

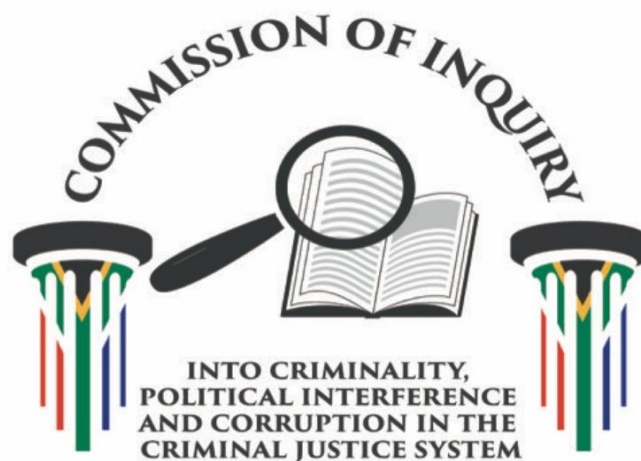
JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM

HELD AT

BRIGITTE MABANDLA JUSTICE COLLEGE

13 NOVEMBER 2025

DAY 32



PROCEEDINGS ON 13 NOVEMBER 2025

CHAIRPERSON: Yes, good morning, Ms Mohlasedi.

ADV MOHLASEDI: Good morning, Chairperson.

CHAIRPERSON: Good morning, Mr Nciza.

MR NCIZA: Good morning, Chair.

CHAIRPERSON: Thank you.

EXAMINATION BY ADV MOHLASEDI

(CONTINUES): Thank you, thank you, Chairperson. Mr Nciza, please confirm that you are still in possession of the
10 two files we have been using over the course of the past few days.

MR NCIZA: Yes, I am.

ADV MOHLASEDI: Thank you. When we closed yesterday, we were on page 24 of your witness bundle. 24, please.

MR NCIZA: I am there.

ADV MOHLASEDI: Thank you. And we were just about to commence with a new topic, highlighted in bold on page 24. Can I ask you to read that into the record? I am not sure I
20 am brave enough to attempt that.

MR NCIZA: Thank you, Ma'am.

MR NCIZA: On 20 August 2023 ...[intervenes]

ADV MOHLASEDI: Can I ask that you start with the heading? Please read the heading.

MR NCIZA: Yes, sorry, the heading is Bhixi-Bhixi[?]

anonymous emails.

ADV MOHLASEDI: I am indebted. Can I ask you to detail for the Commission the events you set out at paragraph 74?

MR NCIZA: Okay, should I read them or just ...[incomplete].

ADV MOHLASEDI: Please, in your own words.

MR NCIZA: Yes. Okay, Commissioners, on the morning of the 21st of August, I woke up and I saw on my emails on my phone, that was an email that had come through on the evening of the 20th, August 2023, which came from a rather funny email address, which was Bikibiki852@yahoo.com, but it also had a name stamp of Bikibiki.me. The email was sent to Jeff Wiggs at News24 with Ms Gxasheka, Doctor Mashazi, Deputy Commissioner Spies, Chief Mapiyeye, Adv Behari, and myself copied. The email had a subject line that read, favouritism corruption and it had as an attachment the charge sheet that I read yesterday for Brigadier Mkhwanazi. It read:

20 “Hi Jeff. I am reporting on the basis of anonymity. Some time ago you reported a very serious incident to one of our colleagues about one security called CAT VIP. The incident took place sometime ago earlier on during the year. My understanding is that a

certain law firm was appointed to oversee the matter by charging Julius Mkhwanazi. According to a document in my possession, Julius Mkhwanazi was charged, and his hearing was supposed to sit sometime in July this year. However, this did not happen. And as such, Julius Mkhwanazi has since not faced a disciplinary hearing.

10

I suspect that the law firm that was appointed could have received something in return. Please report this to the media and shame the municipality for protecting corrupt officials. Please be careful, however, because Julius is highly connected with Matlala, who is also a suspect in the murder of Deokaran Babita, together with the CFO. My case of unfavourable practise has also not been solved by the municipality or by Ekurhuleni. Please follow up on this as we need people like you to clamp down on corruption. I am told from reliable sources that Imogen Mashazi, who is

20

the City Manager, is the one who is protecting Julius Mkhwanazi.”

ADV MOHLASEDI: Thank you. The email you have referred to is annexed to there as PN12 at paragraph 77 of your witness statement. Could you then carry on and set out for the Commission the events subsequent to you receiving that email?

MR NCIZA: Yes, Commissioners, I read this in the morning, and I called Chief Mapiyeye, because he was also
10 copied on the email. He indicated to me that he has not seen the email. He was on his way to drop off somebody at school. It was early morning. He had not seen the email as yet. And I did not respond or not have an opportunity to properly consider the email.

Because I was a witness on that day. I was a witness in a labour dispute that involved an unfair dismissal case against the municipality. So, I went to my arbitration where I was a witness. And indeed, we commenced and we proceeded. During a break in the proceedings where the
20 legal teams were busy with engagements on some documents that the Commissioner had directed them to clarify, I noticed that I had a missed call from Ms Gxasheka.

And as I was checking my phone, I saw that there was a missed call and then she called again. And I indicated to the Commissioner that I need to take this call.

It is from my supervisor, and the Commissioner allowed me to take the call. When I stepped out to engage with Ms Gxasheka on the call, she instructed that I must come to Germiston. I was in Benoni where the hearing was held.

I need to come to Germiston, and I need to come to Germiston with immediate effect. Indicated that I am a witness in an arbitration and I cannot just up and go. You know, she said, does not matter. You need to be here, and you need to be here now. Okay, where here exactly? You
10 need to be at the City Manager's office. I said, okay, fine, let me see what I can do.

I engaged the legal rep of the municipality to say that it seems there is an emergency, therefore I need to rush to Germiston. Fortunately, the Commissioner is a well-versed person who has been part of the Bargaining Council panel of Commissioners for a while. And he understood my role in the municipality. He then allowed that I should depart the arbitration proceedings.

We are almost at the conclusion of the evidence-in-
20 chief. So, I could depart and if I am able to, I should indicate whether I will be able to come back and finalise my evidence-in-chief on that Monday. This was a Monday. I then left. On my way, I got a call from the attorney that had been appointed to prosecute in the matter of Julius Mkhwanzi. And he indicated to me, hey, there is a problem.

He had just received a call from Adv Kemi Behari instructing him to drop whatever he is doing and to come to Germiston. And he reflected that, but firstly, I am not an employee of the municipality. I cannot just be instructed to drop everything I do. I have got other clients. And as a matter of fact, he is outside of the Gauteng province. He is with another matter for another client.

And I was like, but what did he say is the problem? You know, because I have also been instructed to come to
10 Germiston. He indicated that the problem that Adv Behari indicated, told him is an emergency, is this issue of the Bhixi-Bhixi email. And that Adv Behari has accused them, as the attorneys, of leaking Julius Mkwana's charge sheet. And I was like, but this is absurd.

You know, we do our work. We are professionals. We have submitted the charge sheet to the municipality. You know, that is our work. And we have requested the municipality to facilitate the saving of the charge sheet. So, you cannot come back to us and say there is a leak,
20 and therefore the leak has been done by us as the attorneys.

You know, I was like, you know what, I have been called. Let me go and hear what is happening. But he confirmed that indeed it was confronted by Adv Behari regarding the leakage or leak of the charge sheet. I went to

the city manager's office. And upon arrival, I did not find Ms Gxasheka and I was told by the personal assistant that I should wait. There is a waiting area.

I should wait to contact Ms Gxasheka. But the person phoned me and said that she is here. I am still busy in another process, so what is happening? I said, hey, DH, I do not know what is happening. I advise that you simply wait. I waited for what seemed like about 45 minutes before indeed Ms Gxasheka arrived. And when she arrived, she
10 was with Adv Behari.

And then I was ushered to the boardroom of the city manager. At the boardroom of the city manager, the city manager came in as well, had some documents on her hands. We sat, I think I sat next to Adv Behari. Ms Gxasheka was opposite. The city manager was at the head of the conference table. And it was like, yes, what is this thing of this Bhixi-Bhixi?

Like, okay, what Bhixi-Bhixi? What are you talking about? Yes, no, no, no, no, no, you have leaked the charge
20 sheet of Julius to the media. I have leaked the charge sheet of Julius. Where does that come from? No, the charge sheet was given to your office. Yes, all charge sheets are given to my office. Now, can you tell him? And he was like, yes, we called the attorney.

The attorney said they emailed the charge sheet to

you. And I said, yes, of course they emailed their charge sheet to me. All charge sheets get emailed to me. So, there is nothing new. But now the charge sheet is found in the Bhixi-Bhixi email. But that does not mean that it was me. Because as much as it was emailed to me, it was not the only recipient of that email. The email had other people as well, people from the department who had worked on the matter. Even my manager, the final charge sheet, was also emailed to my manager. I was going to facilitate the
10 serving of the charge sheet.

CHAIRPERSON: Are you, when you say that email, are you referring to the email from the attorneys? Which email?

MR NCIZA: Yes, the email from the attorneys. Thank you, Commissioner. Not the Bhixi-Bhixi email. The email from the attorneys on the 20th of June. You know, the final draft of the charge sheet. So, I indicated that this email was sent not only to myself, not only to my manager in my office, but it was also sent to the colleagues in the department that the attorneys were working with in the
20 crafting of the charges.

So, there is a multiplicity of people that would have had access to the charge sheet. No, but that is wrong. Doctor Mashazi charged that, no, but that is wrong. You cannot have that. But that is how it is done. The department is the one that must make the case. They are

the ones that must be also comfortable.

CHAIRPERSON: What was she saying was wrong?

MR NCIZA: She said it was wrong that the charge sheet could have been sent to other people.

CHAIRPERSON: Okay, all right.

MR NCIZA: She argued that, no, but that is wrong. How can you have such a thing? I am like, no, no, no, City Manager, you must understand. As much as my office must facilitate the setting of the charges, but the people that
10 must make the case in a disciplinary hearing is the department, not my office. The people that are going to witness, the people that are going to talk to the evidence is the department.

So, the department works closely with the prosecutor in the crafting of the charges, because the prosecutor is going to require them to witness this in the matter. So, they need to have sight of what exactly are the charges so that they can be in a position to comfort themselves that, indeed, we can speak to these issues.
20 Because it will not make sense.

You go, you draft a charge sheet, your witnesses cannot talk to the charges. Behari, is that so? She then confirms it with Adv Behari, who also confirmed that, yes, it is correct that, indeed, we need to engage with the department. So, then the allegation now, the accusation,

let me not say the allegation, the accusation changes to say, if it is not you, then it is somebody in your office who has leaked this.

If it is not somebody in your office, then it is somebody in the department that has leaked this. So, I get instructed that I must provide Adv Behari with the emails that were shared by the attorneys so that they will conduct an investigation on this leak. It is fine, I mean, emails are emails, I will send them through to Adv Behari.

10 **CHAIRPERSON**: By that, do you mean email addresses to which ...[intervenes]

MR NCIZA: No, the actual email.

CHAIRPERSON: The attorneys, the actual, okay. Let me finish what I was saying. By emails, do you mean the email addresses to which the attorney's email was addressed?

MR NCIZA: What was required of me was to - because they needed to see the email thread, you know, in terms of who would have been emailed. They wanted to see the actual email. So, I was to then forward the email thread so
20 that they can be able to ascertain who exactly would have had sight of the charge sheet. So, I agreed. I said, no problem, I will do that.

I will just get back to the office, and I will attend to that. Then Adv Behari explained something that was a bit off for me. No, you must understand, DH, we like calling

people by titles, Commissioners. So, when we are in a room, there are HODs, CM, and a DH. So, I must understand, DH, that this is a very serious matter. I am like, okay, what is the serious matter, advocate?

He says, no, what is serious is the fact that Mhwanazi's personal details on the charge sheet. And therefore, this thing of the charge sheet being given to Jeff Wiggs, who is an external party to the municipality, is a violation of his rights in terms of the POPI Act. And
10 therefore, I am like, okay, I understand that, but there are issues that are also raised.

CHAIRPERSON: And what were the personal details on the charge sheet?

MR NCIZA: The personal details on the charge sheet ...[incomplete].

ADV MOHLASEDI: To assist you, Mr Nciza, the charge sheet is Annexure PN10. It starts on page 292 of your annexure bundle, 292.

MR NCIZA: When you look at page 292, and this is the
20 funny part, Commissioners, it is the disciplinary hearing with the case number between the City of Ekurhuleni Municipality and Julius Mkhwanazi employee number IGE0120. Those are the only details on the charge sheet. This can be contrasted with the details that would be on a suspension letter.

The details in a suspension letter are more than this. We have all sorts of things in a suspension letter, including ID numbers and the likes. But in a charge sheet, we do not put what would be termed personal details. An employee number is an institution detail more than anything else. But this was the allegation that was put to me to say, you know, this thing has got personal information of Mr Mkwanzazi, and therefore the municipality is running the risk of an POPI Act allegation or claim against it.

10 **CHAIRPERSON:** Based on your HR experience, and you have vast experience indeed, would this employee number be of any possible use or significance to people outside of the municipality? I am trying to understand. I am trying to understand why Adv Behari would have been concerned about such information.

MR NCIZA: At the very most, what you would do with a PAYE number is when an employee, for instance, applies for a loan, then they want information about your employer and your employment details, so that when a bank or any
20 other service provider wants to verify your employment, then they can then use both your employee number with your employer, as well as your other details, like your ID numbers and the likes.

But ordinarily, when they do a verification exercise, it is not just a PAYE number that is used to verify that

indeed this is the employee that they are talking about. Because PAYE numbers, especially in an institution as big as Ekurhuleni, get used all over the place. We use pay numbers in all sorts of documents. So, it is easy for a person to pick up another person's PAYE number.

CHAIRPERSON: Thank you. I hope you still remember where you were. Please continue.

MR NCIZA: Sorry, sorry.

CHAIRPERSON: I am saying I hope you still remember
10 where you were. Please continue.

ADV MOHLASEDI: Mr Nciza, you were at paragraph 84 of your witness statement.

MR NCIZA: Yes, the situation in that meeting, quite honestly, was hostile. I was under attack, and I had to push back. I had to push back to say, but even this issue of the personal detail, my understanding is that there is no significant personal detail that is on a charge sheet that would really compromise the institution. And also, I had to push back on these allegations of leaks.

20 I defended my office. I said, you know what, I know my office has dealt with thousands of charge sheets over the years. And we have dealt with quite high-profile matters where even we had tender irregularities that would be brought, contraventions of the MFMA, serious contraventions of the Municipal Finance Management Act

that we have had to deal with as the office.

So, for me, it did not make sense that there would be a leak from my office on a matter of this nature. So, they then took a view, oh yes, the city manager now changed the issue to now raise questions about my authority to appoint lawyers and legal representatives. And I answered to say, but this has been the authority of the Director of Labour Relations since the commencement of the municipality in 2000.

10 It is more than two decades that we have had this situation in the municipality. No, no, no, no, but Julius is a senior employee. He is a senior person. You cannot be disciplining him. You cannot discipline Julius. But I have disciplined people that are senior than Julius. I have disciplined people that are on a senior position, a senior rank than Julius, both in the EMPD and in the institution. No, no, no, no, no, no, this is wrong, this is wrong.

 Why do you even have authority to appoint attorneys? But I have got authorities given by your office.
20 And that authority has been there even for my predecessors. They have always had authority to appoint lawyers in matters concerning labour litigation as well as internal disciplinary proceedings. This has happened with many cases.

CHAIRPERSON: Did she suggest who, if not you, should

discipline Brigadier Mkhwanazi?

MR NCIZA: She did not suggest who should discipline Brigadier Mkhwanazi, but what she did was to say, this must change to which Mr Gxasheka then responded to say, yes, we are in the process of changing it. I had to pose the question, is it changing because of this matter? All sorts of other matters have been handled throughout the history of the municipality, and there was never a need to change something that has been with the Employee Relations Unit.

10 **CHAIRPERSON:** In terms of the hierarchy, you have touched on this, but just in this context and to remind myself, where would you place yourself in relation to the city manager? How many places down would you be? I just want to get an idea of who then would be better placed according to the city manager to discipline Brigadier Mkhwanazi.

MR NCIZA: In a hierarchical arrangement, if the city manager was number 1, then the HOD would be number 2 or be number 3. That is how the structure is in the
20 municipality. You have the city manager, you have got HODs, and you have got divisional heads.

CHAIRPERSON: Meaning somebody like Brigadier Mkhwanazi would then have to be disciplined either by the HODs or the city manager herself, according to what the city manager was saying.

MR NCIZA: According to what she was saying in that meeting, which does not align to the delegation's matrix that is informed by, like I indicated earlier on, that you have got effectively three dispensations on discipline management that were applicable in the municipality. You have got the city manager and HODs, disciplined in terms of the discipline regulations.

The divisional heads are disciplined in terms of Schedule 8 of the Labour Relations Act. And then you have
10 got everybody below the divisional heads who were now part of the bargaining unit. Mkhwanazi was part of the bargaining unit. The authority of the divisional head employee relations in terms of discipline management applies both to Schedule 8 discipline processes as well as the bargaining unit.

So as the divisional head employee relations, the only people that I was not authorised to appoint a disciplinary tribunal for is HODs and the city manager. And everybody else in the institution, I was authorised to
20 appoint a disciplinary tribunal for. And I, not only myself, my predecessors, you know, these precedents all over the place that points to the divisional head having the authority. And it has always been exercised by the divisional head. At no point was there an issue, at no point whatsoever in the history of the municipality until in the meeting of the 21st of

August 2023.

CHAIRPERSON: And in fact, I think there was something wrong in the language used by the city manager because, on my understanding, but you will correct me, it is not as if, for example, in the case of Brigadier Mkhwanazi, you were disciplining him as such. You were packaging the documents that would then be used in the disciplinary process. Am I correct?

MR NCIZA: You are correct, Chair.

10 **CHAIRPERSON**: And on my understanding again, when it came to who would sit or chair a disciplinary hearing, if it was internally said, it would be someone two places senior to the person being disciplined. And then, if not done internally, then a tribunal would be appointed, and outside people would then get involved. So, you are not disciplining as such someone senior to the person being disciplined. If, for example, Brigadier Mkhwanazi's matter was to be heard internally, it would not be heard by you. You would not chair the process. But someone, did you say
20 two places, someone above whatever the levels, someone above Brigadier Mkhwanazi would have had to chair. Do you want to comment?

MR NCIZA: You are very much correct, Chair. You are very much correct. In this instance, the provisions of clause 7.6 of the Disciplinary Procedure Collective

Agreement would apply because that would be the default position where now I am appointing an internal. In the instance of Brigadier Mkhwanazi, the only post-designations in the municipality that would have been able to chair and effectively discipline would have been senior executive managers who are on C18, would have been divisional heads, you know, who are also above C17 because he was on C17, divisional heads or else an HOD.

All of these would have then been senior to him and
10 in effect, in terms of the disciplinary code, would have had the authority to then sit and preside over his matter and discipline him. We are quite spot on in that particular respect. Outside of that, then it would be an external legal practitioner who then would not fall within the rank system of the municipality, you know, the hierarchical system of the municipality. It is a legal professional who is competent to then exercise the function of discipline.

CHAIRPERSON: And did you get to know the nature of what Ms Gxasheka said they were putting together in order
20 to amend what was in existence so that you should not discipline someone like Brigadier Mkhwanazi?

MR NCIZA: Yes, we got to know - we got to know the very next day. We got to know the very next day.

CHAIRPERSON: Very briefly, can you state what this innovation was?

MR NCIZA: It is in the papers it is in my statement.

CHAIRPERSON: Okay, you are still coming there?

MR NCIZA: Yes.

ADV MOHLASEDI: Yes.

CHAIRPERSON: Okay, let us leave it, let us leave it.

ADV MOHLASEDI: Thank you, Chairperson.

ADV BALOYI SC: On this topic that you are discussing with the Chairperson, Mr Nciza, at paragraph 89, this is where you explain your responses to the city manager in
10 that meeting. And then it is the second part of that paragraph 89 that I think you should explain to us what exactly you were referring to when you say I had done cases that the city manager had instructed action. Can you just explain a bit more there?

MR NCIZA: I can explain this by way of example without mentioning names of people. In the Economic Development Department, there was a divisional head who had misconducted themselves. I do not want to use the gender so that he misconducted themselves. And then the head of
20 department, in line with a directive that I mentioned yesterday that the city manager issued in 2017, this head of department then did a motivation to institute an investigation.

That motivation was taken via my office to the city manager because the city manager had said you cannot

investigate a divisional head without her approving that. Then we submitted that motivation asking for an investigation to be conducted. The city manager approved the conducting of that particular investigation. The investigation was conducted. After the investigation was conducted, another report was submitted to the city manager to say here is the findings.

We are now asking permission to discipline. And the city manager was like, sure, proceed. I then appointed
10 the disciplinary committee. So that is what I mean by it is effectively an instruction that firstly proceed with the investigation and proceed with the disciplinary proceedings. It was not an HOD that signed or appointed. I appointed the attorneys with full knowledge of the city manager. And this is a position that is higher than the Julius Mkhwanazi position.

ADV BALOYI SC: And the city manager did not have any issues with the fact that you have appointed attorneys, you have exercised the power to appoint attorneys.

20 **MR NCIZA:** Madam Commissioner, like I said yesterday, this came out of the blue, even with regards to the discipline of heads of departments. And during the tenure of Doctor Mashazi as the city manager in Ekurhuleni, we have had about five instances where we had to discipline heads of departments. And in all those instances, as much

as the appointment letters were signed by her, they would be crafted by me because it is in my space.

I would be the one that then crafts the appointment letter with even enquiries would be myself indicating that for this particular matter that has been approved by council, where council has now mandated the city manager to institute disciplinary proceedings, we are appointing this firm as prosecutors. So, my role has always been very intricate in all disciplinary processes. And that is the only
10 instance where I would then draft the letter for her signature. But all others, I draft the letter, or my office drafts the letter for my signature. I appoint attorneys.

ADV BALOYI SC: Thank you, Mr Nciza.

ADV MOHLASEDI: Thank you, Commissioner. Mr Nciza, before we continue with the subsequent events of that day, could I just ask you to turn back to paragraph 85? You are on page 27, and you set out some reflections in paragraph 85. Can I ask you to share those with the Commission?

MR NCIZA: Thank you. Yes, Commissioners, I want to
20 stress to the Commission that by virtue of my role in the city of Ekurhuleni, where I am responsible for discipline management, anybody, Commissioners, that has been in a labour-intensive environment would understand and appreciate that discipline management is a very tricky, sensitive function. You know, you get exposed to all sorts

of things as a person who is regarded as Umqashi. You know, you are regarded and even colloquially called Umqashi as the head of labour relations.

CHAIRPERSON: You want to translate Umqashi?

MR NCIZA: Employer. The employer. You know, people have that tendency. And remember, indeed, you become the employer because even though you do not share the disciplinary hearing, you are the one that implements the outcome. A chairperson of a disciplinary hearing will make
10 a finding of guilt and then issue a sanction of dismissal. You, as the Divisional Head of Employer Relations, are the one that must sign the dismissal letter.

It is employee relations that will then issue the termination to the employee that you have been found guilty in this case. Attached is the sanction from the presiding officer. Your services are terminated. You know, so you are always going to find yourself in the firing line. You know, you are going to find yourself in the firing line. I have, over the years, like I indicated yesterday, that even
20 before I assumed the function of Divisional Head in 2017, I had acted and I was always involved, you know, in discipline management from a very early stage of my management career.

So, I was always in the firing line. I have had a lot of defamatory claims and allegations made against my

person, you know, on social media. There have been instances where my name would be the subject of even engagements in three general meetings. You know, I have been threatened with harm and insults. And I have never received, save for something that I will engage on later on, save for an incident that happened in 2011, which was a very unique dispensation that occurred in the municipality that changed even our labour relations and a dispensation in the municipality in 2011.

10 But I have never received any intervention from the employer. I have never sought – let me be upfront I have never sought intervention. I have never gone and cried foul to the employer to say, hey, you know what these unions, these employees are threatening my life. You know, I have never cried foul. These are risks that I understood and accepted as being part of my job. You know, if you are going to be in a labour relations environment, you are going to be bruised here and there.

