and the HOD: HR, therefore he surmised that it is proper, if these ones have taken the decision, they
10 have effectively overruled the DH.

We went on review, the Labour Court agreed with the Commissioner that it was a reasonable award, we went to the LAC, the LAC said no, it is not. The principle of legality vitiates that thinking, because you have a policy position that says this person and no one else is delegated to do this function. So you cannot have another function in the Municipality taking over that function.

So from that perspective, even though the HOD: HR was my supervisor, the function, the authority to do the
20 function resided in the DH position, so the supervisor then does not have the authority to override the decision of the Divisional Head.

ADV KHUMALO SC: Did you show them the judgment, Mr Nciza?

MR NCIZA: They have it. I mean we ...[intervenes].

ADV KHUMALO SC: You know I am talking about at the time when they intervened in June 2023.

MR NCIZA: No, I did not. Quite honestly ...[intervenes].

ADV KHUMALO SC: Because your point is that they had no power to do what they did and you are relying on this judgment. So I am saying if that was your position at the time, why did you not say you do not have the power to intervene or to interfere and here is a judgment that tells you that.

10 **MR NCIZA:** Ja, Mr Commissioner, sometimes you have to read the room. Honestly, you have to read the room. We were confronted here by things that were unheard of in my entire career in the Municipality. Even the example that I gave earlier on about intervention by the Municipal Manager in 2017, it was not at this level. It was at the level where there was no tribunal constituted. It was just a report from the department and she stopped it even at that level and then instructed me to do a new directive on how these things must be handled.

20 This one was just unique. This was unique and the situation that we were faced with, quite honestly, you were not going to go up against Mashazi. The Heads of Departments ...[intervenes].

ADV KHUMALO SC: I think people who abuse power are enabled by people below them who act defeated and they

just say, oh well, I have read the room, you know, it looks like I know this is unlawful but I am going to go along because what can I do?

MR NCIZA: In a way, you are correct. I believe also in that principle that in order for evil to prevail, it only takes good men to sit and do nothing. I believe in that principle. The system in the institution is such that if indeed you have that view, you have to then either submit a grievance to the Mayor, and I can tell you now grievances that are submitted
10 to politicians honestly go nowhere.

Alternatively, I think it is section 64, again, section 64 talks about appeals but they are mostly meant for your residents if they have got issues with regards to municipal decisions. Now even if you were to do that, again, it goes back to submission to the Mayor, you know, and the system, especially at Municipal Manager level, ja, I agree with you on the principle but at Municipal Manager level it is not that easy.

ADV BALOYI SC: Is it a function, maybe I may ask, what
20 is it a function of? Is it that there are no, that there is not enough safeguards in the system that, and as a result the kind of conduct that you are complaining about, including at City Manager level, has a fertile environment to function successfully and what should be done. What is it that is missing in the system, in the governance system, in the

regulatory system that you would say permits this kind of behaviour, if any?

MR NCAZI: Firstly, Madam Commissioner, I need to state that for me, honestly, this was the first, you know. I mean, this was in June 2023, I had been a Manager in HR in Ekurhuleni since August 2003, so in that 20 years this had never happened. It has never happened. I have never seen such overreach by a Municipal Manager ever before and as much as I have had to consult, brief, and indeed take
10 guidance and direction from Municipal Managers over the years, and I am talking about close to six Municipal Managers, inclusive of this Municipal Manager, she has never done this before, you know, and I do not know whether she did it post this or this was just an isolated incident, but you just get through because indeed the system does not envisage that such would happen.

You do not have anything in the system that provides you as a, I mean, we are, I can say Divisional Heads, part of let us say senior management with HOD's and the
20 Municipal Manager in top management, so be senior management, but you do not have anything that actually provides for this because this is not, this was unique. This was unique, honestly, you know. Besides submitting a grievance which, yes indeed, was open to me as an official, but beyond that there is nothing really to do that could have

been done.

ADV BALOYI SC: So it is not ...[intervenes].

MR NCIZA: The system does not, was not actually designed to anticipate this type of overreach.