20 But in all of that, I was shaken by the emerging pattern of interference that emerged with specific regard to this matter. I had said yesterday I have served under well, about five city managers. Doctor Mashazi would have been the fifth city manager of the city of Ekurhuleni. None of them has ever interfered with labour relations functions. None. Doctor Mashazi herself, in her first term of office,

she served five years from 2016, December, until around about 2021, November.

You know, she had never interfered. But very serious matters, inclusive of matters that involve HODs, would constitute, she would sign the, what you call, the appointments of the attorneys. I would work with the attorneys or advocates in crafting charge sheets against HODs. I would facilitate the serving of those charge sheets.

10 And I would facilitate the disciplinary hearings of those HODs. Senior people to me. But my office would facilitate, because that is our role as labour relations. And I have never received any form of interference whatsoever from the office of the city manager. City manager's role was to say, how far are we? Give me a briefing. What is going on? Are there challenges? If there are challenges, I would escalate them to her. Not even to the HOD HR, directly to her.

CHAIRPERSON: So, her interference in Brigadier
20 Mkhwanazi's disciplinary matter was the first and last?

MR NCIZA: It was the first.

CHAIRPERSON: And last.

MR NCIZA: Well.

CHAIRPERSON: No, no, no, to your knowledge, or was you and her were involved within the municipality?

MR NCIZA: Remember, we are now on the 21st of August. Two weeks thereafter, I get suspended. So, what if indeed there is any other further interference, I am no longer in the picture to deal with that.

CHAIRPERSON: All right, thank you, thank you.

MR NCIZA: But, for the first time, I experienced the situation wherein senior management, and I am going to articulate this further and more succinctly when I deal with what I would call the cover-up. Senior management, for the
10 first time, was hell-bent on protecting an employee, regardless of procedures of the municipality and processes of the municipality. Senior management acted as if they are shop stewards of this employee.

ADV MOHLASEDI: Thank you. Mr Nciza, you were taking the Commission through the complaint about your power to appoint external lawyers. You can pick the conversation up again at paragraph 90. Nine zero on page 28.

ADV BALOYI SC: Before you do that, Mr Nciza, at paragraph 86, you say, this is where you record Ms
20 Gxasheka's reply that we are correcting that CM, and this is about your power to brief external attorneys. Before this meeting, and before Ms Gxasheka said this in the meeting, had she raised with you ever the issue about your powers to appoint attorneys, one, and then two, that she is doing something about it to change that?

MR NCIZA: Nope.

ADV BALOYI SC: This is the first time you heard that she is working on correcting that, whatever she meant with it.

MR NCIZA: There had never been a discussion, Commissioner. There had never been a discussion. The only discussions about attorneys that I would have with Ms Gxasheka was money issues. We were honestly owing attorneys left, right, and centre. Attorneys and advocates were just a problem with regards to the budget. That is the
10 key discussion that we were having those days.

Since she became the HOD, there was always an issue about payment. Payment of attorneys. As a result, in our discussions, because of the payment issue, there was a sense that you need to scale down on appointment of attorneys. Because we do not have funds. We are owing money and therefore if we continue to appoint, we are simply ballooning the expense. That was the only discussion. It was not about my authority to appoint.

ADV BALOYI SC: Just to be clear, at this meeting, this is
20 the first time you became aware that the city manager and Ms Gxasheka have some problems or issues with your power to appoint attorneys. This was the first time you heard anything about it.

MR NCIZA: It was the first time.

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

ADV MOHLASEDI: Thank you, Commissioner. Paragraph 90, please, Mr Nciza.

MR NCIZA: Yes, Commissioners, as I have said, I tried to push back and I indicated my issues about my experience in the municipality and the delegations, metrics and the like. But Doctor Mashazi maintained a complaint that I could not appoint attorneys for a senior employee. My understanding of her attack was that it is, Mkhwanazi is some senior employee. So effectively, I do not have the right to
10 discipline senior employees.

You know, I took a different view. Yes, he is senior, but he is not senior than me. But also, I have been involved in discipline of people that are senior than him. But I realised that, you know, this is going nowhere. I was talking to people that have made up their mind. They have made up their mind. And it did not matter what procedural arrangements have been in place. They have made up their mind and therefore it was not going to assist me to add to the matter any further.

20 **ADV MOHLASEDI:** Please proceed.

MR NCIZA: There is something I do not think actually it is appearing. Council, during the course of this discussion, there is something, I am not sure where it is in the statement, but during the course of the discussion, the issue of the service of the charges did come up.

ADV MOHLASEDI: Please proceed, Mr Nciza.

MR NCIZA: Thank you. The issue of the service of the charges did come up where indeed, Doctor Mashazi had raised an issue to the effect that this thing, you do not even charge Mkhwanazi. She raised something to the effect that you do not even charge Mkhwanazi. I indicated that we had received the charge sheet. Gxasheka instructed my office not to serve the charge sheet.

I actually told her that Gxasheka instructed my
10 manager not to serve the charge sheet. And Mashazi was like, okay. It was like, okay. And she simply left it at that. She instructed not to serve the charge sheet. It is fine. Adv Behari had also indicated that, but I had looked at the docket. The evidentiary material, that is how we call it, the evidentiary material is not sufficient to sustain a dismissal of misconduct.

ADV BALOYI SC: At the time when you left, Mr Nciza, did you ever come to know whether an investigation was conducted by Adv Behari to arrive at his conclusion and
20 whether any written report about that investigation and the conclusion which Mr Behari conveys in the meeting whether there was ever a report about it?

MR NCIZA: Yes and no, Madam Commissioner. There is no investigation in relation to the substance of the allegations against Brigadier Mkhwanazi. No investigation

was ever conducted to determine whether there is merit to the allegations. Remember we have the Erasmus report. At that point, the only report that existed was the Erasmus report, and the Erasmus report says the basis for a case to be instituted.

Adv Behari, I came to learn via Chief Mapiyeye, that indeed on the 21st of June, there was that engagement with Chief Mapiyeye, he went through the and as you can see, the investigation report is 276 pages or so, went
10 through the report and took a view that there is no basis to proceed. Beyond that, there is nothing. Firstly, the so-called no basis to proceed, there is no communication in writing from Adv Behari to Chief Mapiyeye, let alone myself as the person who took the decision.

But there is nothing that was actually issued by the legal department. That says we have reviewed the contents of the docket or the investigation report. We found that there are certain gaps, and these gaps are such that they would result in this being a fruitless exercise. Not even a
20 fruitless expenditure, but a fruitless exercise because these are not dismissible for 1, 2, 3, 4 reasons.

The allegations are not supported by evidence. We do not have that. And we do not even have an instance where there was an investigation commissioned on top of the Erasmus report that then looked at the merit of the

evidence. We do not have that. The yes, that was the no, the yes is that indeed there is some report called the forensic report. And I think at some point in my statement I will deal with that. But it is not a report that talks to the substance. It is a report that talks to the handling of the disciplinary hearing. It does not talk to the substance of delegations.

ADV BALOYI SC: I know you are still coming to it and we have had sight of it. That report does not, as I recall, 10 express any view about the merits or the strength of the charges against Brigadier Mkhwanazi. Am I correct in my recollection of that report?

MR NCIZA: You are very correct, Madam Commissioner. It does not attempt to. That report was about something else. It had nothing to do with whether Brigadier Mkhwanazi needs to answer for his conduct.

ADV BALOYI SC: Yes, now you may have dealt with this yesterday and forgive me if you have and I am making you repeat it. Head Adv Behari in particular, but also the 20 Department in general, the Legal Department, have they previously, before this, had any role in reviewing disciplinary charges or cases against employees at the level of Brigadier Mkhwanazi, whatever position he was holding at the time? I am speaking to your internal processes. I am not speaking to where you are now at the Bargaining

Council or in the Labour Court.

MR NCIZA: Madam Commissioner, the Labour Relations Unit in Ekurhuleni is a fully-fledged unit that has a Divisional Head, two Senior Managers, one for Compliance and Collective Bargaining, another Senior Manager for Case Management and Litigation. It has six Senior Specialists. So, the management component alone is nine people and that unit functions in terms of all processes that are labour relations related.

10 The Legal Department in terms of the structural arrangements of the municipality would play a role where there is litigation at labour court level. Even then, it is a support role. The Labour Relations Unit in Ekurhuleni since 2006 has been capable and indeed has been entrusted with the responsibility of dealing with labour litigation matters from end to end.

 There is an organisational management principle that talks to end-to-end accountability which would mean that you are able to account for the start of the function up
20 to the end of the function. The responsibility resides with you. So even my performance contract detailed that. My delegations detailed that. So, it would require assistance from the Legal Department where indeed there is a matter of some intricate nature that requires their attention.

 But ordinarily we are fine until of course Adv Behari

became the HOD. Then things started changing. It started off with a matter that involved a head of department. I think it was the head of department and then there was another matter that involved before even he became the HOD. There was another matter that involved I cannot mention unfortunately the designation because there has only been one person in that designation.

So, if I mention it, it will be obvious to the world that I am talking about that case. But there was a matter
10 that involved a very senior person at HOD level where then the city manager took a view Doctor Mashazi took a view that I am close to that person and therefore I should not be involved, and Adv Behari should play the role that I normally play. Outside of that, he has never been involved. There has never been a review of a disciplinary process by the legal department. There has never been a need for that. All processes were handled within the labour relations unit.

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

20 **CHAIRPERSON:** You said Mr Nciza Adv Behari said after his review of the evidentiary material it did not reveal that there was a dismissible offence. To my mind, that implies that there could well have been an offence but one that was not dismissible. Did you understand him to mean that, or did he mean there was no offence at all? I hope you get the

nuance.

MR NCIZA: I get the nuance, Chair. I get the nuance. Indeed, the way that he put it, he spoke to a dismissible offence. He says that the evidentiary material does not point to a dismissible offence. My engagement with Chief Mapiyeye, he had indicated to Chief Mapiyeye that the R300 000 donation and the lack of procedural compliance with how that donation was sourced could at best result in a slap in the wrist.

10 Now I have checked the Disciplinary Code, I do not find a sanction called slap in the wrist. But nonetheless, to him, these were minor. These were minor. To me, as a person that has dealt with discipline management, I know for a fact that we have dismissed employees for less infractions. There are less infractions that you would find that an employee gets dismissed for.

 An employee gets dismissed for an infraction, dismissed a cashier for there is a concept that we learned at some point called cash rollover where we dismiss the
20 cashier for a cash rollover of R500. You dismiss because that was R500 that was supposed to be banked by the municipality but was not banked by this cashier. So, we dismiss for that. But then we get told that all sorts of things that were done are not dismissible. And I was like, yes.

CHAIRPERSON: Thank you.

ADV MOHLASEDI: Thank you, Chair. Mr Nciza, you have relayed to the Commission that in the course of that meeting, Doctor Mashazi brought up the issue of the lack of service of the charge sheet on brigadier. Now, your evidence during the course of yesterday was that the HR manager from your office, who was tasked with delivering that charge sheet, informed you that Brigadier Mkhwanazi refused to accept delivery on the basis that both the city manager and Ms Gxasheka advised him not to do so. So, in
10 the course of your engagement with the city manager, did you put that allegation to her? Did you open up a conversation with her about her role in blocking the service of the charge sheet?

MR NCIZA: No, I did not raise her role. I raised Ms Gxasheka's role. And she was like, no, it is okay. I did not say you instructed, I said Ms Gxasheka instructed that the thing must not be served. I did not attack her on it.

ADV MOHLASEDI: And nothing further came from her concerning any potential part she played in blocking that
20 service?

MR NCIZA: When I raised the issue of Gxasheka, you know, sometimes I wanted to raise an issue, thinking that at least it will ignite a response, you know. Gxasheka just simply said, yes, and then she was like, okay, no, it is fine and moved on. And changed the subject from a discussion

on the charge sheet to a discussion on my powers. So, honestly, there was no further engagement beyond that.

ADV MOHLASEDI: On the subject of your powers, the next material date is the 22nd of August 2023. Can I invite you then to paragraph 93 of your witness statement, 93.

MR NCIZA: Yes, thank you, thank you, counsel. This is now informed by the instruction that I had received, that I must send to Adv Behari the emails, and the email thread, so that she can be able to investigate this issue of the leak.
10 So, on the 22nd, I indeed sent the emails to Adv Behari. Now, later on in the day, I was contacted by one of my employee relations officers, who sent me a WhatsApp, and I think I was just driving out of Benoni on my way home.

And then I stopped the car and I opened, I got into a garage, and I opened the WhatsApp, and I saw the document. The document was a document that was signed by Doctor Mashazi and listed Ms Gxasheka as the enquiry's person. Now, Commissioners, the protocol in the municipality is that as much as there is a person who signs
20 the document, the person that is listed as enquiries is the person who drafted the document.

So, the insistence that the city manager always has is that if you are going to draft a document for her, you must be the enquiries person, so that nobody must ask her about the document. This was introduced by Doctor

Mashazi to say, no, no, no, if you are going to require me to sign, list yourself as the enquiry's person, so that people must not come to me, they must go to you as the drafter of the document. So, indeed, I opened the message, the attachment, and I found the document on PN13.

ADV MOHLASEDI: Let me assist you, PN13 on page 311. And Mr Nciza, perhaps before we go into the text of PN13, just in the course of your evidence this morning, take the Commissioners through paragraphs 94 and 5, and then we
10 will turn to the statement, just for completion.

MR NCIZA: Okay, so I went through the letter that is on PN13. Having gone through the letter, I contacted Ms Gxasheka via WhatsApp, noting that, of course, the enquiries person is reflected on page 311, is Linda Gxasheka. So, I contacted her. I texted her a message to the effect:

“Good evening, I just wanted to check
the authenticity of this document.”

And the document is this one, PN13. The purpose of my
20 message was to check with her if, indeed, this document was genuine. At about 20:50, 10 to 9 in the evening that day, Ms Gxasheka responded:

“What does OCM say?”

OCM is the Office of the City Manager.

ADV MOHLASEDI: Thank you, Mr Nciza. I will then invite

you to turn to page 311, which is an extra PN13 itself. And perhaps before you pass comment on its contents, please confirm that this is the document you received via WhatsApp on the 22nd?

MR NCIZA: Yes, it is.

ADV MOHLASEDI: That is right. And just read into the record what the subject of the document is in bold.

MR NCIZA: The subject, the document is dated the 23rd of August. It is addressed to all departments and all
10 employees. It is from Doctor MI Mashazi. The subject is disciplinary and ...[intervenes]

CHAIRPERSON: You said 23rd, am I mistaken?

MR NCIZA: No, 22nd.

CHAIRPERSON: 22nd, yes.

MR NCIZA: 22nd August. The subject is disciplinary and grievance procedure in the city of Ekurhuleni. Authorise the representatives of the city manager.

ADV MOHLASEDI: Thank you. And the paragraph immediately under the heading in bold, could you just read
20 that first paragraph starting the South African Local Government Council?

MR NCIZA:

“The South African Local Government,
it is supposed to be bargaining council,
the B is missing, SLGPC concluded a

disciplinary procedure collective
agreement, DPCA, on the 1st of
February 2018.”

ADV MOHLASEDI: And that is the document we took the
commission through yesterday?

MR NCIZA: Yesterday, yes.

ADV MOHLASEDI: Right, and so please then explain to
the Commission the context of this guideline or document
you received vis-a-vis the DPCA that we went through
10 yesterday.

MR NCIZA: Like I indicated to Commissioners that how we
have structured the delegation’s matrix in respect of the
DPCA in the municipality, you would not have an authorised
representative, you would have authorised representatives
of the city manager. Hence, even the heading of this
document refers to authorised representatives of the city
manager in terms of the DPCA. So, this document then is a
document that talks to the issues that are on, is it 15B?

ADV MOHLASEDI: Thank you.

20 **MR NCIZA:** Yes, so when you look at the issues that are in
15B, this document effectively is a modification of 15B.

ADV MOHLASEDI: Thank you. Mr Nniza, then, if you turn
to page 312, 312.

MR NCIZA: Yes.

ADV MOHLASEDI: Under the two bullets, there is a

paragraph that reads the above-listed functions. So, to place it in context, it is discussing the handling of disciplinary proceedings. Correct. So, there is a paragraph there that reads the above-listed functions required. Do you see that paragraph?

MR NCIZA: Yes.

ADV MOHLASEDI: Thank you. Could you read that paragraph, please?

MR NCIZA:

10 “The above-listed functions require specific authorisation from the municipality/city manager to be given to the various layers of management to ensure that disciplinary processes are handled in an expeditious and equitable manner. The collective agreement, however, does not specify who must handle some functions it provides for. For example, in the

20 municipality, if, for example, who in the municipality appoints the chairperson of an appeal hearing or who agrees on an appointment of panellists of the SHGBC to hear the appeal, if the employee makes such a request, *et*

cetera.”

ADV MOHLASEDI: Please also read the next paragraph.

MR NCIZA:

10 “To usher in expeditious, credible, consistent and uniform management of disciplinary tendency in the municipality, the following persons are herewith delegated to perform the above-listed functions as well as all other functions connected therewith as appears from the collective agreement in that regard as the municipal/city manager's authorised representative.”

ADV MOHLASEDI: And so, when you read those paragraphs together, the city manager is saying that the aim of this document is to provide for the management of discipline within the municipality by identifying specific persons who must exercise delegated functions. Is that correct?

20 **MR NCIZA:** Yes.

ADV MOHLASEDI: All right, so, Mr Nciza, I will then just lightly - I will then take you through each of the subparagraphs at the bottom of that page, but I will invite you to read the heading and to pass a comment in respect of the amendment as it lies there or the change as it lies

there. So, paragraph A1 reads:

“Receiving allegations of misconduct.”

And under the bullet point, it says:

“HOD of a respective department.”

Now, please advise the Commission whether that is a change or a retention of the existing procedure.

MR NCIZA: It is a retention.

ADV MOHLASEDI: Thank you. Immediately beneath that is paragraph A2, which says:

10 “Request for allegations to be
 investigated must be submitted to HOD
 Corporate Legal Services.”

Please confirm that that is the position held by Adv Kemi Behari?

MR NCIZA: Yes.

ADV MOHLASEDI: Thank you. So, the allegations then must be submitted to HOD Corporate Legal Services upon determination of a *prima facie* cause for the HOD Corporate Legal Services to confirm the allegations, consider the
20 evidentiary material and then submit a report to HOD HR. Please, again, confirm for the Commission whether that is a modification from the previous document or whether it retains the existing position.

MR NCIZA: That is a serious modification.

ADV MOHLASEDI: Please elucidate your point for the

commission.

MR NCIZA: I do not know, counsel, whether I should take them through what my response was to this because my response is very detailed. I do not know how you want us to.

ADV MOHLASEDI: I will take you to your point in your response where you deal with paragraph A2.

MR NCIZA: Yes.

CHAIRPERSON: Does your response refer to the
10 numbering, like the A1, A2, B, C?

MR NCIZA: Exactly.

CHAIRPERSON: Or if it does that, I think you may do that.

ADV MOHLASEDI: Thank you, Chairperson. Mr Nciza, then, I will ask you to turn to page 316. That is Annexure PN15.

MR NCIZA: Yes, Ma'am.

ADV MOHLASEDI: Thank you. Just to locate this in your witness statement, this is a document where you say in paragraph 97 you describe it as a comprehensive response
20 to the changes in the document what is up to you. Do you confirm that?

MR NCIZA: Yes, Ma'am.

ADV MOHLASEDI: Thank you. And then you say the purpose of that document is to set out why the revisions are unlawful, inappropriate and against the best interests of the

city.

MR NCIZA: Yes, Ma'am.

ADV MOHLASEDI: Do you confirm that? Thank you. When you have regard to page 316, can I ask you again to identify the author of the document?

MR NCIZA: It is myself.

ADV MOHLASEDI: You directed the document to?

MR NCIZA: The city manager.

ADV MOHLASEDI: And then please tell the Commission, 10 read for the Commission the heading in bold on the first page.

MR NCIZA: The heading is dismaying grievance procedure, and the city of Ekurhuleni authorise representatives of the city manager.

ADV MOHLASEDI: Okay. I am going to follow the format adopted with respect to the guideline issued by the city manager, which is that I will read the new guideline and I will then ask you to respond to it. So, we have already addressed paragraph A1. I have already read for you 20 paragraph A2 into the record. Can I then ask you to comment for the Commission on what you described as the serious revisions to paragraph A2?

MR NCIZA: Thank you, council. Commissioners, on page 317, I detailed things from 317 to 318. I submitted to the city manager a detailed analysis of the implications of A2.

Just read them.

ADV MOHLASEDI: Chairperson, my proposal, I am in your hands, but my proposal is that in light of how lengthy it is, it might be a time-consuming exercise.

CHAIRPERSON: I also wanted to suggest that perhaps if you could just deal with a salient or set out the salient points that you made.

MR NCIZA: Thank you, Commissioner, Chairperson. The first issue that I raised with A2 is the requirement for the
10 request for allegations of misconduct to be investigated to be submitted to the HODLS, SCLS. In the municipality, I had indicated this in my testimony before Commissioners, the municipality has got various investigations units. You know, we have the monitoring and evaluation investigations unit which investigates infractions that would happen on the eNATIS system where you have people that have registered cars or even licences in an inappropriate manner.

So those people investigate, and they have got a legal obligation to do that investigation in terms of the Road
20 Traffic Management Act and whatever acts that they use. You have that. You have got the Integrated Standards Unit of Internal Affairs, the Erasmus unit. You have got loss control of, again, EMPD that also deals with this. You have got the Internal Audit Department that also conducts investigations.

And then you have got MPEC, the Municipal Public Accounts Committee, that also would institute investigations. Now, MPEC is even more serious because this is chaired by a councillor and councillors are part of the committee, and that committee has got a legal obligation and powers to actually institute investigations. Now, A2 says you cannot have an investigation unless it is approved by the HOD CLS.

You know, it is just impossible. Effectively, you are
10 saying that councillors cannot investigate. They must get the authorisation of their junior, because all of us are juniors to councillors. That is the political leadership of the municipality, but also all these other units that have got vested investigation authority. Now, that authority is taken away. Before they can conduct any investigation, they must get approval from the HOD CLS. It is just impossible.

ADV MOHLASEDI: And I am sorry to intervene, Mr Nciza. Then, on the facts as they have been relayed to the Commission today, how would that change affect the
20 sequence of events we are informed of? So, for example, we understand that the allegations of misconduct against Brigadier Mkhwanazi were brought to the attention of Commissioner Spies. Commissioner Spies then directed Colonel Erasmus to prepare the investigative report. That investigative report made it to your office. What effect does

A2 have on that sequence, if any?

MR NCIZA: It means that Jeff Wiggs' media query, because within it is an allegation of misconduct. When Spies received that, he would not be able to appoint or instruct Erasmus to conduct an investigation. He would have had to take that query and give it to Behari. And Behari would then consider, in terms of A2, if you read A2, request for allegations must be submitted to HOD CLS upon determination of a *prima facie* for HOD CLS. And that is
10 convoluted. That is seriously convoluted.

And I deal with that. But effectively, it is Behari who must now consider the evidential material of what, at that point, is still just a request to investigate. But you must take it to him to consider whether there is material that actually must now form the basis upon which an investigation must be conducted. The Collective Argument Commissioner says an allegation of misconduct. It does not even say that it is an allegation of misconduct in writing.

It says an allegation of misconduct. In our statute
20 in 2018, we insisted that the allegation must be in writing, even though the Collective Argument does not go that far. The parties in the Partnering Council recognise that you might have employees who might not be in a position to actually articulate an allegation in writing. Now, you have this situation that changes and says an HOD cannot

investigate in this department. Cannot conduct an investigation in this department. The HOD must go to another HOD. And that HOD must actually make a determination on whether, indeed, you are going to investigate.

CHAIRPERSON: I see practical difficulties with this. At what level should the allegations be for you to take them to the head of legal? It may be the barest of allegations. And then references made to a *prima facie* case. Who gets to
10 the level of a *prima facie* case? Will the HOD legal, or will the head of legal, then have to do an investigation herself to get to the level of a *prima facie* case?

Or must she or he determine the existence of a *prima facie* cause on the basis of the bare allegations without any investigation having been conducted? Unless I am misreading it, it is confusing to me. It raises practical difficulties. Most matters would not pass the level of a *prima facie* cause for an investigation to then be conducted. They would never pass because it would, in most cases,
20 just be the barest of allegations.

MR NCIZA: And hence I address that, Chair, on page 318. What you have just indicated now is the same sense that I had. I am saying on Roman II:

“Upon determination of a *prima facie* case, the memorandum is rather

confusing in its articulation in this regard. There is no clarity on the following aspects which are pertinent to a determination of a *prima facie* case. What is meant by upon determination? Who determines the *prima facie*? The request to investigate submitted to HOD CLS, no clarity on who will conduct the investigation, or whether the HOD CLS is intended to approve that a line HOD conducts an investigation in his or her department, or that the HOD CLS will conduct the investigation himself.”

10

You know, is the determination as made by whoever, because it is not clear, contingent on the investigation report, which is not clarified on who and how the same is to be conducted. I want to agree with you, and that is exactly what my thoughts were when I responded to this, to say it would create serious problems for the municipality. It is really impractical.

20

CHAIRPERSON: I am very sorry. If the idea was for the head of legal to do the initial investigation that brings her or him to the level of a *prima facie* cause, that is all that she or he would ever be able to do within the municipality,

because you say you handle thousands and thousands of matters. So, would they still, within legal, be able to do the work that they exist for? I do not know, you know better. You are part of HR. Maybe you know that if you are sitting there, you would be able to say, ah, no, no, no, no, they have capacity. They could have been able to do all of that.

MR NCIZA: Impossible. I would not be able to do it. And I am not a head of department. The legal department has to deal with everything in the municipality. There are issues
10 of supply chain management. There are issues that concern bylaws, municipal courts. There is a whole lot of things that they have to deal with. And this HOD must oversee all of the issues.

Now for him to actually conduct investigations, and as you say, Chair, some allegations are just bare allegations. They are bare allegations. And some issues, yesterday we talked about whistleblower issues. In most cases, a whistleblower will just give you that you know what, something is happening there, but they are not going
20 to provide you with the evidential material.

Now you have an investigator must go and conduct an investigation and get the evidential material. And it cannot be at the level of an HOD. The norm has always been you have the HOD of the department receives allegations of misconduct, causes the allegations to be

investigated in his department by people who have got know-how of how the department actually functions and operates.

Then those people are able to draw the information, craft the report, annex the detail or the evidence to their report. Then we can take it for determination. But this was just a bit, yes. But I raised that, the issue that you have noted, Chair, besides the fact that the municipalities got standing investigations units, there are people appointed
10 there who are paid by the municipality. And now you are simply saying they cannot do their work unless the HOD CLS approves that they do the work.

CHAIRPERSON: So as matters existed prior to this, there was devolution of powers across the municipality.

MR NCIZA: There was what, Chair?

CHAIRPERSON: The work was spread out.

MR NCIZA: Yes.

CHAIRPERSON: The work was spread out across the municipalities. There would be an investigation there,
20 there, there, all the way across by various people who then produced the documents or dossiers and then eventually they would land at your desk.

MR NCIZA: Exactly, Chair. That is how it operated. And quite honestly, it was a seamless process. You have issues in your department, you investigate them. And then once

you have determined that indeed there is *prima facie* cause, we are the head of department, we are the head of department, you have a right to make a determination that you know what, indeed this employee seems to have infringed or contravened rules.

CHAIRPERSON: That comes from a collection from all these focal points and then everything comes from you, the legwork having been done.

MR NCIZA: Yes.

10 **CHAIRPERSON**: Now, as is the suggestion, is for the head of legal to do the legwork. Because how else does he reach a determination of *prima facie* case where there are bare allegations without that legwork having been done?

MR NCIZA: Effectively.

CHAIRPERSON: In practical, it seems to me, unless the people who crafted this were to come and explain how they thought it would work.

MR NCIZA: And I had to craft this response as a person who has got the technical know-how in terms of how
20 discipline management is dealt with in the municipality. I am raising these issues with the accounting officer to say that your letter has got these practical problems you know. Besides the fact that it creates a mess of the process as opposed to what the intention was. If the intention was genuine.

And quite honestly, I want to maintain that this is because of one case. We have never had a problem. There has never been an issue until the Mkhwanazi case. There is never, ever in the municipality. We handled the discipline. I go on and you will see in my memo, I even talk about a comparative analysis that I conducted that speaks to how we as Ekurhuleni were, if we were to benchmark us, benchmark us against other metros in Gauteng, where we were in terms of discipline management as a municipality.

10 **ADV BALOYI SC**: Mr Nciza, that letter at 311 or that directive circular at 311 which tells you what the new regime is going to be. It says at page 312 the paragraph above A1 there is a paragraph there and then it sets out what is intended to be achieved with this new regime. And it says:

“To usher in expeditious credible, consistent, and uniform management of discipline within the municipality.”

Had there been an issue on those aspects in the
20 municipality, how discipline was applied, expeditiousness?
Had those issues been raised and discussed with the HOD and you at any point?

MR NCIZA: Madam Commissioner, there is always issues that are raised with discipline management in every institution. In these terms, the biggest issue that was ever

raised that we have had to deal with as labour relations is age analysis. That has always been the biggest issue that we have ever raised. You have a disciplinary hearing. You constitute it, you appoint the committee, the first sitting, you go to the first sitting, you get a request for further particulars.

You know, you have to delete the request for further particulars. Once you have submitted the further particulars, there are *point in limine* that are raised. Once
10 you have dealt with the *point in limine* there is a refusal application that is raised and boom, two years down the line, the case is not complete. That is the biggest problem that we have ever faced. Age analysis.

When now mention is made of expectations, one would think maybe the intention is to ensure that you shorten the lifespan of disciplinary hearings. But it cannot be expeditious in relation to the constitution of a disciplinary hearing. Before the 2018 collective agreement, we had a 2010 collective agreement that said, if you do not
20 institute discipline after I have made the determination, my 12th April determination, if I do not then actually ensure that the disciplinary hearing commences after three months, I have to go and apply for condonation in terms of that collective agreement.

And that was always an issue, not only on

municipality, but in the sector as a whole. Because there is this problem, even after I have made a determination, you find that we delay, municipalities delay in instituting the actual case, in commencing the disciplinary hearing. So that, for me, expeditious must relate to that. That once you have got your investigation concluded, start the case as soon as possible.

So, there has never been an issue. We always start our cases within the three-month period. Credible? I
10 do not know about credible because all our disciplinary hearings have been credible. The only way that you can determine the credibility of a disciplinary hearing, in my view, is that if indeed you conduct a disciplinary hearing and you dismiss an employee as a result of that disciplinary hearing, you then take the matter to arbitration in terms of dispute resolution mechanisms.

And then a commissioner says, you know what, the conduct of the employer was abhorrent here. You know, you just had it in for this employee. Then it questions the
20 credibility of your process. But that questioning of the credibility of the process will then arise out of an arbitration award that will be issued. That will talk to, you had it in for this employee, the evidence was shoddy, your processes were just malicious and all sorts of things.

Then you can talk credibility. But I can assure this

Commission that for as long as I have been the Divisional Head of Employee Relations in that municipality, we have never had questions about the credibility of our processes. I think, when I read this, I went into, okay, credibility when charging Mkhwanazi is not a credible process because I have never had questions even from – and remember, we submit reports on a quarterly basis to the oversight committee that deals with corporate services in the municipality. And we have never received any feedback
10 from political leadership that says our processes are not credible. They will complain about how long it takes. That was the main issue.

CHAIRPERSON: I know Commissioner Baloyi is still asking. I just want to ask a quick question on the question of credibility. A finding of not guilty would not necessarily be an imputation on lack of credibility. Is that not so? On its own.

MR NCIZA: Yes. To answer that, Chair, I once had a nice debate with the member of the Mayoral Committee for
20 Corporate Services around that. And I gave my own understanding of what discipline management is about. When as an employer you find an employee not guilty, you should be happy. Because it then says that you have got an honest credible employee in your service. Indeed, there were allegations against the employee that you brought as

the employer.

And you find that, you know what? No. An objective analysis of the situation says the employee is not guilty. To me, that says you have done your work. Because discipline management, in my view, should not be a punitive measure. It should be more of a corrective measure. And if indeed you find that, no, no, these allegations do not actually result in a dismissal. They do not result in a sanction. And then you should I, as a
10 manager, I am happy. I am fine. Because I have done my part. And indeed, an objective person has said there is nothing to it. So, it does not call into question the credibility of the process.

ADV BALOYI SC: Can I just explain the base of my question, or the premise of my question, is in that paragraph a reason is provided to justify these changes. So that we have got an expeditious, credible, consistent, and uniform management of discipline. That is why now these changes. And my question was to seek to establish
20 with you whether there had been a problem about these issues that now have purportedly been remedied with this new procedure. And your answer so far is there have never been these issues.

MR NCIZA: To give it straight, when I took over as Divisional Lead in 2017, we had about, in our case role, we

had about 250 disciplinary cases. At the time of my dismissal, I had 51. We have managed discipline not only in terms of managing the case role but also managing conduct and behaviour in the institution. So, honestly, this, these are good principles. Make no mistake, indeed, this is what is required. No problem. But it is not because there was a lack of. There was no lack of. In fact, we have improved.

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

10 **CHAIRPERSON:** Let us adjourn and resume at 11:22. Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Apologies for being one minute late. Let us resume, please.

ADV MOTLHASEDI: Thank you, Chairperson. Mr Nciza, we are in page, on page 318 of your annexure bundle, page 318. We are still discussing your comprehensive response to the guidelines issued by Dr Mashazi. If I could turn your
20 attention to the heading next to Roman numeral III, the heading that reads “For HOD: CLS to confirm the allegations”. So this pertains to the allegations of misconduct. In that paragraph, you describe the HOD: CLS as a super HOD in the Municipality. Could you explain to the Commission your justification for that statement?

MR NCIZA: Yes, the system of delegations in the Municipality, Commissioners, as approved by Council and I think at that point, the system of delegations was approved in 2017 by Council and it was still applicable. It places an obligation on each HOD to manage discipline in their departments.

Now, if an HOD has to give to another HOD the responsibility to confirm whether indeed allegations exist in their department, effectively that means that HOD is
10 subservient to this other HOD you know, and I viewed this as effectively creating a super HOD dispensation in the Municipality and instead of all HOD's being on the same level, now you have this HOD that becomes almost like a supervisor of the others in terms of discipline management.

That is why I then said that this means that the HOD: CLS, Adv Behari, becomes a super HOD in the Municipality, you know, and it cannot be correct.

ADV MOTLHASEDI: And for completion, to your mind, upon considering this new guideline, this new regime, what
20 is the impact, particularly of A2, on the existing investigating bodies within the Municipality? So what becomes of integrity and standards, for example?

MR NCIZA: One of the key considerations for an investigation body is independence you know. If indeed a person is appointed by the Municipality and we train these

people, the Municipality has spent money to train people to be investigators. Some of them indeed have got qualifications as investigators, whether in the police environment or in the general environment of the Municipality.

These are trained professionals and we appointed them you know. They earn substantive packages. Some of them get to be even managers in their fields within the Municipality. And then all of a sudden, in order for them to
10 conduct investigations, they have to be authorised you know.

The 2017 dispensation that was created with that case that I referred to yesterday effectively meant that you cannot investigate a Divisional Head without the approval of the City Manager you know. That was, and I had no problem with that, because indeed there is a Council resolution that was adopted on the 1st of December 2011, which said that the appointment of Divisional Heads is delegated to the Municipal Manager.

20 So the Municipal Manager becomes the employer, you know, of the Divisional Heads and therefore, it is fine if the Municipal Manager is the one that must make a determination on discipline processes for Divisional Heads. Not a problem. But everybody else has got their HOD's you know. Everybody else has got their HOD's. So even these

investigative units are within departments and when they conduct their investigations, for instance, Commissioners, loss control, the loss control investigators investigate matters of misappropriation of Council assets.

Where a Council asset has been misappropriated or stolen or anything that has happened to a Council asset, loss control, because there is even a committee, it is called the Loss Control Committee of the Municipality, that looks at all departments in terms of their management of assets.

10 So if indeed issues arise, either from a Loss Control Committee meeting, where indeed there is submissions that a particular department is reporting that we have lost this and this, then it must be investigated how those losses occurred. Is there anybody that can be found or can be suspected of having done some wrongdoing in spite of the handling of those assets.

Loss control conducts that investigation stemming from the committee itself. But also, where you have got a case of theft in a department, you have a right as a
20 department where you do not have the expertise to conduct the investigation, to request the Chief of Police to appoint Loss Control to conduct that investigation you know. Now, those people are appointed there for the purpose of investigations.

What this does, it means Loss Control cannot do their

work, even if it is stemming from the Loss Control Committee. What this does, it effectively means that you have changed the terms of reference of that committee. What this does, it even changes the terms of reference of MPAC you know. There is wider implications where indeed even a committee of Councillors would be subject to the determination that is made and that committee has that legislative powers.

CHAIRPERSON: What is MPAC? Forgive me if you have
10 told us before.

MR NCIZA: It is Municipal Public Accounts Committee. It is like SCOPA in Parliament, but for the Municipality you have got MPAC. So, and there is a number of investigations. Internal audit is a key investigation. It is an investigations department. What then happens, internal audit cannot conduct an investigation, it must go to HOD: CLS before they can conduct an investigation. Those are the implications you know.

And we have got, Commissioners, we have got Wiley
20 unionists, shop stewards that will pick up on these things and be able to say, but where is the approval from the HOD: CLS you know, on an internal audit report that says this employee has misappropriated Council funds you know. How did you conduct the investigation as internal audit? Do you have the approval of the HOD: CLS as per the 22nd

August 2023 memo.

ADV MOTLHASEDI: Mr Nciza, the new guideline deals in paragraph B with the appointment of presiding officers and employer representatives to run a disciplinary hearing for more serious offenses. You have comprehensive criticism about that at the bottom of page 318, you deal with paragraph B. Do you see that?

MR NCIZA: Yes, Mam.

ADV MOTLHASEDI: Thank you. Could I ask you to take
10 the Commission briefly through your challenges with that aspect?

MR NCIZA: Thank you, Commissioners. The first issue that I raise is that the DPCA is a time-bound peremptory collective agreement. What constitutes serious offences in a Municipality is wide-ranging and cuts across all occupational categories. So what paragraph B says is that for, firstly now, and I do not want, Chair, I do not want to actually sound as if I am a crybaby you know. They have taken my power, now – no, no, no. I am raising pertinent
20 practical issues.

Paragraph B says the HOD, after consulting the Accounting Officer, who are a Municipality, at that time, the Municipality had about 20 departments, you know. They have shrunk them. I think our Chief of Police also testified on the measures and institutional review that took place,

and now it is about 14 or 15. But still, it is a sizable number of departments with more than 20,000 employees.

In order for the issue of the HOD: HR to appoint a presiding officer for an assault case at Waste Department in a depot in Nigel, she must consult the Chief Accounting Officer. It is an assault, two workers fought against each other you know, and therefore, she cannot appoint the disciplinary tribunal without having consulted the Accounting Officer to deal with a matter that involves
10 general workers in a depot.

I mean, it is taking it too far. That is the first issue. And I mean, if indeed the Accounting Officer and the HOD do not get to actually sit and have that consultation and have a record of the consultation, by the way, because if now there is an appointment and there is no record of the consultation, it can be said that the HOD: HR acted *ultra vires* paragraph B and that would be a point that if I was a shop steward, a Willey shop steward, I would raise.

The DPCA gives authority of appointing disciplinary
20 committee to the Accounting Officer or her authorised representative, therefore, the authorised representative has authority you know. If the City Manager appoints an authorised representative, that person then has to exercise the authority.

Paragraph B says no, the person does not authorize,

exercise the authority. The exercise of the authority is contingent on a consultative process and therefore it is contingent on the Accounting Officer giving a sort of consent or some form of agreement that, okay, fine, charge this person or appoint. Now, why do we do that?

CHAIRPERSON: There is a technical legal issue around the process of consultation.

MR NCIZA: Yes.

CHAIRPERSON: If a provision says after consulting, or
10 after consultation with, that means the one who decides or the one in whom the power resorts, consults the other, but the ultimate decision rests on the first-mentioned person. But if the provision says, in consultation with, then the decision is the decision of both people, then there will be no decision if the two have not agreed.

It seems to me that this one is the first, the first example I have given, because it says after consultation. It does not say in consultation. So therefore, the Accounting Officer does not have to agree, even if she or he, I will say
20 she or he, because it will not always be a Dr Mashazi, even if she or he does not agree, the first-mentioned person can take the decision.

MR NCIZA: Yes.

CHAIRPERSON: Although, of course you know with the power relations and all that, it may never happen in practice

if the one being consulted does not agree. But that is, that will not be a function of the law, it will be a function of power dynamics.

MR NCIZA: I understand, Chair, and I agree with the analysis that you are providing. The issue for me is that therefore the HOD cannot appoint without having had the consultation.

CHAIRPERSON: But none of what I am saying detracts from the point you are making ...[intervenes].

10 **MR NCIZA**: Yes.

CHAIRPERSON: Which is basically bottlenecking everything, you know, like your general workers at some depot somewhere, all of that, having to go all the way to the City Manager, even if she is merely being consulted. That will result in serious bottlenecks.

MR NCIZA: Yes, sir, and hence the time-bound processes. So the second one that I had raised is the issue of the authority. My reading of the collective agreement, and not only my reading, but the practice or how we have
20 always interpreted the collective agreement, not only in Ekurhuleni, but even you would find that even in terms of unfair dismissal disputes started arising. It has always been accepted that the authorised representative of the Municipal Manager then assumed the full delegation to perform the function you know.

We have never had to perform a function that are delegated in consultation or after consultation with the delegator you know. When the person is delegated, you are given the authority, therefore, you exercise the authority you know.

ADV MOTLHASEDI: And Mr Nciza, sorry to intervene, if I could draw your attention then, still on page 319 ...[intervenes].

MR NCIZA: Yes.

10 **ADV MOTLHASEDI:** To Roman numeral IV, where you raise issues around capacity. Could you make some remarks in respect of that, please?

MR NCIZA: Yes, thank you, Counsel. What I was raising here it is in line with what I have testified on, Commissioners, on the role that labour relations or employee relations plays, which is not just simply appointing the presiding officer, but you know you have to manage the process, you know, and having had, having appointed the committee, you are also responsible and
20 accountable for how the disciplinary case or the hearing has progressed you know.

You take, like I indicated, the principle of end-to-end accountability you know. You are fully vested in the process. Now, we have a situation here. The HOD will appoint and then step back you know. It is not clear in

terms of where the process then resides in terms of the actual management of the disciplinary hearing.

And one of the things that as the appointor you know, and I have had to do this as the person who appoints the disciplinary committee, you can be subpoenaed to go and explain what happened with the disciplinary process, the appointment process itself, but also the management of the disciplinary hearing you know. For instance, you took a decision that you are going to appoint legal representatives,
10 what informed that? There is a challenge around that. How? What was the rationale and everything?

So one was also concerned about these issues, that you will have an HOD that, at that level, does the appointment and leaves the process and is not invested in the process.

ADV MOTLHASEDI: And maybe if I can ask you a question just about general impact. I earlier asked you, Mr Nciza, what the implications of this new regime are to the investigative capacities within the City. But what are the
20 practical implications of this new regime on your office you know? Apologies if I sound facetious, but some of the provisions go to the heart of functions you have described as belonging to your unit, and tell me if you agree, but seemingly render some of those functions redundant. Care to comment on that?

CHAIRPERSON: It is, your question is not facetious at all.

I do not even think it is.

ADV MOTLHASEDI: Please ...[intervenes].

MR NCIZA: The answer?

ADV MOTLHASEDI: Please answer.

MR NCIZA: Okay. I deal with that even though I do not deal with it extensively, but I deal with it under B of my submission to the City Manager, where I state contractual obligations. And Roman figure II on page 320, I raise the
10 issue on contractual obligations in relation to the
functionaries in the employee relations division. The
functionality of the division is thus put into question. Has
the Accounting Officer taking a decision to close the
employee relations division by stripping it of its core
functional obligations? Discipline management, I would
say, constitutes about 60% of employee relations functions
in the City, because discipline management does not just
simply end with the issuance of the sanction.

It goes on you know, to arbitration and would have
20 our people that must go and deal with those arbitrations,
goes on to Labour Court reviews, Labour Appeal Court
appeals you know, and therefore we get involved from start,
and to end accountability again, from start to finish. So we
are raising these issues.

All of a sudden, when you look at, for instance, the

2018 memo and other memos that are in the pack that speaks to the delegations matrix and the role of employee relations in the discipline management processes, you know, this effectively, this new dispensation meant there is no role for labour relations you know. There is no role.

There is, I think, when you look at the entire thing, labour relations comes up under I on page 313. That is the only place, certainly, of step three of the grievance procedure shall be dealt with, shall be submitted to the
10 office of the HOD: HR for coordination through my office and ensuring a register is kept, that the people that can chair those step 3 grievance hearings is the Head of Department: HR, the Divisional Head: Employee Relations others as may be specified by the City Manager. That is all. In the entire discipline management processes, the Divisional Head now only has to sit in for step 3 grievances you know, when the contract and the performance agreement requires the Divisional Head to be the person that actually manages the entire discipline management
20 process of the Municipality.

But the delegation that he has is one of just sitting in and hearing a grievance. That is the impact that this had. It did not just simply change a delegations matrix, but it also had a contractual implication, not only on the Divisional Head only, but also the employees in the unit.

ADV MOTLHASEDI: And in light of your role at the time, apart from receiving this memorandum via WhatsApp, please inform the Commission whether you were consulted, you know, with respect to the contents of the memorandum, the possible consequences not only on the employment contracts of people in the unit, but also any other potential financial implications.

MR NCIZA: No. Remember, I was only told on the 21st of August that we are correcting it and what correcting it
10 meant was never articulated. I then got to understand the correction when I saw the memo, but no one spoke to me.

ADV MOTLHASEDI: Mr Nciza, before we conclude on this document, at the bottom of page 320, still in your annexure bundle, 320.

MR NCIZA: Yes.

ADV MOTLHASEDI: Yes, you have page 320. You have a heading there titled “A. The Julius Mkhwanazi case” and you discuss it from page 320 to page 321. I do not require you to read the contents of that discussion into the record,
20 but please provide a summary for the Commission about why you deemed it necessary to include specific mention of this case in your memorandum and the reasons therefore. Thank you.

MR NCIZA: Commissioners, before I dealt with the Julius Mkhwanazi debacle, I raised some pertinent issues with the

City Manager. As you can see on page 320, I started off by saying:

10 “To take away what constitutes close to 50% of the operational applications of a unit is to render that unit redundant. The following questions are thus pertinent. 1: What informed these changes? What thought process has been put in place on the implications of the operational implications of the changes so put? Given the fact that the changes are with immediate effect, what about the processes that were put in place but said cases have not commenced? Should the dockets or files of these matters be redirected to the HOD: CLS and HOD: HR as per the immediacy of the processes that are now put in place by the memorandum.

20 Should the answer to 3, supra, be in the negative, what defence should the employer representatives and presiding officers advance to the unions when they are challenged on the appointment and thus jurisdiction of the hearing?”

Because already there were matters that were pending that had not even commenced. And now, were we supposed to issue new appointments or what?

10 “Should the answer to 3, supra, be in the positive, then what about the impact on the timeframes envisaged in the DPCA, noting that the provisions of the DPCA are peremptory. We have matters that indeed you have appointed, and if indeed those people are to proceed, I had a concern, you know, on the timing. In conclusion, I cannot ignore some pertinent issues that must be ventured into in assessing the manner in which this whole matter has been dealt with. I therefore must raise my misgivings in this regard as follows. A: The Julius Mkhwanazi case. The urgent meeting held on 20 Monday at the boardroom of the City Manager required some serious reflection on my side on the direction and manner in which the Municipality is taking on the handling of discipline. The following critical issues arise.