ADV BALOYI SC: Am I correct to understand you to be saying it is not so much a shortcoming of the system and the regulatory governance tools that are in place, it is more a personal, it is more a personal thing, the person and whatever informed their conduct. Am I correct to
10 summarize you that way?

MR NCIZA: Ja, that is on point.

ADV BALOYI SC: Thank you.

ADV MOTLHASEDI: Thank you, Commissioner. Mr Nciza, perhaps then to locate the totality of your evidence under this heading thus far, you have explained to the Commission that Brigadier Mkhwanazi was suspended in February of 2023, correct?

MR NCIZA: Yes.

ADV MOTLHASEDI: And that suspension was uplifted after
20 intervention from Ms Gxasheka and the City Manager, is that correct?

MR NCIZA: I think it should be the other way around, after intervention by Mashazi.

ADV MOTLHASEDI: There we go. The next event is upon the upliftment of that, of the Brigadier's suspension and his

resumption of duty in May of 2023, Chief Mapiyeye made an attempt to move him out of his ordinary station, is that correct?

MR NCIZA: Yes.

ADV MOTLHASEDI: And that attempt to keep him out of his ordinary station in order to protect the integrity of the investigation was also blocked through intervention.

MR NCIZA: Yes.

ADV MOTLHASEDI: The intervention of who?

10 **MR NCIZA:** Well, the letter came from Ms Gxasheka but I believe that it was per instruction by Mashazi.

ADV MOTLHASEDI: Okay. And you have now testified that in June of 2023, an attempt was made to serve the charge sheet upon the then Brigadier Mkhwanazi and that the service of that charge sheet was blocked, is that correct?

MR NCIZA: Yes.

20 **ADV MOTLHASEDI:** And please remind the Commission at whose intervention that blockage was alleged to have occurred?

MR NCIZA: Mashazi and Gxasheka. Quite honest, my sense is that it is Mashazi instruction to Gxasheka but at the centre of it would have been Mashazi and Gxasheka just follows, because she is afraid of being shouted at.

ADV MOTLHASEDI: Thank you, Mr Nciza. If I could then

ask you to turn to paragraph 68 of your witness statement please, 68. We are now on page 23.

MR NCIZA: Yes.

ADV MOTLHASEDI: Yes, you have indicated the blockage of serving the charge sheet. Please then tell the Commission what steps you took immediately thereafter.

MR NCIZA: Well, I called Mapiyeye after I had instructed Sitzama[?] to also record this blockage on e-mail. I also called Mapiyeye and indicated that this is the situation, that
10 the charge sheet has not been served. Well, he also just took note and said let us see what we can do.

ADV MOTLHASEDI: Please continue with reference to paragraph 69.

MR NCIZA: And then on the next day Chief Mapiyeye then called me. Remember, we had discussed the issue on the previous day, then the next day he called me to say that he was called by Mashazi to her office and instructed to bring the docket. Then when he got there he was told that he must go and see Adv Kemi Behari, who was the Head of
20 Corporate Legal Services. And then when he had an engagement with Kemi, he gave Kemi the docket, perused it, and then he took a view that there was no case against Mkhwanazi.

I must also pause to note that indeed the docket did not have the charge sheet that was perused. The

docket that was perused was the investigation report with its annexures, but it did not have the charge sheet from the lawyers at that time.

ADV BALOYI SC: But the documents, the investigation report, would have told him, both the City Manager if she wanted to read it, but Adv Behari, who is given the docket, the report would have told him what are the allegations.

MR NCIZA: Exactly.

ADV BALOYI SC: Thank you.

10 **ADV KHUMALO SC:** So it cannot be an answer to say Adv Behari did not have the charge sheet, because if you want to know whether or not there is a case against Brigadier Mkhwanazii, you ask for the charge sheet. You cannot say because it is not there, I am going to form a view that there is no case.

MR NCIZA: Well, that is what is expected of a reasonable process. I am not going to say a reasonable person. A reasonable process would dictate that indeed you would have, must have the fullness of the situation in order for
20 you to make an informed decision, you know. I honestly do not understand how this transpired, because you have a situation where the previous day a charge sheet is blocked from being served.