(i) How and why did the HOD: CLS, that is Corporate Legal Services Adv Behari, get involved with a concluded investigation report by the police? Is this not ...”

And the police in this instance, I referred to EMPD, not SAPS or IPID.

10 “Is this not tantamount to interference with discipline management, especially given the fact that this was highly irregular and not found in any prescript of the Municipality.

(ii) Where in the DPCA is the role of assessing evidentiary material? Where is such a role in the contract of employment of the HOD: CLS or even on the system of delegations? In essence, Where did the HOD: CLS get the jurisdiction to embark on such a process?”

20

And I raise this because I am sure even Chief Mapiyeye indicated that Adv Behari had instructed, or rather Dr Mashazi had instructed the Chief of Police to take the docket to Adv Behari, and then he made an assessment of the evidential material and took a decision that there is no

case. So I am asking the jurisdiction, where does that come from? Where does he have the authority to do that?

“Why did the HOD: CLS, in the exercise of the questionable function of assessing evidential material, not engage the following persons.”

I am raising this if indeed we are going to make a determination at least to consult those that have been involved with the matter.

10 “(a) The investigation team in order to understand the processes that were embarked upon in the collation and assessment of the evidence gathered in the matter.

(b) The appointed prosecutor to understand the approach sought to be adopted in formulating a winnable case.

20 (c) Potential witnesses to understand the strength and resolve of the persons the prosecutor seeks to rely on in presenting the case of the Municipality.”

None of these people were engaged by Adv Behari in his making the determination that there is no case.

“Given that the test in disciplinary proceedings is one of a preponderance of probabilities, a concept prevalent in human resource practices than legal nuances, what tools of assessment were used by the HOD: CLS since clearly no engagement were held with the persons referred or mentioned in Roman numeral III, supra. Given the fact that the appointed prosecutor is a labour law expert who happens to be an advocate, how does the HOD: CLS, who does not possess notable experience in labour law, override the considered opinion of the labour law expert? Since when does the HOD: HR stop the serving of a charge sheet to an employee? Why was this done with this specific case? And where in the DPCA or any other prescript of the Municipality, inclusive of the system of delegations, does the HOD: HR have the authority to stop a disciplinary process from proceeding?

10

20

7. If there is no legal prescript giving

the two officials the authority to interfere, and in fact stop misconduct proceedings against an employee even after a prosecutor had determined the existence of a probable cause for the institution of a disciplinary hearing, what steps is the Accounting Officer going to take to handle the blatant misconduct of the said senior managers?

10

I am going to indicate that the framing of the memorandum issued on the 22nd of August 2023 leads one to hypothesize based on the conspectus of the evidence and the flow of events, especially the discussion held on Monday, the 21st of August, 2023, that the anonymous e-mail questioning the handling of the Mkhwanazi matter and potential corrupt activities associated therewith, that the memorandum is a post-ex facto legitimization of the misconduct that occurred with the handling of the Mkhwanazi charge sheet. The memorandum is a

20

regurgitation of the processes that were embarked upon by the two HOD's in the handling of the Mkhwanazi matter.

I am reading this ...[intervenes].

ADV KHUMALO SC: The misconduct you are referring to the, sorry to interrupt you. You are referring to the misconduct of the two HOD's, not Mkhwanazi's misconduct.

MR NCIZA: Yes.

10 **ADV KHUMALO SC:** So you are saying by interfering with the handling of the, I would say prosecution, not investigation ...[intervenes].

MR NCIZA: Yes.

ADV KHUMALO SC: They were committing misconduct.

MR NCIZA: Misconduct.

ADV KHUMALO SC: And they are trying to legitimize it through this new delegation of authority.

MR NCIZA: Exactly.

ADV KHUMALO SC: Thanks.

20 **MR NCIZA:** That is why I say, Commissioner, that it is *ex post facto* legitimization, because what they did was not covered by a prescript. Now, in order for them to justify what they did, they then introduce a new prescript. But at the end of the day, as of the date that they were doing what they were doing there was no prescript that regulated that.

But the new prescript that then gets introduced on the 22nd of August, 2023, is exactly what they did in June of that year.

10 “This raises serious questions on the integrity of the processes we engage upon as the City administration. The fact that a single matter has the impact of influencing two decades-long processes that have stood the test of time and challenges mounted by various parties is unfathomable. Of greater concern, however, is the fact that the two departments that are at the heart of good governance are found to be right smack in the middle of a one-tone disregard of Council resolutions, the system of delegations, and policy framework of the disparity. They have shown a total lack of

20 appreciation of a vital function that speaks to the stability of the Municipality, i.e. discipline management and its concomitant nuances.”

Discipline management, in my understanding,

Commissioners, is critical to a stable institution. If indeed we are going to allow employees to disregard rules, disregard policies, disregard processes, like Brigadier Mkhwanazi had done, and we protect that you know, can you imagine if indeed other employees get to learn about what Brigadier Mkhwanazi has done, and he got off scot-free, what is to stop others from doing what he did exactly, getting into some form of memorandums without following due process, issuing letters to service providers, without
10 following due process, you know, effectively giving institutions or entities all sorts of authority that resides in the Municipality you know. What type of state are we breeding?

CHAIRPERSON: To paraphrase what you are saying, this would introduce or create a culture of impunity.

MR NCIZA: Exactly, sir.

20 “There is also a labour law principle that is at play, which has the potential of wreaking havoc with the manner in which discipline management is exercised in the Municipality. That is consistency in the application of discipline.”

You know, and I know that the Labour Court, the Labour Courts have actually emphasised this you know.

You cannot seek to discipline Xolani on this, but then you leave out Ofentse on the same misconduct you know. There must be consistency in the application of discipline.

10 “What is to stop organised labour from demanding the withdrawal of disciplinary matters against their members, given the fact that the existence of allegations of serious misconduct is no longer a sufficient cause to institute disciplinary proceedings?”

ADV MOTLHASEDI: Thank you, Mr Nciza. In paragraph B on page 321, you have a heading there titled “The Handling of disciplinary Cases in the Municipality”, but you have made some remarks regarding that at an earlier point in your ...[cellphone ringing].

MR NCIZA: Sorry, sorry.

CHAIRPERSON: Is it 12 midday again.

20 **MR NCIZA**: Honestly, I switched it off. I switched off the phone, but it is not working.

ADV KHUMALO SC: Divine intervention.

MR NCIZA: Yes, sir.

ADV MOTLHASEDI: No problem. At the bottom of the page ...[intervenes].

CHAIRPERSON: Have you switched off the alarm now? I

hope it is not on snooze because it will come on again.

MR NCIZA: I switched off the phone. I switched off the phone again. Oh, ja. And a friend of mine laughed at me last night, I do not know how to operate a phone. I am sorry ...[intervenes].

ADV BALOYI SC: Mr Nciza, more importantly, have you prayed so that it does not ring again?

MR NCIZA: I have prayed. I have prayed, thank you.

ADV MOTLHASEDI: Mr Nciza, at the bottom of page 321,
10 you have a heading there titled “C: The Frittering Away of the Employee Relations Division”. You have made some, you have given some overview, some concluding remarks already on this topic, but let me give you an opportunity to say anything further you would like to say before we conclude on this document, under the topic of frittering away of the employee relations division.

MR NCIZA: Thank you. Thank you, Counsel. Ja, the first issue that I raised is the taking away of the labour law litigation function to the HOD: CLS. Commissioners, on
20 page 323, you have a delegation. This is a delegation that has been a standing delegation since my, before me, with my predecessors. But if you read the delegations, there is clarity.

“A: The Divisional Head: Employee Relations has got a delegation to

institute and defend labour law, labour relations related legal action in all courts, arbitration, and all labour dispute resolution bodies, including quasi-judicial courts on behalf of Council.”

You know, so I could institute and I have instituted proceedings against trade unions and the likes. For instance, when there is an unprotected strike action, then I
10 would institute interdict proceedings you know. Now all of a sudden this was taken away.

“Instruct lawyers, including junior and senior advocate to act for and on behalf of Council, sign all documents necessary for its registration, institution, and defending of labour law, labour relations applications, etcetera, herein after called legal
20 proceedings for the said purpose, including deposition to affidavits, etcetera.”

So, this whole thing now meant this is taken away.

ADV BALOYI SC: Are A and B not typical functions of an Employee Relations Division Manager typically? Is that not what you find in organizations?

MR NCIZA: That is my experience. That is my experience that indeed a labour relations director would have such authority and the labour relations director in Ekurhuleni has always had this authority. So that is one and all of this now all of a sudden was given to the HOD: CLS.

ADV BALOYI SC: There is that last paragraph on that same page, do you want me to say something about it, F.

MR NCIZA: On page 323?

ADV BALOYI SC: Yes. What is delegated to you in
10 paragraph F?

MR NCIZA: Yes, I had the authority to sign invoices that are submitted by attorneys, firms of attorneys, which would be inclusive of Council invoices if those invoices combined did not exceed 500,000. So if I am, we are running a matter in the Labour Court and I then receive invoices, I would have the attorney's invoice, the junior and the senior counsel and then I would authorize on all invoices and also authorize the payment voucher that would then be submitted to the Finance department. So I had that authority up to
20 500,000. You would see that on page 324. It indicated that if indeed the amount was to go beyond 500,000, then I would seek the approval of the HOD: HR for the payment of an amount that is above 300,000.

ADV BALOYI SC: Yes, you make, now when you spoke, you make specific reference to Labour Court matters. What

about internal disciplinary hearings where you have utilised external lawyers, does that fall under F as well?

MR NCIZA: Yes.

ADV BALOYI SC: Okay, thank you.

MR NCIZA: All matters. I, my, remember there is this delegation and then there is also another, it is called a specimen, what you call document that is issued. That specimen document is for when Finance receives my invoices or invoices from my unit with the payment voucher, 10 the signature that is there must correlate with the specimen document. And the specimen document would also indicate the values that I can sign for, you know, or the maximums of the values that I can sign for. So this was all part of the process of ensuring that there is proper financial management systems in place.

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

MR NCIZA: [Indistinct]... [cross-talking].

ADV MOTLHASEDI: Yes, page 321, unless you have any 20 further remarks.

MR NCIZA: Ja, 322. Commissioners, I think 322 is exactly what we are discussing where I say that:

“There was a taking away of the authority to appoint firms of attorneys, thus impacting on the authority to

institute and or defend labour law matters, inclusive of the CCMA, HBC and the likes, and also the taking away of the authority to appoint officials in disciplinary hearings.”

And then, even though it is not in the memorandum of the 22nd of August 2023, there was some task team that Adv Behari, you know, wanted to be formed that would report to him on the handling and management of dispute resolution functions, which were my functions you know. And quite honestly, I was getting paid handsomely for them and then all of a sudden now those functions are not performed by me and I would still receive the salary. Very funny.

CHAIRPERSON: I am looking at page 320, the paragraph that starts “to take away what constitutes close to 50% of the operational obligations of a unit is to render that unit redundant”. You have said to us that what you were left with was presiding at certain type of grievances. Do you think your quantification of 50% is accurate? Was what was taken away not significantly higher than 50%?

MR NCIZA: No, it is accurate in the sense that as much as discipline management, Chair, constitutes a sizable amount of work that the Labour Relations Unit does, and even in terms of the structural arrangement, because I developed

the structure that we are now using as the Municipality, the bulk of my employee relations officers were in the unit that deals with case management and litigation and discipline management as part of that unit.

But there is also other work that we do, you know, which speaks to institutional stability, you know, institutional stability, which ranges from, I established communication structures from a depot level, I had what was called a depot communication structure, and I had a
10 unit that was dealing with depot communication structures and departmental information structures where we manage relations in the depot so that indeed you avoid a situation wherein there is an escalation of problems or conflict in the depot that will result in industrial action, you know.

So it is one of the things that I invested in and as a result the institution bought into that arrangement so that we try, it was a strike issue, and I think I mentioned something to that effect, a strike in the Municipality, for instance, in 322, where I mentioned two strikes, institutional
20 strikes that were very costly and very heavy on the Municipality.

In 2008, we had a strike that caused the Municipality damages of up to R56 million, the quantification of the damages that were incurred. In 2011, we had another strike that lasted for about 3 months that cost the Municipality

R74 million. So we invest a lot you know.

CHAIRPERSON: Yes.

MR NCIZA: We cannot just deal with management of discipline, but investment on relationship management you know ...[intervenes].

CHAIRPERSON: All right, let me say this. Subject to anybody taking issue with your quantification, I will accept your answer that your quantification of almost 50% it is fine.

MR NCIZA: Thank you.

10 **CHAIRPERSON:** Thank you very much.

MR NCIZA: Thank you, Commissioner.

ADV MOTLHASEDI: Thank you, Chair. Mr Nciza, if I could ask you to turn to the final paragraph of your response, it is on page 322, the final paragraph. The paragraph starts with the words “the representative trade unions”. Do you see that?

MR NCIZA: Yes, Mam.

ADV MOTLHASEDI: If you go to the, let me read that sentence first, actually. It says:

20 “The representative trade unions have also raised queries with me as the DH: Employee Relations on the wisdom that informs the memorandum issued on the 22nd of August 2023.”

In the second sentence there, Mr Nciza, you highlight

the far-reaching implications that will be visited upon the Municipality on the implementation of the memorandum and there is a request of sorts to the Accounting Officer to rethink the contents of the memorandum and seek counsel. My question then is, did you ever receive a response to this memorandum or any form of communication that suggests there was a reconsideration and a seeking out of counsel?

MR NCIZA: No. This memorandum, Commissioners, was submitted to the Office of the City Manager on the 29th of
10 August. Nothing, not even an acknowledgement of receipt.

ADV MOTLHASEDI: Nothing subsequent to that?

MR NCIZA: Nothing.

ADV KHUMALO SC: Did you copy the functionaries mentioned at the bottom of page 322?

MR NCIZA: Well, let me be honest, Commissioner, I do not remember. I do not remember what I actually, in that e-mail I sent it to them, let me not speculate. I do not have the e-mail, but I know that the e-mail itself was sent to the City Manager.

20 **ADV MOTLHASEDI**: Thank you, Mr Nciza. That would then conclude the discussion as it relates to your comprehensive response, which is PN 15. Could I then ask you to turn to page 30 of your witness statement? You can go back to your witness statement.

MR NCIZA: Yes, Mam.

ADV MOTLHASEDI: We are now on paragraph 98.

MR NCIZA: Yes.

ADV MOTLHASEDI: And please inform the Commission the events of that day are set out there.

MR NCIZA: On the 2nd of September, which I think was a Saturday, another anonymous e-mail was sent to Jeff Wicks by the person who was using the pseudonym Bhixi-Bhixi, and in that e-mail the person went on to describe how Dr Mashazi is shielding Brigadier Mkhwanazi from his
10 disciplinary proceedings, and Bhixi-Bhixi even raised an issue to the effect that my powers were taken by Dr Mashazi as part of this process of shielding Mkhwanazi.

ADV MOTLHASEDI: Perhaps for the further elucidation of that point, could you turn to page 336 of your annexure bundle.

MR NCIZA: Yes, I am there.

ADV MOTLHASEDI: That is annexure PN16, and that would be the second e-mail received.

MR NCIZA: Yes, Mam.

20 **ADV MOTLHASEDI:** Yes, Mr Nciza, could I ask you to have regard there to paragraph 4 of that e-mail. You have provided an overview of sorts of its contents, but could you have regard to paragraph 4 of the e-mail. It begins “to support my stories”.

MR NCIZA: Paragraph 4:

“To support my stories, Imogen Mashhazi decided to issue a directive to the effect that from now on, only Linda Gxasheka and Kemi Behari are going to authorize any disciplinary hearings. I have pasted the document to this image so that you can see for your eyes. This was done in order for Imogen Mashhazi to protect the people inside Ekurhuleni and is using Linda Gxasheka and Kemi Behari.”

ADV MOTLHASEDI: And just to further emphasize the point you made in your witness statement, if you turn to page 337, which is the next page ...[intervenes].

MR NCIZA: Yes.

ADV MOTLHASEDI: Do you see the second paragraph on that page?

MR NCIZA: Yes.

ADV MOTLHASEDI: It starts with your name.

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

ADV MOTLHASEDI: Yes, could you please read what Bhixi-Bhixi says there in that paragraph.

MR NCIZA: -:

“Xolani Nciza’s powers have been taken by Imogen Mashazi deliberately.”

you believe these events were all related and culminated in the events of the 7th?

MR NCIZA: Thank you, Counsel. Commissioners, to me, honestly, the Bhixi-Bhixi e-mails just wreaked havoc with my life in the sense that soon after the e-mail of the 2nd, which was on a Saturday, we proceeded and we were busy preparing for a workshop on the institutional review and implementation of the municipal staff regulations that were promulgated by the Minister, which came into effect around
10 about the 1st of November 2022. These were regulations that were now going to have an impact on how we manage HR processes in Municipalities across the country.

Quite honestly, the letter of the 7th ja, came out of the blue. We sat on the 6th preparing for the workshop that was to happen on the 7th and I was playing a pivotal role in those preparations to the effect that Gxasheka even remarked to say, you know, had it not been for these protocols that the Council has, actually, you should be the one that leads the HR team tomorrow in the workshop with
20 Councillors, because we are going to meet all Councillors and we are going to workshop the Councillors on the staff regulations and how they are going to impact the institutional review process in terms of especially the political office, the political offices.

Now you have that full day engagement of the

management team. You play a role in terms of structuring even the presentation, teasing out the key issues that we need to concentrate on when we actually deal with these matters that must be workshopped. And then, boom, the next day, you will get served with a suspension letter.

And even though the suspension letter speaks to issues about qualifications, those issues, in my view, had been dealt with. But nonetheless, we get issued this. Now, fine, you get issued with a suspension letter primarily
10 because, in my view, I had raised critical issues in my letter that was served on the City Manager's office on the 29th of August and I believe that the issues that I have raised in the letter that we have just discussed now you know, effectively went to the extent of exposing the malice that the Municipal Manager and the two HOD's had in their attempts to protect Mkhwanazi and therefore to deal with anybody and everybody that was involved with the investigations and the possible discipline of Mkhwanazi.

CHAIRPERSON: Just one brief point. Yesterday I asked
20 you a question whether based on what you knew, you thought what Ms Gxasheka was doing and saying was motivated by her fear of the City Manager. I understood your answer to be in the affirmative.

MR NCIZA: Yes.

CHAIRPERSON: Now, can you please explain to me why

you say her conduct was malicious? You have just referred to her conduct and that of the Head of Legal as having been malicious. So in the context of my question posed yesterday and your response to it, can you please explain why you say Ms Gxasheka was acting maliciously?

MR NCIZA: I am saying that she acted maliciously in consort, of course, with the City Manager and Adv Behari in the sense that as much as I, I honestly believe, Commissioners, that the drive to protect Mkhwanazi was a
10 Mashazi-driven drive. That was a Mashazi project, you know. It is Mashazi that had these close links to Mkhwanazi. I know Mx Gxasheka, I have worked with her since she arrived in the Municipality around about 2015 you know.

She came in as a Divisional Head that was dealing with what was called functional line services, and I have worked closely with her on a number of projects and processes in the Municipality. I know her capacity as a person. The environment that I can see erupted when her
20 predecessor left and how her predecessor left, that is where this problem started in my view, where her predecessor was the HOD: HR, was even excluded from the process that resulted in the reappointment of Mashazi you know, and she was then put in charge of that process from an HR point of view.

And then her predecessor was not even shortlisted for her position. I mean the position with all the qualifications and experience and everything, the position gets advertised. I do not get even shortlisted from a position that I have held and my junior, you know, qualifies for shortlisting. It is such a mess.

And then she got into this close proximity with Mashazi and she, unless she found herself captured because everything Mashazi wanted, she did, everything
10 you know, and unfortunately, some of us are the characters that we are. You know, you would be like, but no, this is wrong you know.

What I mentioned yesterday about ...[vernacular] I do not want to be shouted at, you could go to HR in Ekurhuleni and ask employees, they would tell you we had an HOD: HR who genuinely fears the City Manager and HOD: HR on every issue effectively has abrogated that responsibility and giving it to Adv Kemi Behari. [Indistinct] advocate, no, no, no, you must leave the advocate, no advocate
20 ...[vernacular] you know.

That is the type of environment that was created, whether it was as a result of maybe, whether there is a combination, as a combination of on the one side fear and on the other side lack of capacity to stand for your own and to actually lead the function that Councillors appointed you

to. For me, it was a combination of both.

So I view it as malice how the things then turned out, because there was malice in the sense that I would rather sacrifice this person, these processes in order to protect myself from ridicule and being lambasted you know. That level to me, at that level to me that is malicious.

ADV BALOYI SC: But, Mr Nciza, there is, of course, the third possibility that she made common cause with Dr Mashazi.

10 **MR NCIZA:** Yes, there is that possibility as well, mam.

ADV BALOYI SC: Yes.

MR NCIZA: Yes.

ADV BALOYI SC: Thank you.

ADV MOTLHASEDI: Thank you, Commissioner. Mr Nciza, you have indicated today that your belief is that the facts that you spoke up and you took steps, you know opposing actions to shield Brigadier Mkhwanazi resulted in your suspension on the 7th, is that right?

MR NCIZA: Yes.

20 **ADV MOTLHASEDI:** And if regard is had to the notice, your notice of suspension on page 338, it sets out in paragraph 2 distinct reasons warranting the suspension, your suspension, reasons relating to your academic requirements.

MR NCIZA: Yes.

ADV MOTLHASEDI: Yes, and can you please comment to the Commission whether, in your view, those reasons are valid or you disagree with them, and that you maintain that the real reason is the position that you took in opposition to the shielding of Brigadier Mkhwanazi.

MR NCIZA: Commissioners, these are invalid reasons. This is just a guise that was used to camouflage the real issue. Firstly, I have worked for that Municipality since 1997. When I came into that Municipality, I provided my
10 qualifications. I moved from being an intern student to an admin officer and every time you get promoted, you respond to an advert. That is how the Municipality works. There is an advert, you respond to the advert, when you respond to the advert, you provide your qualifications, you provide your CV and everything, so that the people who are going to shortlist, have a sense of who are we shortlisting. You provide the documentation. Get appointed in 2003 as the Manager, provide the documentation, you know.

In 2011, I was almost appointed as the Director:
20 Labour Relations. I provided the information. I even went to the extent of a psychometric assessment in 2011 you know. It took about three months for the Municipality to make a determination between myself and the eventual person who was appointed.

But nonetheless, the information that speaks to my

qualifications, my skills, my competencies as an individual, who in fact literally grew up in the Municipality, you know, were provided. Then 2017, provided - the Municipality at all material times had my qualifications, at all material times. And then I get suspended because I am told that I did not provide my qualifications. I am in my second term as a Divisional Head: Employee Relations and I get told, no, I did not provide the qualifications. I mean, seriously, in which world?

10 **CHAIRPERSON**: Do you have any idea as to what triggered the need for you to produce these qualifications?

MR NCIZA: Mr Commissioner, or Chair, in the e-mail that we dealt with of the 2nd of September, there is an individual that is included that I believe was weaponized by the Municipality. Bhixi-Bhixi includes that individual who happens to be ...[intervenes].

CHAIRPERSON: 336.

MR NCIZA: 336. Yes, I would not mention the name because I was told not to mention names, but under the cc,
20 the last individual that is cc'd, you know the usual names that have been mentioned all along, actually the one, the last before Spies you know, you see the cc there is Imogen Mashazi, Linda Gxasheka, Xolani Nciza, Kemi Behari and then this individual, and then Revo Spies.

There is, this individual happens to be a General

Secretary of a union that is unrecognized in the Municipality, but the way that this person has got unfettered access to all sorts of things, inclusive of personnel files of employees you know, is able to write all sorts of stories about everybody. This person was, in my view, weaponized to start a campaign which involved even a, what you call, what is this thing, a criminal allegation of fraud against me, which was investigated by the SAPS fraud unit, and indeed a determination was made and a *nolle prosequi* certificate
10 was issued.

So this campaign had been ongoing, and I know for a fact that indeed Mkhwanazi was part of this campaign and I had raised these issues. Unfortunately, I do not have access to my laptop and the likes, but I had raised issues about these things. Now, and that criminal investigation had concluded. After the criminal investigation that said all my qualifications and documents are authenticated you know, I get suspended.

CHAIRPERSON: This person, the second last cc'd person,
20 is the one that said you lacked the necessary qualifications?

MR NCIZA: Yes.

CHAIRPERSON: All right, thank you.

MR NCIZA: And that was investigated. He was the complainant in the criminal investigation, investigated,

everything was issued. He even went to the extent of sort of appealing the determination of the NPA and that matter was then taken to the Chief Prosecutor who reviewed the dockets and everything and issued to say, but there is nothing wrong with this person, his qualifications are proper you know.

But then the Municipality goes and suspends me using that allegation. So in my view, I mean, they always had the qualifications you know. So, all of a sudden, they
10 suspend me saying that I do not have qualifications, and that started another horrendous experience.

ADV MOTLHASEDI: Thank you, Chairperson. So, Mr Nciza, if I understand you then, the, even the contents, you know, of what is contained in the pre-suspension notice, according to you, you know, parts of a broader scheme to protect the Brigadier from disciplinary processes and accountability. Is that correct?

MR NCIZA: Yes, Mam.

ADV MOTLHASEDI: Thank you. This then is
20 ...[intervenes].

ADV BALOYI SC: If I may. Paragraph 5 of that pre-suspension letter, what is that about? It speaks about a memorandum of 20 July 2023 about invoices, the signing of invoices that you apparently did not comply with. What is that memorandum and what are you supposed to have

done?

MR NCIZA: Madam Commissioner, honestly, I was not even given an opportunity, of course, to respond to this. I actually discovered that indeed such a memorandum had been issued by the HOD: HR to say to all Divisional Heads, that – remember, I talked, I spoke about the specimen delegation, the specimen delegation issue, where she said that, you know, she is holding back the new delegations in terms of specimen signatures and the likes, and effectively
10 barring Divisional Heads from signing invoices or approving invoices, you know.

And there were two, I think two invoices that I had signed post the issuance of that memorandum. And quite honestly, my take on it was that I have a delegation from the City Manager to deal with invoices of attorneys in labour disputes. So all other invoices I do not sign in terms of what she had raised as a general member to all Divisional Heads.

But my specific, and indeed, remember I do not just
20 deal with invoices of attorneys, there is a whole lot of other things that I have signing powers over. So that is suspended, but the delegation that comes directly from the City Manager regarding a labour dispute has not been suspended, because the only person that can suspend that is the issuer of that delegation. So, ja, you know, it was

just one of those. I signed invoices of attorneys for work that has been done. That payment was due.

ADV BALOYI SC: Thank you.

MR NCIZA: In any event, they dropped it along the way. When we went on to deal with other things, they dropped it totally.

ADV MOTLHASEDI: Thank you, Commissioner. Mr Nciza, in conclusion of this topic, a question that has been put to you repeatedly is what you believe are the underlying
10 reasons motivating the conduct by the City Manager to protect Brigadier Mkhwanazi and the response you have offered is that of proximity. Is that correct?

MR NCIZA: Yes.

ADV MOTLHASEDI: You have provided the Commission with a recording that you would ask us to play.

MR NCIZA: Most definitely.

ADV MOTLHASEDI: Our technical team is going to set us up and then I will ask you to answer a few questions thereafter.

20 **MR NCIZA:** Ja, we definitely need the volume.

VIDEO RECORDING PLAYED

ADV MOTLHASEDI: Mr Nciza.

MR NCIZA: Yes, Mam.

ADV MOTLHASEDI: At this juncture, are you able to identify the lady in the centre image who seems to be the

centre of the song being sung?

MR NCIZA: That is Dr Imogen Mashazi.

ADV MOTLHASEDI: Thank you.

MR NCIZA: The City Manager.

CHAIRPERSON: And will the witness explain why you say the City Manager is the person at the centre of the song being sung. Will somebody explain that?

ADV MOTLHASEDI: Yes, chairperson ...[indistinct].

CHAIRPERSON: All right, thank you. Thank you.

10 **VIDEO RECORDING PLAYED**

MR NCIZA: There is a critical element that we jumped.

ADV MOTLHASEDI: Perhaps before we do that, I am going to play the video again. I want to play the video again, but let us start by asking you to identify, you know, the source of the video, yes, and provide the Commission with details of how it came to you.

MR NCIZA: Thank you, Counsel. Commissioners, this video came to my possession around about mid-last year, mid-2024. I have had it quite a while. And it was sent to
20 me by a colleague, or a former colleague you know who was like, hey, some people are having fun, they have got mothers in the institution.

ADV BALOYI SC: Sorry, that was going to be my question. What is this and these people, is this their mother who are singing Umamalo? If you can just give us a fuller context of

it.

MR NCIZA: Okay. The person who sent me the video, Commissioners, was at the function. This is a function that happened in December 2023, on about mid-December 2023.

ADV BALOYI SC: And is it a municipal function or a private affair?

MR NCIZA: It is a Christmas party. It is a Christmas party.

ADV BALOYI SC: Of the Municipality, municipal staff.

10 **MR NCIZA**: I will try and explain.

ADV BALOYI SC: Okay.

MR NCIZA: I will try and explain. There is no official Christmas parties in the Municipality, but this was some form of a Christmas party that was arranged by the City Manager's office and specific individuals then get invited by the Municipal Manager's office that are close to her.

ADV MOTLHASEDI: And can you tell the Commission any information about that particular venue, do you know where the party was held?

20 **MR NCIZA**: No.

ADV MOTLHASEDI: No.

MR NCIZA: I never concerned myself with that.

ADV MOTLHASEDI: Thank you.

CHAIRPERSON: And may I ask you to also translate the words being sung. The song says, Umamalo osi zalayo.

MR NCIZA: Umamalo, this is our mother, osi zalayo, who bore us. Is it born? Ja, who gave birth to us. Ja, who gave birth to us. Ja, that is what the song is, jubilant song.

ADV MOTLHASEDI: We are going to play the video again and stop it in a certain position so you can identify individuals.

VIDEO RECORDING PLAYED

ADV MOTLHASEDI: You have identified for the Commission and translated the lyrics that are being sung.

10 **MR NCIZA:** Yes.

ADV MOTLHASEDI: But part of what is, do you see the individuals who are pointing towards a certain person as the song is being sung?

MR NCIZA: Yes.

ADV MOTLHASEDI: Yes, and who is the person being pointed towards while the song is being sung?

MR NCIZA: The person that has been pointed towards whilst the song has been sung is Dr Imogen Mashazi.

ADV MOTLHASEDI: Thank you.

20 **VIDEO RECORDING PLAYED**

ADV MOTLHASEDI: Mr Nciza, are you able to identify the person speaking?

MR NCIZA: The gentleman in the white T-shirt, a short-sleeved T-shirt, who is facing Dr Mashazi is Brigadier, or rather at this point he was the Deputy Chief of Police,

Julius Mkhwanazi.

ADV MOTLHASEDI: Thank you so much.

VIDEO RECORDING PLAYED

ADV MOTLHASEDI: Are you able to tell the Commission what the gentleman with the white T-shirt said in that part of the video?

MR NCIZA: Can I propose something, Counsel? Can you just play it until the end and then we will talk, because when we stop it there is a critical part that the
10 Commissioners are not going to be able to hear.

VIDEO RECORDING PLAYED

ADV MOTLHASEDI: Thank you, Mr Nciza. We played the entirety of the recording as you requested. My previous question to you related to a period where the gentleman you have identified wearing the white T-shirt was making some remarks, he was speaking, and I asked you whether you heard the remarks that he was making and whether you could please share those with the Commission.

MR NCIZA: Thank you, Counsel. Yes, indeed, I have
20 heard the remarks. The first part of the remarks, because the latter part of the remarks is, get drowned out by the response of the crowd. The first part of the remarks goes, we will die for you, pointing to Dr Mashazi, and then he continues to say, I will take a bullet for you, pointing to Dr Mashazi. Unfortunately, then the further part, and I have

tried to listen to it on several occasions, I cannot make out what he says further, but the crowd is revved up by those statements.

ADV MOTLHASEDI: Thank you. And Mr Nciza, one of the questions you have ...[intervenes].

ADV BALOYI SC: Maybe before you move on to your new question. You have had the opportunity to watch this video quite a number of times. There is someone who says, thank you.

10 **MR NCIZA**: Yes.

ADV BALOYI SC: And then we can go back there if necessary. Have you been able to establish who speaks there, who says, thank you, and it is in response to what?

MR NCIZA: Thank you, Commissioner. Indeed, I have been able to establish who speaks there. That is Dr Mashazi. To Deputy Chief Mkhwanazi's remarks, she responds, thank you.

20 **ADV BALOYI SC**: Which part of the remarks, of the two, you have said there is a part where I think we will die for you and there is I will take a bullet for you. Which part is he, if any of the two, if it is any of the two?

MR NCIZA: It is, my understanding is that he speaks, we will die for you, I will take a bullet for you, she responds, thank you. He continues then, but by the time he continues, his voice is muffled out by the response of the crowd. But

she responded after the two statements.

ADV BALOYI SC: Yes, thank you.

ADV MOTLHASEDI: Thank you, Commissioner. Mr Nciza, you have repeatedly stated in the context of your evidence about a proximity between Brigadier Mkhwanazi and the City Manager. Having played that video, would you care to comment on that proximity in the context of that video?

MR NCIZA: Thank you, Commissioners. What is clear in my mind is that we have a situation here where between
10 February 2023 and December 2023, the dynamic has changed. The situation concerning Mkhwanazi has totally changed in the Municipality. February, allegations are submitted, investigation is conducted. In June, the serving of charges is stopped. In August, you know, the meeting that was held with the management of EMPD where indeed Mkhwanazi indicated that certain people are *de facto* Chiefs of Police, we do not have a Chief of Police and all sorts of things. The Chief of Police gets put on special leave, you know, and then in the meantime Mzolo goes on retirement
20 while Xolani gets suspended, as one of the *de facto* Chiefs of Police gets suspended. The actual Chief of Police is put on special leave.

And then what you have is Mkhwanazi who gets promoted. A few weeks thereafter, there is this, Mkhwanazi then expresses his gratitude, his loyalty, and all sorts of

things to say, you know what, I will die for you, because you are my mother. You have not only secured my continued employment in the Municipality, but you have also advanced me against all odds, against all processes of the Municipality.

In fact, you have even go on to change processes that have been there, processes that have stood the test of time, just like that, they have been changed because you protect me, you are my mother. The affinity that exists
10 between you and I is to the extent that I would take a bullet for you.

And I do not take this to be I will take a bullet for you in the ordinary sense of a VIP protector protecting their principal, but I take this statement to be a statement that is issued by a person who truly believes in the relationship that they have with the other person you know ...[vernacular] and therefore, I would go to the ends of the world for you, because I am where I am and who I am because of you, my mother.

20 **ADV BALOYI SC:** I am going to ask you a question, even though I think the answer is obvious, but I would like to hear what you say. Is it even appropriate for any employee under any circumstances, proximity or no proximity, whatever the source of the proximity, to say to their superior, I will die for you, I will take a bullet for you,

unless they are a personal protector, unless that is their job definition? Is it appropriate for a subordinate to ever have that kind of relationship?

MR NCIZA: No ways. The only instance where a person is expected to take a bullet is in the line of duty. You know, it is in the line of duty. The person who would be expected to take a bullet is a person that protects the principal and those people are trained for that purpose you know, and it is part of their functional disposition.

10 We have those people in the Municipality. We even have created a special dispensation that we call a VIP allowance because of the risk that these people are taking in becoming VIP protectors. You know, we have a dispensation in the Municipality that was specifically created for those people. Mkhwanazi has never been one of those people.

ADV BALOYI SC: What does that kind of loyalty that we have just described now, which it is not job prescribed, but it is because we are friends, we are special friends, what
20 does that kind of loyalty do to organizational discipline between a subordinate and a senior, even if they are not direct subordinates. But in the workplace if you have got people who have that kind of loyalty and relationship to their superiors, which is not related to their functions, what does it do to organizational discipline?

MR NCIZA: Madam Commissioner, in my professional view, this is beyond an anomaly. This means I am loyal to you, I am not loyal to the institution. We work for an institution. We do not work for persons. We are not employed by persons. Even if a person is in a top management position, if that person is in a position, that person can move out of that position at any given point for whatever reason. There can be a termination of any form.

But if I am going to be loyal to you and not the
10 institution, then there is a serious problem, because then it means I am willing to bend the rules. I am willing to ignore protocol. I am willing to go around procedures, systems, everything of the institution so that I deliver to you. So I am not delivering to the institution.

And this institution is the institution that is supposed to serve the people. If I am going to have a loyalty to you as an individual, that means I do not have loyalty to the people that the institution stands for. The institution is created to provide for the people, for the
20 residents, the 3.4 million or so residents of Ekurhuleni.

Then you have a person who is a senior policeman, a senior policeman. At this point, he is no longer a Brigadier, he is a Commissioner. He is at the level of Spies. And he is effectively saying, I will give loyalty to this individual and not to the people that actually I am supposed

to serve.

ADV BALOYI SC: [Indistinct]... [microphone off] so that superior - all right, Mr Nciza, I will finish off my question when we come back.

MR NCIZA: Oh, okay.

ADV BALOYI SC: Okay.

CHAIRPERSON: Let us adjourn and resume at 2pm.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **ADV MOHLASEDI:** Thank you, Chairperson. Mr Nciza, the look on your – Chairperson, please just give us a few minutes to obtain the witness' files. Thank you. Please let me make an enquiry. Security cleared them before lunch. I just want to find out where they are.

CHAIRPERSON: And it is set to load. Ja, please. Thank you.

ADV MOHLASEDI: Thank you Chairperson. Mr Nciza, please confirm then that you have got the two files, your witness statement as well as your annexure bundle.

20 **MR NCIZA:** Yes, I do. I just do not have the other PN15 documents. I am not sure.

ADV MOHLASEDI: I will provide them to you shortly.

MR NCIZA: Okay.

ADV MOHLASEDI: Thank you, Chairperson. Mr Nciza, could I ask you please to turn to page 30 of your witness

statement? When we got to lunch, we had concluded the topic before and we are now beginning a new topic at paragraph 100. The topic is entitled events subsequent to my suspension. Are you there?

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Thank you. Could I ask you to detail to the Commission the contents of paragraph 100? You touched on this issue in your evidence yesterday and I would invite you to make any further remarks you wish to
10 make here.

MR NCIZA: Thank you, Counsel. Commissioners, on about the 14th of July 2023, a report was generated by the Human Resources Department. An official who is in the office of the HOD HR, who was not, in terms of the functional responsibilities in the municipality, necessarily seized with remuneration related duties. This individual is more of support in the office of the HOD.

The municipality actually has a unit that deals with remuneration and benefits that would be seized with reports
20 that pertain to salary adjustments and the likes. However, this specific report was not generated in that unit, but it was generated in the office of Ms Gxasheka. That report had effectively entailed a salary review for the HODs.

I reflect on paragraph 100 that these individuals, on their appointment in March 2023, they were already internal

candidates, so they got promoted to the positions of heads of department. They were on the same level as divisional heads, then they got promoted to the next level, which is HODs, and effectively received salary increments varying between R200 000 per annum to R300 000 per annum. That then happened in March.

And then this report that was generated was to effectively then move their packages. If my memory serves me well, I think I can just refer to the actual report so that I
10 give the specific figure.

ADV MOHLASEDI: It is Annexure PN18, page 341 of your annexure bundle.

MR NCIZA: Thank you. Thank you, Commissioners. The report on 341 then speaks to the adjustments that were proposed. And the adjustments that were proposed were effectively to now move them. I am just looking for the actual package that they were on, but it was going to move them to the maiden package of 264021, that is on page 343. The initial package that they moved from would have been
20 that 2085.

So, my criticism of this report is that when you actually read the report, the report does not articulate any HR basis for such a salary increase. And I am saying this because there had not been any evaluation of the functions which would have spoken to a process of job enrichment or

job enlargement, which would then invite a consideration of a salary adjustment.

The functions that are articulated in the report would have been the functions that the position had at the commencement of the contract, in any event. That is one. And if indeed there were such considerations from a human resources point of view, then those considerations should then go to Council, because Council has approved the positions. And in the approval of the positions, the Council
10 has articulated what are the functions that are to be performed. And if indeed there is a job enlargement or job enrichment exercise that had occurred, Council must be notified so that council indeed approves such, but that did not happen.

In any event, I indicated to the City that such processes of remuneration packages for the Municipal Manager and managers directly accountable to the Municipal Manager are regulated by means of the upper limit dispensation that the Minister determines. And in
20 terms of that dispensation, at the offer of employment for a head of department or for a Municipal Manager, considerations about where they shall be put in relation to what is reflected on page 343 in terms of the scale.

The scale has got three levels. You have got a minimum package, a medium package, and a maximum

package. That determination is done at the offer of employment in terms of the gazetted upper limits that the Minister would publish every year. Now when you get to the offer of employment, what would determine whether an HOD is at minimum, medium, or maximum would be the results of the competency assessment that would have been conducted.

The competency assessments would have four outcomes. I heard in some other process that somebody
10 spoke about failing and passing. There is no such thing in competency assessments. There are four outcomes. The first outcome is a basic competence. The second outcome is a competent. And then the one, the next one is an advanced competency. And then you have got a superior competency.

Now the regulations say that if indeed an employee gets basic, the municipality is cautioned against employing such a person. But should a municipality employ such a person, that person must be employed with a development
20 plan that would be in place in order for the person to develop the necessary competencies that the better of test would have proven that this person is lacking in.

So you can appoint, but you are cautioned because there are processes that must be put in place to develop the competencies of that particular person at such a senior

level. Then if you are at a competent outcome, you must then be put on a minimum package. If you are at advanced, then you can be put on a medium package. And if you are superior in terms of your competency skills, you can be put at the maximum package.

So that is the basis of how the table is translated in terms of its implementation. There is no movement, there is no movement in the levels that is envisaged. There is no, in other HR practices where there is a salary scale, an
10 employee would have a merit advancement system in place. Here that does not apply. The only thing that the senior manager would get on an annual basis, the Minister would then make a determination of the cost of living adjustments, which is your salary increase typically based on a consumer price index basis, your CPI basis. Then that would be implemented to the total cost and then you get that increase like any other employee.

Where you are located as per the competence outcomes remains. But this report, this report is a report
20 that says to the municipality, you know what, as much as we were employed at the minimum package, we are still under probation by the way, however, increase us from that minimum package to the medium package. And there is no framework that actually speaks to that and the report does not deal with how the upper limits are to be implemented as

regulated by the Minister.

So, and the only thing that I could think of, having read the report and actually looked at the situation, Commissioners, is that these two individuals, and there were other HODs by the way that were employed at the same time, and they are not part of the report, you know. There are HODs that were employed by the municipality at exactly the same time, but they were not considered in the report. This report sought to only benefit these two
10 individuals who happened to be involved in the Mkhwanazi matter only about two weeks before the generation of the report. That is number one in terms of your, what you call, paragraph 100.

Thank you. In terms of paragraph 101, and I think I need to also answer the question that Commissioner Baloyi raised yesterday, I answered partially the question that was raised about the second leg of the interview process on the appointment and promotion of Brigadier Mkhwanazi to Deputy Chief of Police.

20 You are having a situation that defies any HR process that I have ever been involved in. You start off the year having a situation where this employee is facing dismissible offences, and then end the year by promoting that employee. I have not come across that. This was the first time that I actually have come across such a situation.

But in relation to how the actual promotion happened, I raised yesterday that I had problems or issues with how the Panel was constituted, but there is this other leg that, Madam Commissioner, you raised about the skipping of the second part of the process of appointment.

I referred to the Commission yesterday to the LAC judgment that dealt with a recruitment process, and I think it is in the bundle, where the municipality went to the LAC and made an argument. In that instance, this employee had
10 failed in the interviews. Having failed in the interviews, the Panel said only the people, the two candidates, that had passed in the interviews must go for competency assessments.

When those two individuals failed the competency assessments, the Acting HOD HR and the then City Manager concocted an exceptional recruitment process to take people that had failed the interview without even going back to the Panel, people that had failed the interview and took them to the competency assessment. And on the basis
20 of an individual passing the competency assessment, there was a proposal to appoint that individual into a position who had failed the interview process.

And indeed, we went to the LAC and the LAC agreed that that was wrong. How that entire process was handled was wrong. In this instance, the information that

even Chief Mapiyeye testified on talks to, I think it is a flip of that one, where now you have a person who has attended an interview but then does not go to competency assessment. Then that person gets promoted without even going to competency assessments.

I testified that the contractual dispensation that pertains to divisional heads in the City of Ekurhuleni is a dispensation that is akin to the contractual dispensation of heads of departments and the City Manager. Everything
10 about their contracts gets reflected into the DH contract and everything about the recruitment process of HODs gets performed in respect of the appointment of divisional heads. The position of Deputy Chief of Police is equivalent, or is indeed, a divisional head level position.

And therefore, all divisional head level positions in the municipality since 2003, when it was determined that divisional heads shall have the same contractual dispensation as heads of departments, everybody attends competency assessments. Everybody. It is a policy of the
20 municipality that people must attend competency assessments.

And if indeed, the allegation that Mr Mkhwanazi did not attend competency assessment is true, then that recruitment process is fatally flawed, you know, and such a promotion is irregular.

ADV BALOYI SC: That process of attending a competency, so it is a two-legged process. You have the interview and then you have the competency test.

MR NCIZA: Yes.

ADV BALOYI SC: Does it also contemplate that after the competency test, the Panel or the committee will reconvene for a purpose, for some purpose, or the decision is finally made by whoever when they get the competency test results?

10 **MR NCIZA:** The policy of the municipality is very clear. An appointment is made on recommendation of the Panel. Even the, what is this, the regulations. the regulations on the appointment and conditions of service of senior managers in local government are very clear. The appointment of a person is made on recommendation of the Panel. So you have the first step where you have got the interview. The Panel interviews you. Let us say the Panel interviews five candidates.

20 I am honestly a bit baffled by the fact that only two candidates were interviewed in this particular process. You have an interview of five candidates. You then as a Panel take a view that the two top scoring candidates must then go for competence assessment. You have not yet recommended a person. It cannot be that you have recommended because you cannot recommend two people

for one position.

So the people go for competence assessment. You should then come back to the Panel to say that these people have gone for competence assessment. These are the results. Then the Panel must, by way of resolution of the Panel, recommend to the appointing authority. If it is the council that is the appointing authority, which would be an instance of the Municipal Manager or HODs, then it must recommend, generate a report to council indicating that this
10 is the process that was followed, and therefore this person is now recommended for appointment.

If it is a position like the one of a Deputy Chief of Police, the appointing authority, by way of delegation, is the Municipal Manager. Then the Panel must then sit, say these are the results, and therefore of the people that went to the competence assessment, this is the person given the outcomes of the interview and the competence assessment as a combined process. Now we are proposing or recommending this individual for appointment.

20 **ADV KHUMALO SC:** So do you know how the Municipal Manager determined that Brigadier Mkhwanazi should be appointed as Deputy Chief of Police in the absence of the results of the competence assessment and a recommendation from the Panel?

MR NCIZA: My engagements with the chairperson of the

Panel point to the Panel sat, they interviewed, they sent the people to competence assessment, the HR head then submitted a report to Doctor Mashazi, she then appointed Mkhwanazi, and the chairperson of the Interview Panel, who was Chief Mapiyeye, then got told, *post ex facto*, that there is an appointment that has been made.

ADV KHUMALO SC: And that according to you is irregular?

MR NCIZA: That is irregular.

10 **ADV MOHLASEDI**: Thank you. Mr Nciza, you are still dealing with the contents of paragraph 101, but I would ask you to address the Commission on that third sentence in paragraph 101, starting with the word Commissioners.

MR NCIZA: Ja, like I had indicated, Commissioners, that it is worse because it is within the same year. We are talking about some years down the line, and then a person gets promoted after escaping, for lack of a better word, escaping a disciplinary process, you know, on serious allegations. You then have a person going through this funny
20 recruitment process and then gets promoted. It is unheard of. I have never experienced it.