So for all intents and purposes, they knew that the charge sheet was there. There is a charge sheet. But for

some reason, when there is an engagement with Mapiyeye, the engagement is limited to an investigation report, you know.

And the concentration is to say that this investigation report does not have evidential material that will sustain the holding of a disciplinary tribunal. And I can tell you now, Commissioners, this is discipline management. This is not a trial in court. You know, this is about discipline you know, and quite honestly, we have approved
10 disciplinary cases on far less than what is contained in that bundle you know, or in that docket, because this is about affording an opportunity to an employee to come and explain himself to the employer about his conduct or his conduct, you know.

So the test is not as strenuous. But nonetheless, you have a situation here where a decision is taken to say, no, no, no, there is no case here. There is no case here. And this version or this thing that is given to Mapiyeye gets given to me at a later stage as well.

20 **ADV BALOYI SC:** Did Adv Behari speak to you or to anyone from your section who have been involved with this matter in his, when he considered the docket and he got to the conclusion that there is no case? Was there ever any engagement?

MR NCIZA: Not at this stage.

ADV BALOYI SC: Not at this stage. And before this, had he been involved with you or anyone in your department relating to this matter?

MR NCIZA: No.

ADV BALOYI SC: Before this point.

MR NCIZA: Before the 21st of June, there has never been a Kemi Behari, Adv Kemi Behari, anywhere in the picture, especially on this matter, you know. When I had a conversation with Chief Mapiyeye you know, I was quite
10 taken aback to say, but ...[vernacular], you know, where does he come in you know. The delegations matrix at that point did not even involve him whatsoever.

There was nothing that actually spoke to litigation at this point. There is not even litigation. This is a disciplinary hearing. That is all. So there was no need for me to have a discussion with Adv Behari and for that matter, there was not even a need for me to have a discussion with Gxasheka or Mashazi. There was simply no need.

20 **ADV BALOYI SC:** And before this intervention, or now the involvement of Adv Behari as, I think, Head of Legal, the legal person.

MR NCIZA: Yes.

ADV BALOYI SC: Had the legal department gotten ever involved in disciplinary, other than litigating, when it is now

at litigation, but at the stage at which the employee relations department is managing disciplinary processes internally, is there a role for the legal department?

MR NCIZA: The legal department would get involved in discipline management matters that are at the senior management level. The disciplinary regulations, the Heads of Departments, they got involved you know. I know that Adv Kemi Behari was involved at some point when we were dealing with the COO. At some point we were dealing with
10 an HOD. He got involved with those particular matters you know. Even then, he got involved because of his deployment by the City Manager.

But in the discipline management matrix, there was no need at that point for, there was no need at that point for the legal department. There is a number of cases, even at HOD level, that had been processed. I mean Adv Behari was HOD: Corporate Legal Services from the 1st of March, 2023. So historically, he would not have the involvement of the Corporate Legal Services department unless there is a
20 particular legal issue that requires their involvement, but only at that level.

ADV BALOYI SC: And Brigadier Mkhwanazi's position was not that senior management level you are speaking to?

MR NCIZA: No, it was not.

ADV BALOYI SC: Thank you. Thank you, Ms Motlhasedi.

ADV MOTLHASEDI: Thank you, Commissioner. Mr Nciza, you say at the end of paragraph 69 of your statement, you say there that Chief Mapiyeye was subsequently instructed to withdraw the internal investigation into Brigadier Mkhwanazi. In the following paragraph, you discuss the effect of that withdrawal. Can you please detail that to the Commission.

MR NCIZA: Yes, Commissioners, the so-called withdrawal letter of the 22nd of June, 2023, firstly, Mapiyeye was
10 functus officio, his role ends at a particular point you know. His authority ends at a particular point, and that point is reflected in his letter that I approved on the 12th of April, 2023. Beyond that, he has no authority over the matter you know.