You know, to such an extent that the regulations, both the Municipal Staff Regulations, I think as well as the Senior Managers Regulations, stemming from I might be mistaken, but I think it is section 56A, or section 50, around

about section 56 of the Systems Act. The legislature took a view that there must be some prohibition that is put into the legislation on the appointment of people that have been dismissed.

You know, and I know CoGTA at some point even raised the issue with especially the metropolitan municipalities, to say you have instances where a person gets charged and the person then resigns, and then rocks up at another municipality. You know, so they wanted even
10 to regulate that. So there was, there is this emphasis on the need to curb appointment of persons that have been dismissed for serious allegations like gross dishonesty.

This individual had allegations of gross dishonesty. Yes, a process was implemented to quash the processing of those allegations but nonetheless the allegations still remain. They are there and they have never been disproven. You know, no matter what they did, whatever Mashazi and Gxasheka and Behari did, those allegations have never been disproven.

20 Then you promote the person. The allegations are still lingering. Whatever they have done the allegations are still lingering. So that is why for me it honestly sends shivers down my spine, you know, to hear that indeed this person has been promoted in the midst of everything that had happened.

ADV MOHLASEDI: And in the paragraph subsequent to that you detail some developments as they regard IPID. Can I ask you to address the Commission, starting at paragraph 102, please.

MR NCIZA: Yes. Recall that earlier in my testimony, Commissioners, I indicated that as much as there was the Erasmus investigation, there was also an IPID investigation into the Blue Lights Scandal. Now it came to my attention that in December 2023, indeed IPID handed their report.
10 My briefing was that IPID attempted to give the report even to the Chief of Police and given what was happening, he had advised them to give it to the City Manager, but eventually it was given to the Executive Mayor.

And that IPID report had damning findings against Mkhwanazi and it had directed that an internal disciplinary process be held and simultaneously it had indicated that it was going to refer the docket to the NPA.

ADV MOHLASEDI: Thank you. And, Commissioners, just for reference, the full IPID report is attached as JM19 to the
20 Mapiyeye bundle. And Mr Nciza, please then proceed to paragraph 103, please.

MR NCIZA: Yes. Now, after the IPID report, I came across and quite honestly, it is funny, Commissioners, because this document was widely circulated by Mkhwanazi, the Deputy Chief of Police Mkhwanazi, to politicians that are in the

municipality to say that I was cleared.

ADV MOHLASEDI: Apologies, Mr Nciza ...[intervenes].

MR NCIZA: That is on 103.

ADV MOHLASEDI: So that is the document on page 344 of your annexure bundle?

MR NCIZA: Ja, PN19.

ADV MOHLASEDI: That is correct. I am not the only person that got to be in possession of this document, Commissioners. It was widely circulated within the municipality. And what is on PN19 in essence? Firstly, it was not signed by Adv Behari. It is one of the many funny things that happens in the municipality when crucial decisions are taken. The incumbent of the position is not there. It is an acting person that signs. His subordinates signed it.

There was a person who was acting in his position and another person who was a senior legal advisor at the time, they are the ones that purportedly crafted the letter and signed it. Firstly, the letter disagrees with the findings of IPID relating to corruption and fraud that IPID concluded against Mkhwanazi. Now, in the absence of any new investigation or new evidence, the letter from these individuals rejects the outcome of the IPID report and says that IPID made material omissions and did not thoroughly investigate.

In sum, the City, despite possessing an investigation report to the contrary, makes a finding that, or rather, makes a submission that the IPID findings are incorrect. Now, my problem with this report or the letter on PN19 is a letter from the legal department. My expectation of a legal department communication to an agency of the state on a matter that falls within the legal ambit of that state agency is that if indeed you are to write such a letter and advance an argument to the effect that that state agency is wrong, you must rely on Council resolutions that
10 would say, sorry state agency, your findings against us are wrong because what our employee did is informed by this resolution of the municipality.

You must rely on a council policy. You must be able to say in terms of council policy that was adopted as per this item of the municipality, your findings are wrong because our employee conducted himself in line with the provisions of this policy. You must as a legal department, Commissioners, as a legal department, postulate a view
20 that says in terms of these laws, this employee that you are saying is corrupt and has conducted himself in a fraudulent manner is covered, his actions are covered in terms of this law.

You can read this letter. This letter regurgitates the views that were expressed by Chris Steyn that we

discussed yesterday on the norm that Chris Steyn says was done. You take for instance paragraph 5 on 345 where the individuals from the legal department say the restoration of the vehicles was not done by the suspect but by the authorised personnel from the fleet.

Steyn says clearly in his letter Mkhwanazi came, Mkhwanazi provided a donation letter, Mkhwanazi this, I facilitated the restoration of these vehicles on the basis of Mkhwanazi. But the legal department says therefore
10 Mkhwanazi is not – the finding against Mkhwanazi is wrong.

ADV MOHLASEDI: If I may ask, Mr Nciza, you say in paragraph 103 of your statement, there is a sentence there, it is the third sentence where you say:

“In the absence of any new investigation or new evidence, the letter rejects the outcome of the IPID investigation.”

Do you see that?

MR NCIZA: Yes.

20 **ADV MOHLASEDI**: Can I ask you to turn to page 344 of the letter? Page 344.

MR NCIZA: Yes.

ADV MOHLASEDI: The last sentence in paragraph 2.

MR NCIZA: Yes.

ADV MOHLASEDI: Could you read that sentence, please?

MR NCIZA: It says:

“I have consulted with internal staff
and I am advised that based on the
current evidence, it would be difficult
to prove fraud and corruption.”

ADV MOHLASEDI: Please comment on the rejection of an
external report provided by IPID based on consultation with
internal staff if you have any views on that.

MR NCIZA: Firstly, the internal staff that are supposedly
10 consulted, Commissioners, are not listed. They are not
listed. The reference in the letter to Steyn talks to the
letter that, the statement that Steyn made in March 2023,
which was part of the docket. And indeed, to simply say
that they consulted without even indicating who they
consulted also does not make sense.

ADV KHUMALO SC: You keep saying they, but the author
of this document says I. Paragraph 1, I refer to your
memorandum. Paragraph 2, I have considered the matter.

MR NCIZA: Yes.

20 **ADV KHUMALO SC:** The paragraph you have just read,
last sentence, I have consulted with internal staff. I am
advised that based on this and this and that. And then
throughout the document it says that I, I, I. Do you know
who the author of this document is?

MR NCIZA: On page 348.

ADV KHUMALO SC: No, because there are two people who have signed, but it is clear from reading this that only one person authored. It is not clear whether the Acting HOD simply endorsed the letter or whether he is the author of the letter. So it is really not clear who authored and who made the investigation and who consulted with internal staff.

MR NCIZA: And that is why, Commissioner, I refer to they.

ADV KHUMALO SC: It does not say we.

10 **MR NCIZA:** Yes.

ADV KHUMALO SC: Because if it said we, then you could say they.

MR NCIZA: It is difficult for me to say who.

ADV KHUMALO SC: Ja.

MR NCIZA: Because firstly, I had indicated, Commissioners, that let us say if you go to page 344 at the commencement of the letter, you know, how we write letters would have an enquiries person. you know, you look at even the letter that was dated the 22nd of August. It is
20 signed by the City Manager, but you have got an enquiries person. Then it tells me that the person who would have been the author, even though the person who owns the document is the City Manager, but the author would have been this person.

So in this instance, you have got two people that

have signed, and it is not even clear exactly who amongst the two people is the author. But for purpose of a hierarchical ownership, let us call it a hierarchical ownership, I would say then the Acting HOD as the last signature. You know, because the senior legal advisor is, or the legal advisor is the junior person to the Acting HOD. So I would assume, Commissioner, if indeed, if I was to use a singular person, I would say that I would refer to the Acting HOD, but it is not apparent from how they have
10 crafted the letter. But if indeed there is to be accountability for this letter, in my view, both of them have to account.

ADV MOHLASEDI: Mr Nciza, if I can take you back where you were. You were on page 345 of the letter, and you were dealing with the issue of donation under paragraph 5.

MR NCIZA: Yes.

ADV MOHLASEDI: But I would like to, still on the issue of donations, and the response provided by Mr Chris Steyn from Fleet, I would ask you to turn the page to 346, at the top of the page. Do you see the sentence beginning with
20 the inverted commas, did you then consider?

MR NCIZA: You see, again, Commissioners, maybe my approach to compliance issues might be different from the people at the legal department. But you do not take a view that there was nothing wrong that the employee did, because you are saying to an investigating authority, did

you consider that all other donations in EMPD were also non-compliant with the process that you described? And surely Chief of Police and other senior management, including Chief's Spies, who has lost this complaint, cannot be ignorant of such donations.

Let us assume that indeed they were not compliant. Does that mean, therefore, this one that is also non-compliant must be let go, you know? Because that is the suggestion that I read from this.

10 **ADV MOHLASEDI**: Please continue in that paragraph.

MR NCIZA:

“Furthermore, according to Steyn, the EMPD was under-resourced at the time. The Chief of Police Mapiyeye and Deputy Chief Spies addressed this to effectively and efficiently protect the residents of the City of Ekurhuleni.”

My God. I am sorry. We do not write like this as management. We simply do not. This is not a management
20 thought process, let alone a legal department thought process. This is not about protecting the interests of the municipality.

I indicated yesterday that if indeed there was a scarcity of resources, there should be a report that is generated. There is a report that must be generated. If

there is a scarcity in Mkhwanazi's division or unit, my expectation is that as a manager, he generates a report which report, at the end of the day, if we are going to go out and source donations, is there to say that indeed there is an acknowledgement by the institution, not by Steyn. Not by Steyn.

And they are raising these questions as if now they are saying, if indeed there is anything wrong that has happened, it is Chief Mapiyeye and Chief Spies that have
10 done something wrong.

ADV BALOYI SC: Mr Nciza, you say management does not write this way. At page 348 we do have the names of the people, and you say the letter is widely circulated. The one is Adv Njabulo Zulu, Legal Advisor. The other is Thabo Makhwiting, Acting HOD Corporate Legal Services, and both their dates are the 13th of December 2023.

Apart from, we do not know who is the I that is referred to unless Zulu and Makhwiting make one person, and therefore that I, are these people living legally
20 qualified? Are they employees of the City? I am asking in all seriousness because this is a nonsense document when you read it. It is bad and I am hoping that we can cut through this and just get straight to what this is. Are these people employees of the City, and are they in the legal department? Do they hold degrees, legal law degrees to

qualify them for those positions? Do you know?

MR NCIZA: Thank you, Madam Commissioner. Yes, Madam Commissioner, these are employees of the municipality employed in the legal department. You know, Adv Njabulo Zulu, now that you have mentioned the name. Okay, thank you.

ADV BALOYI SC: These are public officials in a government institution, and there is nothing wrong in mentioning who wrote the letter.

10 **MR NCIZA**: Thank you, Madam Commissioner. Adv Njabulo Zulu, in my understanding, is an advocate of the High Court. Before joining the municipality, I am aware that he was a prosecutor at some point in the National Prostitution Authority. I think possibly he has less than 10 years in the service of the municipality. He has recently been appointed to a divisional head position. After this, I think sometime early last year, he was appointed this was in December 2013, he was a legal advisor, and then sometime
20 last year he was appointed to a divisional head. It is called Specialised Legal Services.

And then Thabo Makhwiting was a legal advisor in the municipality until October 2023, where he was promoted to the position of divisional head. I am not sure exactly what he is responsible for, but when he signed this letter, he was two months in the position of divisional head. If you

were to ask me, Commissioner, what are my thoughts about this letter, my first thought about the letter is that they are not the authors of the letter. My first thought.

ADV BALOYI SC: Why do you say that, and who do you think authored the letter?

MR NCIZA: I say that because they were not involved with anything that concerned the Mkhwanazi debacle. It is Adv Kemi Behari who was involved with the Mkhwanazi debacle. I believe that the letter was prepared, whether they were
10 involved or not, but Adv Behari would have known about the letter and the preparation of the letter. I believe that they would have taken leave, and then indeed, these two would have signed the letter on his instructions.

ADV BALOYI SC: In fairness to them, let me just mention part of why I say this is a nonsense document, or it does not make sense, at least let me say. If you look at 346 paragraph 6, this is about the vehicle registrations, and it says:

20 “At the time of vehicle registration, the benefit would have accrued to the City had the deal been approved.”

So there is an acknowledgement that there was no approval of the transaction. And then two, it says:

“The cost incurred in the registration of vehicles was a step towards obtaining

the benefit on behalf of the City.”

Right? And then you then further go on to – and so it says, let me finish up that paragraph:

“It will be challenging to argue that the registration costs constitute prejudice to the City.”

But right, we know that that was reversed, right, that registration:

10 “The registration costs should not be viewed in isolation, but as part of an entire process.”

And then if you go to paragraph 8, it says:

“The vehicles were not registered fraudulently, as explained above. It is difficult to see how CAT benefited from the registration of the vehicles as they transferred ownership to the City.”

We know that is not true, right?

MR NCIZA: And that is the problem I have.

20 **ADV BALOYI SC**: They were never transferred to the City?

MR NCIZA: There was never a transfer. There was never a benefit that accrued to the City at any given point.

ADV BALOYI SC: Okay.

MR NCIZA: Even the paragraph 6 that Madam Commissioner was reading, at the time of vehicle

registration, at the time of vehicle registration, because by the time you register the vehicle, the ownership must have transferred. You start first with the ownership before I register the vehicle on the system. We deal with the issue of ownership, you know?

ADV BALOYI SC: Yes.

MR NCIZA: If indeed there is a donation of a vehicle, before we go and run and register this vehicle, I must first have the ownership of the vehicle. We must deal with
10 whatever transaction that must be entered into, where indeed you transfer the ownership to me and then we register the vehicle on the system. The registration thing is a system thing, but the actual transference of ownership has not happened at any given point. And that is the nub of this problem.

There was never, because the processes, and it is worse, a legal department effectively says indeed there was no compliance with the policies of the municipality. They agree. They agree in paragraph 7. Failure to comply with
20 internal policies relating to donations does not translate to fraud.

ADV BALOYI SC: Yes.

MR NCIZA: So there is a failure to comply with internal policies. So even if it does not translate to fraud, let us say, let us give them that it does not translate to fraud, but

it translates to misconduct. It translates whether they were negligent in terms of their non-compliance with the policies or they were dishonest in not complying with the policies, but there is a clear misconduct with non-compliance with policies.

ADV BALOYI SC: Yes.

MR NCIZA: Now if a legal department would write something like this, and then tomorrow we want to go and discipline employees for non-compliance with policies.

10 **ADV BALOYI SC:** Yes.

MR NCIZA: I mean, our employees will just simply say, but why does HR want to discipline me when the legal department actually does not find anything wrong with non-compliance to policies? They even wrote a letter to IPID, a legislative body that conducts investigations that, you know what, your finding of non-compliance to policies is irrelevant.

20 That is why, I mean, I call this a funny letter. You know, I heard Madam Commissioner even using a nicer way of a nonsensical letter, you know. But what does this mean, therefore? And I think the point that I wanted to raise with the Commission, Counsel, if I am allowed. The way that this letter is crafted, this letter is crafted as a defence letter. This letter is crafted to say, you know what, IPID, leave Julius alone. This letter resonates with what

happened in the telephone call of the 23rd of May 2023, in the telephone call I was instructed ...[vernacular] Julius, leave him alone.

In this letter, the essence of what is here is to tell IPID, leave Julius alone. He has done nothing wrong. Actually, if there is anybody that must be looked at, it is to look at the fleet management department, you must look at Mapiyeye, you must look at Sies, look at everybody else, leave Julius alone.

10 **ADV BALOYI SC**: Maybe finally, I mean, the letter says 347, at page 347, paragraph 11, it says:

“Respectfully, the suggestions...”

And I underline suggestions:

“...of IPID, given such material omissions and failure to thoroughly investigate risks the City in any further processes herein.”

Then 12 says:

20 “Please respond within the next 10 days.”

Now, the report that we have seen, and if you are aware of another report from IPID, this is your chance to say, the report that we have seen does not contain suggestions. It contains findings and a recommendation to act. So, are you aware of another report that contains suggestions that can

be responded to?

MR NCIZA: Madam Commissioner, in my history, I have never come across an IPID report that has suggestions. I have never. A suggestion is to say change the way we are doing things and do them this way. IPID is not that type of institution. They would not have authority to make suggestions to a municipality.

MR NCIZA: There is no way that the author of this letter could have misunderstood that IPID was making
10 suggestions, at least on the report that we saw. It makes findings and recommendations of what action must be taken.

MR NCIZA: I am trying to look for the right English word. But the closer response would be ...[vernacular]. I am not sure would the right English word be, they were silly. They were just being silly.

ADV BALOYI SC: Yes.

MR NCIZA: Because to take it further, paragraph 11 talks about the failure to thoroughly investigate risks the City in
20 any further processes herein. IPID says discipline. Discipline. That is all. And I do not know why people are so scared about discipline. You know, discipline, it is a normal process of an employment contract or of an employment relationship. Subject an employee to discipline where there are questions about the employee's conduct.

That is all.

Let the employee go and respond. Let it be Mkhwanazi that goes and says, you know what, there is nothing wrong. We have been doing this with Mapiyeye and Spies. That is my expectation. It must be Mkhwanazi who leads that evidence in the disciplinary inquiry. He is the one that must go and tell the chairperson of the disciplinary inquiry that what has been raised with me is inconsistent with the conduct of the department. Not the legal
10 department raising that.

So, what would come out of a disciplinary process that risks the City is that Mkhwanazi gets dismissed and Mkhwanazi institutes an unfair dismissal dispute. So, we go and defend it. There is no risk.

ADV BALOYI SC: Thank you, Mr Nciza.

MR NCIZA: And just to close on this, Commissioners, to me, this letter on all fours is a letter that at page 348 the person who would have written this letter, all things being equal, would have been the Regional Secretary of the Trade
20 Union. The person who would have signed here, given the content of the letter, you know, a Regional Secretary of the Trade Union would be raising all these issues to say, you are a wrong employer, you cannot do this, this is our member, this is our member, that this is what this means to me. These people are just shop stewards of Mkhwanazi.

ADV MOHLASEDI: Thank you, Commissioner. Mr Nciza, in light of those remarks in respect of IPID, I would then ask you to turn the page to page 32. You are on paragraph 104, please. 104.

MR NCIZA: Yes.

ADV MOHLASEDI: Thank you.

MR NCIZA: Yes. Thank you, Commissioners. On 104 I wanted to inform the Commission that it is not the 8th, it is the 22nd of March. It is just that the letter is dated the 8th,
10 but the actual service of the letter was on the 22nd of March, and my understanding of labour law is that a termination of employment occurs upon service of the termination of the employee, not on the date that the letter is dated, because there cannot be a retrospective termination of employment.

So, if I may correct, the letter is dated the 8th, but the actual service of the letter via a firm of attorneys occurred on the 22nd of March 2024, and therefore my 26 years of service in the municipality was summarily
20 terminated on that date.

ADV KHUMALO SC: It is actually dated the 7th, but it says the effective date of termination is the 8th.

MR NCIZA: Yes, that is the supposed date that the letter was signed on. And I would say it is supposed date, Commissioner, because on the 8th I was called, and there is

an area where I actually tabulate my experiences. I was called by an inspector, I think it was De Villiers who requested that indeed I must meet him at my offices, I must bring the office keys and I must hand them over and I must take possession of a letter.

When I got there, the letter was not signed. That was on the 8th. Hence, I say the supposed signing date was supposedly the 8th, but on the 8th the letter was not signed, and De Villiers went around looking for the Acting City
10 Manager and they could not find him, and then eventually after about two, past two in the afternoon they indicated that, you know what, we cannot find this gentleman so the letter cannot be signed.

When the letter gets signed, we will indicate to you. And then two weeks down the line, I received the letter that was signed dated the 8th after two weeks. So that is why I am saying it was supposedly signed on the 8th. But what is worse is the fact that the person who signed the letter on
page 250 as Acting City Manager, because we have got an
20 arbitration that is running on this particular issue since last year. The person who signed the letter, we discovered that his acting was from the 26th of February to the 1st of March. So by the time the person signed, he was no longer acting.

That is the niceties of this place. But nonetheless, I was terminated summarily without a disciplinary hearing.

There was an attempt to have a disciplinary hearing. At the disciplinary hearing the presiding officer had made a ruling that if I had points in *limine* that I wanted to raise, I must raise them within a specific time period. I did raise my points in *limine*.

The municipality was not able to respond to the points in *limine*. And I must say, in my view and my rep's view, the points in *limine* that we had raised were dispositive of the matter. But the legal representatives of
10 the municipality, which was an attorney and an advocate, also admitted on the 26th of February that if these issues are not responded to appropriately in terms of historical analysis of contracts of employment, then this would be dispositive of the matter if the municipality is not able to respond.

CHAIRPERSON: Just, Mr Nciza, for me to understand the timeline, what happened first? Between the letter we are looking at, that is PN20, and what you refer as an attempted disciplinary process, what happened first?

20 **MR NCIZA:** Because this letter does not, I hope I have read it correctly, it does not seem to refer to any disciplinary process. It just said we called upon you to give us documents proving your legal qualifications, you failed to do so, you are terminated. So, ja, just the timeline, ja, what happened first?

MR NCIZA: Okay. Mr Chair, I was suspended on the, effectively on the 7th of, what you call, September, because even the representations on the suspension, you know, I raised issues, they did not consider them. I was suspended on the 7th. I was then served with the charge sheet, and there is a table where I articulate how service was done on me, and we will come to that.

I was served with the charge sheet on the 23rd of January, and then we had a disciplinary hearing on the 26th of February. In between, there were all sorts of exchanges, and then the presiding officer who was appointed was an attorney, ruled that I must submit points in *limine*. I was supposed to submit my points in *limine* by the 23rd of February, which was on a Friday, and the employer was to respond on the points in *limine* by 5 o'clock on the 25th of February, which was on a Sunday, and then the chairperson was to make a ruling on the 26th, the Monday morning, and then we were to sit for the disciplinary hearing on the 26th and the 27th of February.

I made my submission. The employer, instead of responding to the points in *limine*, sent an email on the Sunday, and in that email, firstly, they suggested that I had waived my right to raise points in *limine*, even though it was a ruling by the chairperson, but nonetheless, they said I had raised issues about contractual dispensations, and their

client, which is a municipality, was not aware of these things, you know. So they are not able to respond.

We met on the 26th, which is the Monday. When we met, we dealt with the issue of the points in *limine*. The chairperson requested me to assist the employer with retrieving the Council Resolutions that I had submitted in my points in *limine*. There was a 2003 Council Resolution, and there was a 2011 Council Resolution.

I then assisted them, went into the system of the
10 municipality, and we did get the Council Resolutions. The prosecutor, the advocate, I am not sure whether I should mention names, but the advocate that was dealing with the matter then raised an issue to say these resolutions make reference to reports, and there is a need for them to get the reports.

So we tried to get the reports on that morning, and then there was an agreement that, no, these reports are not on the system of the municipality. They are on the internet. So they are archived off-site, we are in Germiston, they are
20 archived in Birchleigh Kempton Park, where there is a major archive centre for the municipality. Then the municipality will go and retrieve the reports, which of course were named in the Council Resolution. They will retrieve the reports, and then we should postpone the hearing to the 20th of March.

All nice and nice, we agreed, the matter gets postponed. On the 1st of March, which is the Friday, this was a Monday, on the Friday, I receive a letter from the municipality. I get accused in that letter that I have delayed the disciplinary hearing by raising points in *limine*, and therefore the municipality has taken the decision to put the disciplinary hearing in abeyance, and I must give them reasons why it should not be terminated.

They list their issues about even the criminal case
10 that I referred to earlier on, they list the issues about my advanced labour law programme, and I said fine, no problem. I am called upon to make submissions by the 5th of March. I made the submissions. The total submissions that I made, Commissioners, was 64 pages. I did a thorough, comprehensive, what you call, articulation of the issues, but then also had annexures, you know, that even talked to what the university had provided.