I am seized with the matter. So, the letter of the 22nd of June was intended to undo something that had already, you know, transpired in essence. Firstly, the letter says he is withdrawing an internal investigation. On the 22nd of June, there is no internal investigation. There is no
20 internal investigation. The internal investigation was concluded in March, 2023.

It was brought to Xolani Nciza in April, 2023. He had taken a decision on what then must happen going forward. There is no internal investigation. We have passed that stage. By the time the letter of the 22nd of June

is issued, that letter for me had no force of law, because it spoke to a process that does not exist anymore.

ADV KHUMALO SC: Is that not a form over substance argument, because if the instruction was that the charge sheet should not be served and the investigation should be withdrawn, what is the substance of those two instructions taken together?

MR NCIZA: The instruction to not serve the charge sheet first at that point was not in writing. And quite honestly, as
10 much as I had spoken to Mapiyeye for an intervention, you know, he always have this thing with no man, you know what, this thing can be resolved at some point.

But that for me, it is an instruction on a different process, even though the processes are linked in the sense that it start by investigation and then goes to disciplinary tribunal. But you cannot say you are taking a view that the internal investigation be withdrawn when there is no internal investigation. I think that is the point that I am trying to make. There was no internal investigation at that point you
20 know.

ADV BALOYI SC: In his evidence, and maybe in fairness to him, we should tell you what it is that he said, how he explains that. I do not have the transcript in front of me, but I think it can be summarized this way. His explanation is that he was being, I guess, subversive. He understood

that the investigation is complete.

It was his way of trying to keep the disciplinary process alive instead of killing it completely. So he chose this wedding deliberately, knowing that he could not withdraw a complete investigation, and yet there is no record that he has withdrawn the disciplinary action itself. I think that is the sum of his explanation.

MR NCIZA: Okay. No, I understand it.

ADV MOTLHASEDI: Thank you, Commissioner. Mr Nciza,
10 in the following paragraph, paragraph 71, you set out in your own words what you say was the effect of stopping the charge sheet ...[intervenes].

MR NCIZA: Yes.

ADV MOTLHASEDI: Viewed against the effect of withdrawing the internal investigation. Could you please set out your views there?

MR NCIZA: Ja, my view is that indeed, like Commissioner Khumalo had raised it, that substantively it meant that the disciplinary proceeding could not proceed, because without
20 the serving of the charge sheet, you cannot have a hearing you know. So for as long as the charge sheet was not served, the disciplinary proceedings could not proceed at all, even though there was no official written withdrawal of the disciplinary proceedings *per se* you know.

And technically, it would mean that the attorneys

and the advocate were still on brief, because there was no withdrawal of that particular instruction that they should prosecute the matter as it stood.

ADV BALOYI SC: I asked the question because of your experience in this space as an employee relations person, is it not a form of misconduct to intervene in this way without a rational basis for it?

MR NCIZA: It is. Straight up, it is.

ADV BALOYI SC: And you would say, where does it
10 belong in your code, either in your code of discipline, which lists forms of misconduct, or as a matter of common law or law of general application. I ask because it bothers one that you would have this kind of conduct which is highly suspect, if one, you know, at best it is highly suspect, and yet there is no consequence for it and it has serious implications, because it has someone who is accused of serious misconduct, very serious misconduct, who goes unpunished, because those who have power by virtue of office, they use it to circumvent lawful processes that are
20 basically the law, collective agreement. It is a form of subordinate legislation, and they subvert the law for no rational basis. Surely it cannot be. That is the end of it, and there is no consequence for such people.

MR NCIZA: You are correct, Madam Commissioner. It cannot be the end of it, and it should not be the end of it.

And perhaps critical in your analysis is the abuse of power by people that are in authority. This is a classical demonstration of such.

You have people that are in authority, they step in, and they cause something like this to happen. But not only did they cause something like this to happen, other things flowed from it. You have a person who was supposed to be disciplined and potentially be dismissed in June. In December, that person gets promoted. By who? By the
10 very same people that stopped the discipline. The very same people that stopped the discipline.

There is another issue that I will be raising later on in terms of the effect of the stoppage you know. And you could see that indeed, what was at play here is a serious, yoh, deviation would be a ...[intervenes].

ADV BALOYI SC: Mild way.

MR NCIZA: It is, ja. To say that there was a deviation from processes and procedures would be, ja, no, it is kindergarten language and I cannot find the right language
20 to actually describe this.

CHAIRPERSON: A blatant disregard of the problem.

MR NCIZA: Ja.

ADV BALOYI SC: Or a blatant abuse of power in disregard of the law.

MR NCIZA: You know, if the evidence leader would allow

me, if the evidence leader would allow me ...[intervenes].

ADV BALOYI SC: You have the Chairperson's permission to speak freely.

MR NCIZA: Freely, okay. You have a situation here to show, I just want to show how this thing actually played out. The disciplinary charges stopped on the 20th of June. Two weeks down the line, a report gets served that seeks to give Adv Kemi Behari and Linda Gxasheka a R600,000.00 increase. That report does not provide any basis why such
10 increases must be effected.

These two people are appointed on the 1st of March, 2023. They are still under probation. Four months after their appointments, a report gets generated seeking to provide them with massive increases. And nothing has actually happened in the intervening period between March and July in terms of municipal processes. What is in that report is exactly to what they had in March, but in July, that is used to say these people must get these massive increases.

20 I can only suggest or opine, but thank you, you are aligning yourselves to the instruction. You have aligned yourselves to the instruction. You have aligned yourselves to what I want as the City Manager. My person is not to be touched, and you have ensured that my person is not touched. Here is an increase.

ADV BALOYI SC: Unless, of course, there is evidence that on their appointment, the terms of their appointment was that at the end of the probation period, they would get increases. I am not saying that is what happened. I am saying maybe it is somewhere ...[intervenes].

MR NCIZA: No, there is no such. It does not exist in Local Government.

ADV BALOYI SC: You are the expert. I will not argue.

MR NCIZA: No, because there is a regulatory framework
10 that deals with what is called the upper limits for the total remuneration packages of Municipal Managers and Managers directly accountable to Municipal Managers. That thing is determined by the Minister of COGTA. There is a framework on how such salaries are to be determined, how even cost of living adjustments are to be effected.

But for the first time in the Municipality, again, immediately after having protected Mkhwanazi, increases were effected. So for me, it is, ja.

ADV KHUMALO SC: I am going to test your opinion or
20 your view again. You see, Parliament will say to people like you, we have done our job. We have passed the Protected Disclosures Act. Everything you have just said now, you could have made a protected disclosure and you would be protected from an occupational detriment. And the law is there for officials like you to use it. Why did you not use it?

MR NCIZA: I was suspended in September and dismissed the next year without even a hearing.

ADV KHUMALO SC: Two months later?

MR NCIZA: Yes.

ADV KHUMALO SC: But you accept that the law is there?

MR NCIZA: The law is there.

ADV KHUMALO SC: And at any ...[intervenes].

MR NCIZA: And I have utilized the law ...[intervenes].

ADV KHUMALO SC: At any stage ...[intervenes].

10 **MR NCIZA:** [Indistinct]... [cross-talking] issues that pertain to that law.

ADV KHUMALO SC: Between May and August, a protected disclosure could have been made.

MR NCIZA: I take the point.

ADV MOTLHASEDI: Thank you.

ADV BALOYI SC: Maybe let me add, and it is on the back of that, that you could have taken steps, on a quick look, the abuse of entrusted power is defined as corruption. So you could have gone to the Police if these things that do not
20 make sense to you for the Police to investigate. So there may have been an avenue that was not explored.

MR NCIZA: Well, there is things that I suffered, Commissioners.

ADV BALOYI SC: Yes.

MR NCIZA: There is things that I suffered personally, even

during the period that we are talking about you know. There is things that I suffered.

ADV BALOYI SC: Thank you. It is, please do not understand us to trivialize the circumstances that you found yourself, not just you, in fact, even the witnesses that preceded you, to trivialize them and to be criticizing that you did not do anything. It is simply to explore whether you realize or recognize that there may have been things that you could have done, but you did not do because of the
10 circumstances.