They did not have a problem with my law degree. They just had a problem with my advanced labour law
20 programme from UNISA. So I gave them everything that they required, in my view, gave them everything that they required. And then on the 8th, I gave them on Tuesday the 5th. On the 8th, there was this attempt to serve me with this letter. When I took the letter I noticed that the letter was not signed, you know, and therefore the employee who was

serving me with the letter had to go back and get the letter signed.

They failed to have the letter signed on the 8th. We proceeded because now I was not served with the termination letter, and in our understanding, the matter has not been withdrawn. The matter is still scheduled for the 20th. On the 19th, my representative sent them an email to say that the matter is proceeding tomorrow and the likes, you know, and the attorney then responded to say, no, the 10 20th was a provisional date. All of a sudden now it was a provisional date, so we are going to revert to you. And then the next morning, they reverted and said, no, the matter is not proceeding, you know.

Well, the matter did not proceed, and then on the 22nd another firm of attorneys that was not part of the prosecution, but a firm of attorneys that was part of my unfair labour practice dispute on the suspension, then served me with a dismissal letter, this letter, you know, and this letter is, of course, the subject of unfair disciplinary 20 proceedings that have been ongoing since March 2024, and I am still busy with my unfair suspension proceedings that have been ongoing since September 2023.

CHAIRPERSON: Thank you. Thank you.

ADV MOHLASEDI: Thank you, Chairperson.

ADV BALOYI SC: Mr Nciza, this process, this shorthand

process where you are called upon to make representations why you should not be dismissed, and then a decision is made on that basis to terminate you, is that provided for? Is it something that is regulated by the collective agreement?

MR NCIZA: Not at all, Madam Commissioner. What they said in their letter dated the 1st of March, they invoked Schedule 8, Item 4, Sub-Item 4, which speaks to, I think the provision is crafted in – I might not be able to quote it
10 verbatim, but it says in exceptional circumstances where an employer cannot be expected to follow the pre-dismissal procedures, the employer can summarily terminate the services of an employee. And I think it is a provision that I think our courts have said can be invoked in what would be regarded as war zone circumstances, like industrial action where the situation is beyond. They invoked that, they said it is exceptional circumstances, the fact that I raised points in *limine*. But, well, it is just one of those.

ADV BALOYI SC: All right, thank you.

20 **ADV KHUMALO SC**: Do you still have a copy of the 1st of March 2024 letter?

MR NCIZA: I have a copy of that letter, but it is not here. I have a copy of the letter, I think we can make it available as well as the representations that were made.

ADV KHUMALO SC: Yes, because reading the 8th of

March letter on its own does not tell the full story.

MR NCIZA: Especially when you read that I have considered, I have perused and considered your representations and that is it. Ja, but I think we can make them available.

ADV MOHLASEDI: We will obtain a copy of that letter, Commissioner Khumalo. Mr Nciza, that then brings us to paragraph 105. You are on page 32, paragraph 105.

MR NCIZA: Yes.

10 **ADV MOHLASEDI**: Indeed. Please inform the Commission about your receipt of the report.

MR NCIZA: Yes, Commissioners. In October 2024, I was forwarded a report that is titled forensic investigation report into allegations of defamatory statements made against the City, breaches of the Protection of Personal Information Act and irregularities relating to the engagement and payment to attorneys in and about May to August 2023. That was forwarded to me by Chief Mapiyeye.

20 **ADV MOHLASEDI**: Thank you. That report is – you would find it on page 351 of your annexure bundle. If I can assist you, Mr Nciza, you can also place a – also have regard to page 370 as you deal with paragraph 107. So, page 370 can assist you in giving evidence as it relates to 107.

MR NCIZA: Yes. Commissioners, at the offset, I need to indicate that, again, this is unheard of. This was unheard

of on two counts. Firstly, I still have in my phone all sorts of issues that have been raised in the life of this municipality about officials in the municipality, both on social media, in newspaper articles, things that have been sent to journalists concerning employees of the municipality, inclusive of Doctor Mashazi.

There is a point where there was such gross allegations that were made about corruption, tender irregularities, and all sorts of things. Beneficiation of
10 employees and senior managers of the municipality in terms of their association with politicians, with service providers, and all sorts of things. Very, very gory things that have been said about all sorts of employees in the municipality. At no point whatsoever has the municipality ever commissioned a forensic investigation. Never.

On another point, we have had instances where we would have investigations conducted, we would have determinations made. Some determinations are made without even an investigation, and decisions would be taken
20 that, you know what, we do not have a strong case, you know, properly taken that there is no strong case to pursue a particular cause of action. No problem. And even if you had attorneys appointed to assist the municipality in making those determinations, that has happened long before even Doctor Mashazi was a City Manager.

This report seeks to firstly say that there is an investigation that is conducted because of some remarks that are associated with the Bhixi-Bhixi emails. The 20 August 2023 email and the 2 September 2023 email, number one. It seeks to investigate that, who is Bhixi-Bhixi, and all sorts of things, and whether indeed the remarks that have been made by Bhixi-Bhixi are defamatory or not. That is how they have characterised the investigation.

You know, and it makes that finding that
10 defamatory, however, we do not know who is Bhixi-Bhixi, they cannot find who is Bhixi-Bhixi. But also then it goes to the disciplinary hearing. It makes all sorts of findings about the disciplinary hearing. But key amongst the findings that it makes about the disciplinary hearing is...

ADV MOHLASEDI: Let me assist you, Mr Nciza.

MR NCIZA: Yes.

ADV MOHLASEDI: If you turn to page 391, 391.

MR NCIZA: Three?

ADV MOHLASEDI: 391.

20 **MR NCIZA:** 91?

ADV MOHLASEDI: Yes, 391 is where the heading conclusions begins.

MR NCIZA: I do not have on this page.

ADV MOHLASEDI: In the annexure bundle.

MR NCIZA: I do not have on this. Remember, this is not

my original annexure bundle.

ADV MOHLASEDI: Let me – give me a few minutes, let me...

CHAIRPERSON: Do you not have a – do you have one for yourself?

ADV MOHLASEDI: Yes, I am in order, Chairperson. We had a spare and our attorneys are providing it to the witness.

CHAIRPERSON: Yes.

10 **ADV MOHLASEDI**: Page 391.

MR NCIZA: I am there.

ADV MOHLASEDI: Thank you. The top of the page is titled conclusions.

MR NCIZA: Yes.

ADV MOHLASEDI: You are then addressing the Commission as regards to Allegation number 3. So please just turn to page 392, Allegation number 3.

MR NCIZA: Thank you. And I think, Commissioners, you would have a better appreciation of the folly that exists in
20 this report without having heard the discussions that we did regarding the appointment process in terms of the Disciplinary Procedure Collective Agreement. On paragraph 13.7, it says:

“Nciza Head, by appointing those attorneys as the City's legal

representative in the Mkhwanazi disciplinary matter without having obtained Mkhwanazi's prior written consent breached the clause 774.”

And when you read the clause itself that they have quoted, it does not say that there must be consent. It says there must be agreement as the first option, but it goes on. You know, after saying that unless both parties agree in writing to allow legal representation or if the presiding officer upon
10 receiving an application by any party determines that it is reasonable to allow legal representation having regard to the applicable criteria.

Now, there is no requirement that must get consent. It says get agreement. If you do not get agreement, apply for legal representation. This clause, Commissioners, when we negotiated, and fortunately I was part of the negotiators, we took this clause verbatim from the Rule 25 of the CCMA. It is exactly like that. Either parties shall agree or there shall be an application.

20 So, it is not saying that you get consent. But most importantly, you would not know whether indeed you are to engage with the employee before you serve the charge. I do not know whether I am making myself clear. The way that things are done, you appoint a presiding officer and a prosecutor. The prosecutor will craft the charges. Having

crafted the charges, then we serve the employee with the charges. The employee having received the charges would make a determination on how he wants to respond to the charges.

Firstly, do I as an employee want to represent myself in a matter of this nature, given the type of charges that have been levelled against me? Do I want a shop steward or Trade Union organiser or official to represent me in a matter of this nature? Alternatively, am I going to source legal representation? Now, those are the options that are open to me as an employee.

If, having due regard to the type of charges, I take a view that I am going to sought legal representation, then when the employer comes to me and says, listen, I have got a legal representative, I want us to engage on representation. As the employee, I am better positioned to apply my mind on the provisions of 77.4 in respect of whether I agree to legal representation. And if I do not agree to legal representation, it does not mean that the employer cannot be legal represented. It does not mean that.

I might say I do not agree, so fine, I do not agree, then the employer must go and apply in terms of this clause. But this person that was doing this investigation, even though clause 77.4 is clear, he even quotes it. He

then says, no, but you have breached this because you did not get the consent of the ...[indistinct]. If indeed employers are to get consent of employees, then you will never have legal representation.

And there is a point, Commissioners, where indeed our collective agreement outlawed legal representation. There is a point where indeed we had said as the parties in the Bargaining Council, no legal representation whatsoever. But then in 2018, we brought it back because of our
10 experiences in disciplinary inquiries, especially disciplinary inquiries of very serious and complex misconduct proceedings, and it was agreed that we are going to use the CCMA rule and convert it into a provision in the DPCA. So this is just ...[intervenes].

CHAIRPERSON: If this disciplinary process had not been terminated prematurely, how would this have unfolded to get to a point where legal representation was allowed?

MR NCIZA: All right. Firstly, let me make the point that clause 7.6, this is 7.7, that talks to legal representation for
20 employer representative, the prosecutor. But 7.6 does not talk to legal representation in respect of the presiding officer. So you can appoint an attorney to be a presiding officer. There is no application that is required there, there is no agreement that is envisaged.

CHAIRPERSON: Let us just zoom in on 7.7.4, which I

understand to be about legal representation for the employer or the employee.

MR NCIZA: Exactly.

CHAIRPERSON: So how would that have unfolded to get to a situation where there would be legal representation as envisaged?

MR NCIZA: Now, what would happen, and what happens in practice, is that we appoint a prosecutor. If I appoint a firm of attorneys to prosecute, because I have to appoint them, 10 the prosecutor must generate the charge sheet. No one else. The prosecutor that is appointed is the only person that is empowered to actually say this is the charge sheet. So I cannot draft a charge sheet, and then after I have drafted the charge sheet, serve the charge sheet to the employee, then appoint. It cannot happen that way.

So we appoint, the prosecutor drafts the charge sheet, we serve the charge sheet, the employee then, even in the charge sheet we mention that we have a right to have legal representation. So if the employee gets legal 20 representation, it makes life easier then because then it is easy, both of us are legally represented, we get the agreement, we even submit it in writing that the parties have agreed and that is it. Or the employee goes to his Trade Union, and the Trade Union can also agree, that it is fine, the employer can be legally represented.

No problem. But where the employee says, no, no, no, I am not agreeing to legal representation, then we make the application to the presiding officer. It is then the presiding officer, having followed the criterion that is enumerated in the collective agreement, he will then make the determination that indeed, legal representation is allowed or not. If he makes a determination that it is allowed, the process continues. If he makes a determination that it is not allowed, then the process comes
10 back to me to then make an appointment of a suitably qualified person either in the municipality or outside of the municipality, from another municipality. So that is how we do it.

CHAIRPERSON: All right. At which point though, leave out the stage of the preparation of the charge sheet and so on, I want you to address us closer to the stage of the actual hearing. At which stage would the employee and employer have engaged each other with a view to reaching agreement or not reaching agreement on legal
20 representation?

MR NCIZA: What we normally do, Commissioner, is that we first appoint a prosecutor, and then we engage the employee at the point of – we serve, then we engage the employee after serving the charges.

CHAIRPERSON: So it would have been at some point

before the hearing? It would have been at some point before the hearing?

MR NCIZA: Before the hearing, yes.

CHAIRPERSON: Okay.

MR NCIZA: After the service, then we engage to say that, for instance, in the charge sheet it would reflect who is the prosecutor in the charge sheet. And then the employee would know that the employer has appointed a legal representative in the charge sheet, you know. Because
10 from the service of the charge sheet to the seating of the hearing, there are timelines. So in that process, we get into this engagement with the employee. In most cases in the municipalities, the employee would have a Trade Union. I mean, in a correlating close to about 95% of employees are Trade Union members.

So you would then have the employee would – sometimes you serve the employee, you also copy the Trade Union the charge sheet, where we have got the employee's Trade Union details on file. Then we are able to
20 serve the Trade Union as well.

CHAIRPERSON: Thank you.

ADV MOHLASEDI: Mr Nciza, and just perhaps to assist in tying up your answer to the Chairperson, if you have a look at page 295 of the Annexure bundle 295 under the heading there, the employee's rights 295, yes.

MR NCIZA: Should I read that?

MR NCIZA: You are entitled to, yes.

MR NCIZA: Thank you. Commissioners, this is the charge sheet for Julius Mkhwanazi as reflected on page 292. 295 refers to the rights. The first right is the issue of representation:

“The employee will be entitled to be represented at the disciplinary inquiry by:

- 10
1. A fellow employee of his or her choice from within the employer, or
 2. Any member, office bearer or official or the employee's registered Trade Union, or
 3. A practicing attorney or a practicing advocate of the High Court or both.”

So the employee has that right. If he elects to use the right to legal representation, we do not have a problem as the employer.

20 **ADV MOHLASEDI:** And if you turn the page to 296, please. Page 296, the second paragraph starting please take notice, please take further notice.

MR NCIZA:

“Please take further notice that the employer appointed Mr Blah Blah

Attorneys who have subsequently briefed Blah Blah Adv to initiate these disciplinary proceedings against the employee. The employer will accordingly accept service of any correspondence or process at the following address.”

And it lists the address of the attorneys.

ADV MOHLASEDI: Thank you.

10 **MR NCIZA**: That effectively firstly gives the employee the rights but, secondly and most importantly, in the charge sheet we always demonstrate as the employer who is going to be the prosecutor and if indeed the employee then having regard to such, in practice, Commissioners, employees would then also revert to the employer to say okay here is my rep, which is a legal rep.

20 These are the people that represent me, it is my Trade Union and we take the process forward. We have those engagements if indeed there is an agreement. When you go to the disciplinary hearing, as it was envisaged there to take place on the 3rd of July, by the 3rd of July if indeed Mr Mkhwanazi would have appointed an attorney, which was within his rights, we would have then gone there to indicate that here is a written agreement between the parties, both of them are legally represented. Or for that matter, he

could have had a Trade Union rep who says I do not care that the employer is represented by a Trade Union, it is not a problem, I mean an illegal representative, it is not a problem for us. You know, it has happened as well.

CHAIRPERSON: But is there not a problem with this formulation? Take an employee who is not in the know or who knows nothing at all about disciplinary processes and the prescripts applicable to such processes, that employee would not know that there is a clause 7.7.4 which says
10 neither party can have legal representation unless there is agreement. So what your formulation or the formulation that we have just gone through now, it just says you are entitled to be legally represented, the municipality is already represented, and there is no indication at all that there is something like clause 7.7.4.

MR NCIZA: Okay. Now remember, Commissioners, even if indeed you are seized with a situation where the employee is not *au fait* with the provisions of the collective agreement, the collective agreement says if there is no
20 agreement between the parties, the employer then must apply to the presiding officer.

CHAIRPERSON: Exactly my point. Exactly my point. The employee will not even know that there is such a process. The employee will proceed on the basis that my employer has told me that I have a right to legal representation, let

me seek legal representation. So the employee will not know that I can actually say I do not agree that any of us should have legal representation, as I am entitled to say so in terms of clause 7.7.4.

So for that reason, unless you say something that I understand, your formulation is incorrect. You simply say you have a right to legal representation and we, as the municipality, are already exercising a right to legal representation. That does not speak to clause 7.7.4. Do
10 you follow my ...[intervenes].

MR NCIZA: I follow you, Chair. I follow you, but let me put it this way, Chair. Firstly, every time we have a collective agreement, employees in the municipality are orientated on it. That is the first point. The second point is that in most instances, almost 100% of instances where we appoint representatives, it is for senior employees, you know?

Because if, indeed, we are talking about employees that would not be *au fait* with the policy regime of the
20 municipality, because this becomes a policy regime of the municipality, the collective agreement, you know, that would in most cases be with your lower level employees. Unless there is something exceptional about that misconduct, we would not use legal representation for that level of employees.

But we are talking here in this specific instance a senior, a very senior employee, number one, and indeed they would know because we do a lot of workshops on the collective agreement. We even had a programme where we did depot workshops. We went through all the depots and had workshops with employees so that employees know their rights, know their processes that apply to them in respect of what happens in respect of discipline management, grievance handling, you know, benefits
10 administration and all sorts of things.

So we put a lot of emphasis on getting employees to understand the rules in the company, you know. Now, I understand where you are coming from, Chair, but in practice this is what we have done, and we have done – not only ourselves. Also all the municipalities that I am in contact with, this is how we do it.

We appoint the prosecutor who crafts what you call the charge sheet. Having crafted the ,charge sheet, remember before the service of the charge sheet, the
20 employee is not in essence aware of being summoned into a disciplinary hearing. So it is the charge sheet that effectively hits the employee to say, by the way, now I am required to interact with the employer in this particular process.

So, and the person that must craft the charge sheet

is the prosecutor, and my colleagues in the sector would say the same thing, that is how we do it. We appoint the prosecutor, the prosecutor drafts, then indeed. The safeguard, the safeguard that I think the clause puts in place for the employee is that in the absence of that agreement, you know, remember it is not automatic that even the attorney that I have appointed is admitted into the disciplinary hearing.

It is not automatic. The presiding officer still has to
10 make a determination. And if the presiding officer, having due regard to the factors that are listed in 7.4, makes a determination that no, no, no, this is – you are going overboard by appointing legal representatives, the chairperson, and it has happened, the chairperson would say this matter is not that complex, this person is not that senior, you do have suitable qualified people that can deal with this. And indeed, if the chairperson makes that ruling, safeguarding of course also the interests of the employee in
20 this particular regard, would not have been *au fait* with the processes, which is very, very minimal in our situation, you know, the employer would then do away with the representation and appoint a suitably qualified internal prosecutor.

CHAIRPERSON: I do not want ...[intervenes].

MR NCIZA: That is how it has played out all along, Chair.

CHAIRPERSON: I do not want to belabour the point. In your introductory remarks in responding to my question, you emphasised the level of the employee or employees. My question is less about that. It is more about the prescript because the prescript says there must first be agreement, failing which there must be an application. So this proceeds, from your formulation, proceeds from a premise that already says you are free to get legal representation. It says nothing about you are free to refuse or not to agree
10 that either of us should have legal representation. But as I say, I do not want to belabour the point. You have given your response, thank you.

ADV MOHLASEDI: Thank you, Chairperson. Mr Nciza, you have had an exchange with the Commission regarding the findings summarised in paragraph 109.1 of your statement.
109.1 on page 33.

MR NCIZA: Yes.

ADV MOHLASEDI: Yes. With regard to the actual report as it is set out on page 393, I would ask you to comment to
20 the Commission in light of the contents of paragraph 109.2.
Do you see that?

MR NCIZA: 100?

ADV MOHLASEDI: Paragraph 109.2.

MR NCIZA: Yes.

ADV MOHLASEDI: Thank you.

MR NCIZA: Now, this finding that was made is linked to the one that says that I should have gotten prior consent before appointing the, what you call, the attorneys to prosecute. And unfortunately, again, it talks to how we have always interpreted this particular provision. And quite honestly, we have never actually even received a challenge that our appointment of attorneys was incorrect in the manner we should have appointed them, even in terms of unfair dismissal disputes that were handled by attorneys in
10 the municipality and elsewhere.

So this one then says because we have appointed those attorneys without having received prior consent from the employee, therefore, you know, the monies, because the attorneys then submitted an invoice to the effect that certain fees were owed for the services that they rendered, the attorneys as well as the advocate, and the total value thereof was R45 470.

perhaps one of our biggest challenges, Commissioners, and I am sure that other labour relations
20 practitioners in the sector would also have this view because that is what we do, is if indeed it is correct that you must first get the consent, remembering that even if you do not get the consent, you can still apply to the presiding officer. so it is not automatic that legal representation is not allowed.

So even if indeed there was no consent, the application could still be made to the presiding officer, and that is what we always do. Even if there is no consent, we still apply to the presiding officer. It is the presiding officer who is seized with the matter who then makes a determination on whether indeed legal representation is accepted or not. You know, so ...[intervenes].

CHAIRPERSON: For the record, Mr Nciza, I do not want you to go home on the understanding that my questions
10 were suggesting that you should not have been assisted by attorneys in formulating the charge sheet, for example. And also, I would imagine that an application failing agreement for legal representation could be made even on the day when the proceedings are to commence. And if that is correct, if that is a correct interpretation, you would obviously be going there with your lawyers ready to run with the process in the event that the application for legal representation is successful.

So do not leave this room thinking that I am saying
20 that you should not have engaged lawyers. I am by no means suggesting that. It is more just about the formulation of that initial document. And I am saying perhaps there is a need for a reconsideration, that is all.

MR NCIZA: Okay.

CHAIRPERSON: I am not at all saying. So I am not saying

that there was anything that mattered with for example having lawyers in respect of whom costs to the – or cost in the amount that has been indicated ought not to have been engaged.

MR NCIZA: I get you.

CHAIRPERSON: Or rather that attorneys should not have been engaged with the result that the indicated costs were then incurred. I am by no means suggesting that. I am not there at all.

10 **MR NCIZA**: Thank you. Thank you, Chair. I appreciate, Chair, the wisdom that the Chairperson is actually sharing on this particular aspect, and I think my colleagues around the country who are observing these proceedings will also take them to heart, take your wisdom to heart so that indeed we fine-tune this. We fine-tune this. Thank you, Chair.

The point that I was making, Chair, is that indeed the determination that is then made by the forensic firm to say that it was wasteful expenditure to have appointed the
20 attorneys to deal with this matter is off-base because had Mkhwanazi been charged, had he accepted the charge sheet as per any normal situation in the City, the matter would have gone to the disciplinary hearing on the 3rd of July, and indeed the disciplinary hearing would have proceeded.

We are confident, and we were confident that even in our application for legal representation would have been successful. But when we read this report, this report suggests, Chair, that there was a withdrawal of the disciplinary hearing. And now we have actually dealt with the so-called withdrawal.

ADV MOHLASEDI: If I can ask you, Mr Nciza, page 393. 393, paragraph 13.8.3. 13.8.3.

MR NCIZA: 13.8.3. Now, this finding, Chair, that actually
10 wants to say that the expenditure becomes fruitless because there was already a withdrawal. The expenditure is incurred before there was a withdrawal. So, it cannot be that the expenditure becomes fruitless because of the withdrawal. Now, and secondly, I still maintain that there was no withdrawal of the disciplinary process. I never withdrew it as the person that had the delegated authority to establish the process.

Now, and it actually, in the entire report, the fact that the charges were never served or that there was an
20 instruction not to serve the charges is not dealt with in this report, which is a critical element of how the process collapsed, so to speak, you know. Instead, the emphasis that is put is on the withdrawal that purportedly happened on the 22nd of June 2023.

I maintain that if indeed there was no stoppage of

my manager from serving Mkhwanazi, there would have been a disciplinary inquiry and we would not even be sitting discussing this report because then the inquiry would have proceeded properly, you know. I believe that the attorneys that were appointed would have succeeded in making a point that we indeed, you know, must be legally represented based on the seniority of the employee and the complexity of the issues, as well as the seriousness of the allegations, you know.

10 So, ja, unfortunately, again, we have got a report that is crafted. The key person who appointed and dealt with the issues is not consulted, there is no engagement, there is no request even for a submission, you know, and adverse findings are effectively made about me without even the courtesy, you know, the courtesy. As much as they say that I was not only the employee of the municipality, I can tell you, Commissioners, I have had a number of instances where we have investigations, we have got processes that must be dealt with and we have to go to
20 a person who is no longer part of the institution and request, you know, a submission, a statement or whatever that will assist us to make informed decisions and to take the processes forward.

We even, if indeed the person is no longer part of the institution and it is a legal process, we subpoena the

person to come and provide critical information or evidence pertaining to the matter. But this report gets produced and there is no engagement at all.

ADV BALOYI SC: Is the simple point not this, Mr Nciza, on this, that you if there was a fruitless and wasteful expenditure within the meaning of section 78, you could not have been the cause of it because you did not make the decision not to continue with the disciplinary hearing. Whatever happened to it, you did not make that decision.