MR NCIZA: I think that we will perhaps, in the fullness of my testimony, then perhaps also revert back to an analysis of what could have been done, or you know, what did I miss out, so that indeed, if Commissioners were to get a full sense of the circumstances that one was confronted with, then there will be a better appreciation of some lack in terms of processes that one could have been able to put in place.

ADV KHUMALO SC: And remember, we have the benefit
20 of hindsight, which is unfair to you, but take it in that spirit.

MR NCIZA: Ja. Thank you, sir.

ADV MOTLHASEDI: Thank you, Commissioners. Mr Nciza, we are at paragraph 72, if I could take you back to paragraph 72 of your witness statement on page 23. In the last two remaining paragraphs of this sub-heading, you set

out your frustrations following the inability to serve the charge sheet on Brigadier Mkhwanazi. Will you please set those out for the Commission in summary of this topic.

MR NCIZA: Thank you. Thank you, Counsel. Of course, the legal team, or the prosecution team that was appointed were very frustrated. They raised issues to say, but how can this be left unattended? I mean, remember, they had consulted with witnesses. They had even a much more fuller appreciation of what was at stake, because they not
10 only had the documents, but they had a human view, you know, a human touch on the issues.

So I engaged with the advocate that was appointed, and of course, he had indicated his frustrations. I also indicated my own frustrations back to him, because the matter was scheduled to sit on the 3rd of July in line with the three months that one was chasing that, within the three months, the matter must commence. So there was that particular frustration that was expressed by all involved, let alone the frustration in the department in terms of senior
20 management of the department.

At a later date, I was updated that not only did the charge sheet not go out, but external lawyers were also not paid you know. Of course, this was frustrating, and indeed, we were incapable to proceed with the dismal hearing at all.

ADV MOTLHASEDI: And can I ask you to read that last

sentence, that last sentence of paragraph 73 into the record?

MR NCIZA: -:

“Despite engaging the most senior official at EMPD, which would be the Chief of Police, my superior, which would be the HOD: HR and the City Manager brought an inquiry into Brigadier Mkhwanazi to a halt.”

10 **ADV MOTLHASEDI:** Thank you. And Mr Nciza, do you know if these charges against Brigadier Mkhwanazi were at any point ever served on him or an attempt was made to revive or resuscitate this process? I ask the question mindful of the fact that you left in March 2024. At that point of departure, were you ever aware of an attempt to revive or to attempt to reserve the charges on the Brigadier?

ADV NCIZA: I need to correct the point about when did I leave. I was suspended effectively on the 7th of September 2023, and I was rendered a *persona non grata* you know.

20 There was a directive issued that not even a single person was to speak to me from the Municipality, let alone from my division. I was even actually, I even raised an issue to say, I was told that I must not even go to municipal offices even to pay for my rents and taxes. So that ordeal did not just happen in March 2024.

But coming back to your question, nothing has ever happened to Brigadier Mkhwanazi. Nothing. No ...[intervenes].

ADV MOTLHASEDI: That you were aware of up to and including your point of termination.

MR NCIZA: Nothing.

ADV MOTLHASEDI: Thank you.

MR NCIZA: Instead of something happening, he got promoted. Something happened. I am wrong, something
10 did happen to Brigadier Mkhwanazi . He became a Deputy Commissioner.

ADV KHUMALO SC: Do you think your suspension had anything to do with the charges, the suspension of Mkhwanazi, the charge sheet and all of those, or it was unrelated?

MR NCIZA: Can I hold on a bit? It is going to the next - I need to get the fullness of what happened, Commissioner. I need to get the fullness of what happened and how these things actually unfolded.

20 **ADV BALOYI SC**: Okay, you can stop me as well if it belongs in what you are going to be saying, but I am asking the question on the back of what, the last thing you said, which is instead he got promoted. Now, we have heard evidence, I think from Chief Mapiyeye, about an interview, a selection process, application and shortlisting and

something else that ended up prematurely without – that ended prematurely because a step that was supposed to complete that process was not done, but the next thing he was appointed and he got his colours. Do you know anything - ja, I struggle to remember the name of that thing.

MR NCIZA: His rank.

ADV BALOYI SC: His rank, and, but did not learn to wear it properly. Were you involved with that selection process? Do you know anything about it?

10 **MR NCIZA**: Madam Commissioner, I was not involved with the selection process, but I do know about it. And again, this is another demonstration of how disregard, to use the Chairperson's language, disregard for policies and procedures has been a norm of late in the Municipality.

Firstly, and this is from my understanding in terms of even my engagements, even post my suspension, because even though there was this directive, I do get engaged by people on a number of things. The selection panel that was used, I would criticize it. This was a
20 position of a Divisional Head level, very senior in the police environment, which is a very specialized environment, specialized in its functionality, specialized in its regulation.

Then you have a selection panel where it is the Chief of Police, of course, was an expert in policing. It is the HOD: HR, who knows nothing about policing, with all

due respect to herself. It is the HOD: Sports, Recreation, Arts and Culture, nothing about policing.

Now the problem with how recruitment and selection happens in our environment, and this is a criticism that I even actually made in a matter where we were a respondent in an unfair labour practice dispute leading to promotion, and the criticism that I made, and fortunately for the Municipality, we won using that criticism, is that we have a situation where the actual suitability of a candidate
10 for appointment is premised on aggregation of the scores. You aggregate the scores of the three panellists, and then having aggregated the scores of the three panellists, the candidate that has got the highest score gets to be the one that is recommended.

Now in a situation like this one, the two people that are not experts on policing, I have not seen the scores, but I can tell you now, would have scored Mkhwanazi better than the person who is an expert on policing, because there's a predetermined notion that he will be promoted,
20 come hell or high water. That is the first point of call before even getting to the other steps.

How this thing was structured, it had a predetermined outcome. So whatever the Chief of Police scores could not be used as a benchmark of how the person has answered. If the Chief of Police scores the candidate

two, and the other panellists score the candidate four, aggregate the scores, that candidate becomes the highest scored person, even though the expert said, these answers are not correct.

ADV BALOYI SC: Is that a fair criticism though? What options were there within the Municipality to constitute the panel differently, taking into account what you are saying about experience, that the people who know anything about the environment should not have been there. I think that is
10 the nub of what you are saying, that you have got two people who know nothing about policing. What would have been the options available to the person constituting that panel, apart from the Chief, who is an obvious choice? What options would there have been for the other two?

MR NCIZA: The options that would be for the other two are informed by what has happened with previous appointments at that level in the EMPD, all right, because this was not the first time that the EMPD was having an appointment of a Deputy Chief of Police. It was not the first time you know.
20 So in previous instances, you would have the Chief of Police and the Head of Department: Disaster and Emergency Management Services.

The Head of Department: Disaster and Emergency Management Services is the closest, because that person is involved in the uniformed service, in the uniformed service,

and indeed there are those overlapping functions that actually are involved in both EMPD and DEMS. We call them DEMS, Disaster and Emergency Management Services. So the precedent in the Municipality has always been that DEMS, HOD, even if it is an acting HOD of DEMS, would sit with the Chief of Police.

ADV BALOYI SC: Right.

MR NCIZA: That has been the precedent.

ADV BALOYI SC: Okay.

10 **MR NCIZA:** But I can tell you now, there has been a number of instances where when we are having a Divisional Head position, specific individuals are then drawn to be the panel, because a particular outcome will then be determined, specific individuals that are consistent in the panels for Divisional Head positions.

ADV BALOYI SC: I interrupted you. You were still explaining what you know about that process that ended prematurely, the selection process, but somehow Brigadier Mkhwanazi was selected.

20 **MR NCIZA:** Yes. Thank you. Thank you, Madam Commissioner.

CHAIRPERSON: Please hold that thought. Let me continue the interruption. On the facts that you are aware of, why do you think the City Manager was as invested as she was in Brigadier Mkhwanazizi? I wanted to also include

Ms Gxasheka, but I am not sure whether I should, because at some stage you said that she said she did not want to be shouted at and wanted to see the finalization of the DC process without a hearing having taken place. So maybe let me leave her out of the equation for a moment. So why do you think, on the facts that you know, the City Manager was as invested as she was in Brigadier Mkhwanazi?

MR NCIZA: Thank you, Chair. I think, Chair, there is a point, I think it was at, I am not sure it was yesterday or
10 early this morning, when I had to give a view on the proximity claim you know, and I indicated that when you look at the hierarchical arrangement of the Municipality, there should not be a proximity between the two individuals. But nonetheless, that proximity does exist you know.

And perhaps one would have to then investigate what informs this proximity, because this proximity, in my view, is what then informs the Municipal Manager's attitude, the Municipal Manager's conduct when this individual is involved you know, when this specific individual is involved.
20 There is a number of matters that we have dealt with, with this Municipal Manager. A number of matters you know, including HOD's, including other people that were even in her office, directly in her office.

But this was unprecedented. And the only thing that one can opine is that it is unprecedented and it is the

type of conduct is informed by things that are extra, is there extra organizational, there is extramural activities you know. So there is something that is beyond organizational arrangements that, in my view, exists between Mashazi and Mkhwanazi.

That would then inform the proximity claim. That would then inform the conduct of the Municipal Manager in respect of this individual, protecting the individual, not only protecting the individual, advancing the individual and there
10 is so many things. You have a situation where, and it is just unheard of in the municipal environment. A person gets appointed to a position that is the equivalent of other positions and there are other people that are occupying those positions. This one comes now, Mafigizolo you know. Literally, this is a Mafigizolo.

But then the Mafigizolo gets to act and be the supervisor of the people that have got more service, more experience, more qualifications, more this, more this, more that, but this person gets to act and these ones never get to
20 act at all. For as long as Chief Mapiyeye, what was on leave, was put on special leave, was suspended, one person acted.

Council policy on acting is clear. There must be a rotation of acting, but there is no rotation of acting. This person gets favoured above everybody else. And there is

no rational basis in terms of the institution, in terms of processes of the institution that I can think of that would put the Municipal Manager in that position where she has to make sure that this one person enjoys protection and enjoys benefits, enjoys everything. There is nothing institutionally.

So then it has to be on a personal level. The allegation against me and Chief Mapiyeye is that we are personal against Julius. I do not know how do I become personal, Chair. I do not even know the man. I have never
10 seen him outside of uniform. I have never seen him outside of uniform. I have never even met him at a funeral, except for a funeral of an EMPD official where even then he is in uniform.

But I am personal against him. I do not even know where he stays. I do not even know his family. I know nothing about him, except for the fact that he is an employee of the Municipality you know. But here, clearly there is some personal relationship.

CHAIRPERSON: Based on what you know, would you say
20 that Ms Gxasheka's claim that she did not want to be subjected to continued rebuke was the full answer to how she herself conducted herself with regard to Brigadier Mkhwanazi?

MR NCIZA: My understanding of Ms Gxasheka and her tenure as the Head of Department, HR, which would have

commenced when her predecessor left the institution, I think it was at the end of July 2022, and then Ms Gxasheka was appointed to act in the position. From August 2022 until the 28th of February, she was acting and then she got appointed from the 1st of March. There is no other rational basis that I can think of that would make her as an HOD: HR, you know, to act in the manner in which she acted, except for her fear of Mashazi. That is how ...[intervenes].

CHAIRPERSON: Yes – ja ...[intervenes].

10 **MR NCIZA:** That is how she has always addressed herself.

CHAIRPERSON: That is exactly what I want you to address. On the basis of what you know, do you think that the manner in which she acted was indeed motivated by her fear for Ms Mashazi?

MR NCIZA: Nothing else.

CHAIRPERSON: Thank you.

ADV MOTLHASEDI: Thank you, Chair. It is one minute past four.

CHAIRPERSON: Let us adjourn and resume at 9:30
20 tomorrow.

INQUIRY ADJOURNS TO 13 NOVEMBER 2025