10 You did not prevent it proceeding. It is that simple really.

MR NCIZA: You are correct, Madam Commissioner. Actually, I think your outlook on it is spot on because indeed, if there is a fruitless and wasteful expenditure, then the persons that stopped the serving of the charges, which effectively stopped the disciplinary hearing, caused the fruitless and wasteful expenditure.

ADV BALOYI SC: Yes, thank you.

ADV MOHLASEDI: Thank you. Mr Nciza, before we turn to the next theme, I would ask you to have a look at paragraph
20 110.4 on page 34. Please make some concluding remarks to the Commission on what you believe was the true aim or the real purpose that motivated the Commissioning of the report.

MR NCIZA: Thank you. Thank you, Commissioners. I advance a view here that indeed, in my view, this report

was procured with the main purpose of further suppressing the scandal involving Brigadier Mkhwanazi, you know, because we read this report, this report nowhere, and I think at some point, Madam Commissioner, there is an interaction that we had about whether indeed there is a report that actually speaks to the merits post the Erasmus report and I indicated that there is a report but it does not speak to the merits. This report does not talk to the merits at all. You know, instead ...[intervenes].

10 **ADV KHUMALO SC**: I thought such a report would be the 13 December 2023 report authored by the two advocates.

MR NCIZA: The one advocate?

ADV KHUMALO SC: Ja.

MR NCIZA: Ja.

ADV KHUMALO SC: This one seems to be a witch hunt to look for people who leaked information to Jeff Wicks and also to investigate whether there was wasteful expenditure. So it does not deal with the merits of the allegations against Mkhwanazi. It is really a witch hunt to go after people who
20 exposed that wrongdoing.

MR NCIZA: Exactly. Exactly, Commissioners. And to further illustrate that, Commissioners, I am not sure, but I know that that article is not in this bundle. In the City Press newspaper on the 28th of September 2025 an article was published in City Press Online where indeed this issue of

the blue lights is articulated. And the response of both Mashazi and Behari in that article quotes this report to say that Mkhwanazi was vindicated by this report.

They say that – I think I even saw another article where, I think on Saturday or so, where indeed Doctor Mashazi says that she had commissioned an external investigation and that external investigation proved that Mkhwanazi did nothing wrong. I have still not seen any investigation that actually says Mkhwanazi did nothing
10 wrong. Mkhwanazi himself, in an interview on the 25th of September 2025 with ENCA, says to the journalist there are three investigations that have cleared him.

I liked how the journalist responds and says no, you have not been cleared. And he effectively makes reference to this report as one of those investigations. He is making reference to the letter of the 22nd of June 2023, the so-called withdrawal letter, as well as the legal department letter to IPID that those have cleared him of wrongdoing. But in my professional expertise and
20 experience, I have not come across any investigation that has cleared Brigadier Mkhwanazi of the actual misconduct that was alleged, none whatsoever.

So indeed, I agree with you, Commissioner, that this was intended, firstly, to sanitise the Blue Light Scandal and therefore go after, because it does not only go after

me, it also goes after the senior management of EMPD and says they must be dealt with as well, you know. And what have they done? All they did is to investigate allegations of misconduct as what is expected of any manager. Thank you, Counsel.

ADV MOHLASEDI: Thank you, Mr Nciza. That then brings us to our last major theme on page 34. It is titled Weaponization of the Metro Police and Labour Practises. Do you see that?

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

ADV MOHLASEDI: Thank you. Before you address the Commission on that, please have regard to the table you have prepared at paragraph 119.

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: Thank you. Please then use that table to assist you as you address the Commission from paragraph 111.

MR NCIZA: So I can just go through it all once?

20 **ADV MOHLASEDI**: You can summarise it with reference to the table because the table condenses and reflects your experiences to the Commission.

MR NCIZA: Commissioners, this theme effectively talks to the harassment that I have endured from the 7th of September until I think the 8th of March. On the 7th of September, when I was served with the pre-suspension

letter that we looked at earlier on, I was approached by three Metro Police officers. You will recall, Commissioners, that I described how the offices are situated. I was in the building where Ms Gxasheka sits, and then I was approached by three Metro Police officers at the parking lot. I mean, it is an open public area where I was served with a letter saying I must go home.

I mean, I come from my boss's offices. Instead of in the privacy of an office, you know, I was given a letter in public with Brigadier Mkhwanazi observing and monitoring the situation when I was served with that letter.

On the 11th of September in the early evenings, it was already dark, something to 7, I received a call from my wife indicating that there were police at my house with sirens and blue lights. I stay, Commissioners, in a relatively quiet suburb, Farrarmere in Benoni. And the street that I stay in, next to my house is a estate. It has about 24 what you call houses.

From in that block, from the stop sign up until the end of the street, my family is the only black family in that street. So you can imagine, sirens and blue lights at night. Then I spoke to the inspector who was there to say, why come to my house? You know, I mean, you guys have my contact details. I am not even at the house at that particular point. When this happens, I just left Benoni town,

I was driving to a church meeting because I am also a leader in the church.

I was driving to a church meeting, I am on the N12 going to Benoni, I mean to Daveyton. And I speak to this inspector and he says, no, but this is the instruction we got. Sorry, DH, you know, this is the instruction we got. Got from who? From who? No, from Gxasheka, that you must come to your house at this time. And I am like, but to come and serve a letter with four cars?

10 You will see on page 36, paragraph 119, that the people that were at my house were in four vehicles, eight officers. All of them alighted the vehicles to serve a two-page letter.

CHAIRPERSON: What are you alluding to when you mention that on your street you are the only black family?

MR NCIZA: Whether we like it or not, racial connotations exist. If indeed you are going to come to a person's house with sirens and blue lights and you are going to see, Commissioner, as I go along, that indeed this, you know, it
20 is a build-up. But if you are going to come to a person's house, you know, neighbours are bound to be interested in what is going on.

You know, they are bound to be interested in what is happening. Or it is *daai darkie se huis*, and I am going to illustrate it even further with another incident, other

incidents.

CHAIRPERSON: No, I get you. I did think that is what you were alluding to.

MR NCIZA: Yes, yes, yes, yes.

CHAIRPERSON: Okay.

MR NCIZA: So I spoke to the inspector and suggested to him that I am on my way to Daveyton, why do we not do this? Why do you not leave my house? Because you have no business at my house. Your business is with me. Leave
10 my house. Let us meet at Daveyton Police Station, you know, which is not far from my church. So we can meet there and then you can serve me. It is not a problem. He agreed.

You know, he was actually talking to me on my wife's phone and it was on speaker. So my wife is standing inside the gate. They are outside. She hears the conversation. And then hardly five minutes, two, three minutes thereafter, my wife phones back. No, these guys have left. What do you mean they have left? No, after he
20 spoke to you, he called somebody and then I could hear him saying, okay, HOD, no, no, it is fine, HOD. So they were then instructed that, no, we are not going to do that. Leave that letter with the wife.

So the man insisted that my wife must sign for receipt. My wife has got nothing to do with employment

processes. In all the 25 years of our marriage, she has never had to deal with anything that has to do with employment processes until that day.

ADV BALOYI SC: Mr Nciza, I mean, it may sound silly, but I imagine that this letter would have been carried by just one of the officers in the car, in one car, right?

MR NCIZA: Yes.

ADV BALOYI SC: Physical possession of the letter.

MR NCIZA: Yes.

10 **ADV BALOYI SC:** So you would have had four vehicles with eight officers.

MR NCIZA: Yes.

ADV BALOYI SC: There is a cost involved in having four vehicles and eight officers coming to deliver one letter that is in one car.

MR NCIZA: In the hands of one person.

ADV BALOYI SC: Yes. Am I correct?

MR NCIZA: Yes.

20 **ADV BALOYI SC:** Do you think that whether the HOD or whoever might have had concerns that they may not be safe when they come to deliver the letter and so they need to come in numbers because this might have been a risky operation? Do you think there might have been a basis for that? If we try to make sense of this, which on the face of it appears like a fruitless and wasteful expenditure, actually,

but if we try and make sense of it, do you think it may have been informed by an anticipation that there might be some risk involved in delivering this to you?

MR NCIZA: If, Madam Commissioner, Gxasheka did not know my house, had never been to my house, did not know the area that I stayed in, I might even venture such a thought, but this is a person that had been to my house. She knew exactly where I stayed, the environment in which I stayed. She knew me. At no point would there be a basis
10 to believe that indeed I would pose a risk to a police officer, police officers that I have worked with for all these years.

ADV BALOYI SC: Thank you.

MR NCIZA: So it was not about risk, it was about humiliation.

ADV KHUMALO SC: At that stage, you were still an employee of the municipality. So if they wanted to serve a letter on you, they could have summoned you to their office to come and sign the letter. You were still an employee on suspension.

20 **MR NCIZA**: Not even on suspension.

ADV KHUMALO SC: [Indistinct].

MR NCIZA: Remember, Commissioner, I have not yet actually been suspended.

ADV KHUMALO SC: That was before, yes.

MR NCIZA: Because this now is to serve me with a

suspension.

ADV KHUMALO SC: A suspension letter, ja.

MR NCIZA: Exactly. You know, besides me going to their offices, and Commissioners, I have dealt with service of documents. I have, myself, in my office, we have utilised the EMPD to go and serve documents on especially senior employees. Firstly, we would have a person or two people in one car. There is never been a point wherein you send a squadron to an official, you know. But secondly, you would
10 give those people that person's cell number so that they phone the person to say that, hey, we need to come and serve you this particular document that comes from HR or comes from the City Manager's office. Make arrangements. Can we meet somewhere? That has always been the arrangement. You meet somewhere, you serve, they are signing, and that is it, you know.

But even after I had spoken to the inspector, there is an arrangement, there is this HOD, and the only people that I can think of would have been Gxasheka and/or
20 Behari. But those people had said that it was Gxasheka that had instructed them to come to my house. I then sent, because now when my wife told me that this is what had happened, I then sent Gxasheka WhatsApps.

ADV MOHLASEDI: Page 396, Mr Nciza, 396.

MR NCIZA: Commissioners, I sent four messages. The

first message I sent was at 18:43, in which I asked the question:

“Why send police to my house at night?”

And then I continue in Xhosa ...[vernacular], why are you harassing my family? What have they done to you? And then I sent another WhatsApp at 18:46:

10 “Sirens and blue lights at my house, Linda, causing a scene at my house, scaring my children and my wife.”

Then I sent another WhatsApp:

“Turning the Metro Police into a security branch of old, where people would be raided at night by police.”

Then the last one I sent was at 7 o'clock, ...[vernacular], it is okay, let us proceed. Now, as you can see, Commissioners, all of them are one ticks. All of these messages that I sent to Mr Gxasheka were one ticks.

20 **CHAIRPERSON:** Please forgive me for a bit of levity on something so serious. I see that two of the messages are deleted. Those were probably expletives.

MR NCIZA: Ja, they were. Honestly, I had written them in some rather crude Xhosa. Then I was like, no, but this is my boss, so I deleted them. Quite honestly, I was really vexed by this. Then I reflect on paragraph 115 that I sent

Mr Gxasheka these messages questioning the conduct of sending police with blue lights and sirens to my house at night, and thus harassing my family.

Later, my wife advised me, honestly, Commissioners, I was not aware. My wife advised me that if the message is one tick and you no longer can view the person's profile picture, it meant the person has blocked you on WhatsApp. I was not aware. No, because when I came back from church, well, I proceeded. I mean, I had a
10 church engagement. I could not just leave it. When I came back from church, and now I am sitting with my wife and we are talking about this situation, and then I am like, no, but ...[vernacular].

She is like, I have sent her messages, but she is not responding. And she is like, okay, let me see. I show her the phone. She is like, did you have a profile picture before this? I am like, yes, I did. She says you are blocked. And since that day, I remain blocked. And again, this is a suspension process, Commissioner. It is not a
20 termination. I am nowhere near termination at that stage, for my superior then to block me in the midst of this conduct.

And then I get blocked. I am like, okay. And also, to just link that, on the 7th, I received the pre-suspension letter. On the 8th, when I tried to send an email talking

about irregularities in the pre-suspension letter that I picked up, I discovered that I was also blocked on the email system of the municipality. I could not access the system of the municipality. So in my view, it then meant that I was actually suspended from the 7th because we ordinarily do not block people on the system.

ADV KHUMALO SC: Just remind us, the reasons for your suspension were two. The qualifications and you approving invoices contrary to a memorandum.

10 **MR NCIZA:** Yes.

ADV KHUMALO SC: So because of that, four police cars in sirens and blue lights are sent to your house.

MR NCIZA: Yes.

ADV KHUMALO SC: I mean, this is something you could have received the next day when you go to work.

MR NCIZA: Yes. The next morning, on the 12th of September, we were awakened by a siren at the gate. And this is around 6am in the morning. You know, my third-born son was already awake, preparing to go to school, and he
20 comes to the room. Dada, Dada ...[vernacular]. And I think at that time, he was doing grade 8. So he is like, but there are people at the gate, you know. I wake up. I rush to the gate.

I find three vehicles, branded vehicles of the Metro Police, at 6am in the morning. Again, I get into a

discussion with them to say, but why? What is going on? Do you have to come at this time of the day and sound a siren? You are not only waking me up, you are waking my neighbours up. You know, and this is a very quiet and serene street.

Now, they indicated that they were instructed by Gxasheka to collect the laptop of the municipality at that time. And I am like but this is not even working hours, why specifically at this time? No, we were given instructions
10 last night that we must come here and collect this laptop. That was ...[intervenes].

ADV BALOYI SC: You also mentioned that they had three vehicles. This time it was three vehicles.

MR NCIZA: Three vehicles, with six. Each vehicle has two people inside it. There were three vehicles that came to my house at that time of the day. That is reflected on my table on page 37.

ADV BALOYI SC: I am suggesting, Mr Nciza, to the
20 Chairperson that maybe you are being unfair to these three vehicles. The ne was going to carry the charger, the other one the bag, the other one the laptop. Be kind.

MR NCIZA: It is possible. It is possible. It is possible, Madam Commissioner, but I mean, my laptop is heavy. Therefore, they needed six people to come and collect it.

ADV BALOYI SC: I know this is serious. I do not mean to

make light of it.

MR NCIZA: But, again, these officers indicated, Madam Commissioner, that their actions are per the instructions to the letter of Gxasheka. She told them that they must come at that time. They got the instructions the previous night to say that tomorrow morning, when you come on duty, start at Mr Nciza's house. So, they clocked in at my house.

Then on the 10th of December, I received a call from an Inspector De Villiers, who requested to meet me to
10 serve me with an extension of my suspension. I requested that we meet at the Farrarmere Pick & Pay parking lot, because I was at the Pick & Pay. I was busy with some groceries. And then he calls me to say, *Meneer, ek het 'n brief vir u*. I have a letter for you, can we meet? And I know Inspector De Villiers. It is a person that I have worked with on a number of instances.

And then we met. I said, you know what, it is fine. And fortunately for me, in this particular occasion, they were driving unmarked vehicles. They came. We met.
20 Then they provided me with the letter. They were in an unmarked vehicle, and they were wearing civilian clothes. But in this instance, there were three members. De Villiers was alone in his car, but then he was accompanied by a second car. Again, I signed for the thing, you know. They left.

The one that then became – or rather, before they left, I asked them, I asked De Villiers why they need to use so many cars when they come to me? He indicated that he was instructed to use at least two cars with four members to come to me. It is an instruction. The one that, Commissioners, I think, was a bit, ja, okay, let me not characterise it. Let me just tell you what happened. On the 23rd of January 2024, there was no investigation firstly that was ever conducted regarding the allegations that I was
10 suspended for the investigation.

I was then formally charged. In the sense that a charge sheet was brought with four Drug Enforcement Unit branded vehicles in the middle of the day. It was around 2pm.

CHAIRPERSON: What exactly does the branding say? Does it make reference to drugs at all, or is it just EMPD?

MR NCIZA: It is EMPD, Drug Enforcement Unit, written in big blue letters. You know, and I recall when they arrived, because they came and they did their siren thing, I came
20 out, it was a siren thing again. It was right in the middle of the day, around two. Came out, there were some neighbours of mine who were taking a walk. They stopped, of course, to see what is going on. And here comes this drug lord to come and receive a charge sheet from four Drug Enforcement Unit vehicles.

CHAIRPERSON: But the charge sheet, even though it is Drug Unit cars, the charge sheet still relates to the invoices and qualifications.

MR NCIZA: Exactly. But in this instance, Chair, one of my neighbours actually felt the need to come and talk to me. You know, he came just to ask what is going on. I said, no, man, it is work issues, you know, it is work issues. He says, are you sure? I am like, no, no, no, do not worry. You know, you know most I work for the municipality, so no,
10 these are my guys. You know, and they have driven off that time. I am like, no, these are my guys, do not worry. You know, it is part of my work, you know. Because, I mean, clearly if you are going to be visited by a drug unit, Drug Enforcement Unit, it says perhaps you are part of a drug syndicate.

I detail on paragraph 119 further instances in that table that on the 10th of February, again, I had people come into my house to serve a further extension, an extension on top of the extension of suspension. And then on the 13th of
20 February, the municipality in their charge sheet had invited me to a pre-trial hearing. I said that is not regulated by the prescripts of the DPCA, nor even the regulations on discipline, and therefore I do not see the need for us to have a pre-trial hearing.

But then De Villiers, when I met with him on the

very same 13th, because after I did not attend, they then sent De Villiers with a new letter where now they were changing the disciplinary procedure. Because if it was going to be a normal case, then all of a sudden now they want to invoke what is in the DPCA in terms of clause 9, something called the summary procedure.

Ja, clause 9, an optional summary procedure is on page 12 of the DPCA. They wanted to do an optional summary procedure which would have meant that instead of
10 having a trial type of arrangement, a proper hearing, you just simply make submissions, you know, and the chairperson takes a decision based on submissions, of which I in any event objected thereto.

But De Villiers indicated to me that your matter is hot, you know. We were stopped from going to other operations that we are supposed to go to. We had stopped and instructed to go to the head office where the disciplinary hearing was going to be held, and four vehicles, their squad, was then told that they were not going to do
20 law enforcement processes. They must come to the head office and guard the head office, because my case is sitting.

ADV BALOYI SC: Was this for the pre-hearing?

MR NCIZA: Ja, you know. I was like, okay, fine. On the 1st of March, when they sent me the letter contemplating

termination of employment, again, two vehicles with four members. And then on the 8^t of March, when they attempted to serve the unsigned letter of termination, they had four members and two vehicles. I record, Chairperson, that the total number of EMPD officials that were sent to me in the various occasions come to 48 people. And the number of vehicles that were used to serve me with single-page, two-page letters comes to 23.

And it must be noted, interestingly, that all these
10 vehicles and members, all of them fell under the command of Brigadier Mkhwanazi. It was not people from by-law enforcement, it was not people from regional operations, it was specifically people from Specialised Services.

ADV KHUMALO SC: Did the Drug Enforcement Unit also fall under Specialised?

MR NCIZA: Yes, it also fell under Mkhwanazi. I must say that all of this was completely unnecessary and unpleasant, you would imagine. It was intended to humiliate me and my family and to cast aspersions on my person, my dignity and
20 my character. Ms Gxasheka was doing all of this knowing fully well where I stayed, my role in the community and leadership in the church.

ADV BALOYI SC: Mr Nciza, ordinarily, when assuming that the employee relations, or in fact, even HOD, human resources, Gxasheka is responsible for all these

disciplinary processes in your absence, the serving of the suspension letter, pre-suspension, pre-termination. Ordinarily, how would you serve process on an employee who is on suspension? They are not in the office to receive the extension of a suspension because they are already at home, maybe even termination. Do you – is there specified unit vehicles that you use? How does it work? And I ask the question to try and see if indeed anything is amiss in the fact that Mkhwanazi's section is the one that was
10 delivering these documents to you.

MR NCIZA: Thank you, Madam Commissioner. Indeed, it is an important question that you are posing. The default position is that you arrange with the employee to come to their office, their place of work. Remember, when a person is on suspension, one of the suspension conditions is that you must avail yourself at any point the employer requires you during working hours.

That is the default position. You know, it is during working hours and you must be available. If the employer
20 gives you a call today and says tomorrow, and you are working at the Kempton Park Waste Depot, you know, you are required at the office. So my team would then make that call to the employee. You are required at the office. One of my team members would then go to that depot and meet with that employee and effect service.

ADV BALOYI SC: Okay.

MR NCIZA: Now, when do I use Metro Police? I use Metro Police, Madam Commissioner, when there is a senior person involved. And at Metro Police, it is unfortunate that our person that used to do this, one person, unfortunately, he passed away, I think, early 2023. But in the course of time that have been at DH Employee Relations about, let us say, six years, there is a specific person that I had an arrangement with Metro Police that this, if I need to serve
10 an HOD or a divisional head or somebody senior, you know, I would not really call them into the office for service. You know, I would not call an HOD, come to my office, I want to serve you something.

I would request this gentleman who was a senior in the Metro Police Department, I think he was a deputy director, you know, I would talk to him, that, hey man, can you assist us with servicing a particular letter at HOD so and so? Here is the address, here is the telephone number, can you make a call? So that he has a sense of where the
20 person stays. You know, then make a call to make arrangements to meet with the person either at a restaurant or meet wherever, you know, that the two of them would agree.

That has been the norm, you know. I would not use Metro Police officials or even this specific gentleman. And

even when I use that gentleman, it is via the Chief's office. You know, if the Chief Mapiyeye is not there, I would talk to Chief Mzolo, Deputy Chief Mzolo, then we would make those arrangements. Well, no problem, it is fine, I will talk to him. You know, I would not go directly to him. I will talk to the Chiefs. They are the ones that will then engage with him. He will call me, we would meet, I will give him the necessary documentation contact details and everything. He makes that arrangement with the person, the service is
10 done, he brings back proof of service, you know.

In respect of officials lower down, no service via Metro Police except for one. There is a gentleman who actually we had to dismiss because he was refusing, he carried a firearm to work and he was very obstructive and very rude, insolent. We charged him, but eventually the municipality was like this person has to go. You know, and everybody, the head of department, the supervisors, the City Manager, the Mayor, everybody was like this person has to go, you know. And we took a decision that this is
20 totally out.

So the service to that person because of the nature of the person, you know, and the inherent danger that he posed, we effected the service to that person via a Metro Police. I think it was one vehicle with two officers that had to go and serve him, and it only happened once. That

service was to service determination when we sent junior Metro Police officials to go and serve him.

ADV BALOYI SC: Ja.

ADV MOHLASEDI: Thank you, Commissioner. Mr Nciza?

MR NCIZA: Yes, ma'am.

ADV MOHLASEDI: My apologies. Could I ask you to turn to the next page, your final paragraph there, paragraph 122. I would invite you to read that into the record, please.

MR NCIZA: Commissioners, I have listened to the
10 evidence of Chief Mapiyeye and Deputy Chief Spies before this Commission. Viewed cumulatively and in terms of my own experiences, the Commission is able to see a pattern whereby Doctor Mashazi, Ms Gxasheka, and Adv Behari used labour processes, suspensions, special leave, disciplinary proceedings, even terminations to frustrate and get rid of employees who opposed their unlawful conduct that relates to Brigadier Mkhwanazi at the time, up to the point where he became even the Deputy Chief of Police.

There is an aspect that I am not even sure that
20 Chief Mapiyeye knows that I know this, but there is an aspect that, Commissioners, I just want to bring to attention that was relayed to me by two heads of departments in the municipality, who are still in the municipality. I think I was still on suspension in December 2023, and the first head of department was like this thing that we are coming from, I

have never seen such.

I am like, what is happening, HOD? And the person is like, no man, we went into a senior management team meeting. Senior management team meeting, Commissioners, is the City Manager and all the HODs in the municipality. It is supposed to be a meeting that discusses strategic issues about service delivery, implementation of resolutions of Council, mapping processes that must be implemented to ensure that the citizens of Ekurhuleni are
10 better served.

And this person says to me, you know, we went into a meeting where for about 45 minutes the discussion was about my Mapiyeye and Mkhwanazi. I am like, what? Yes. Where Mapiyeye was lambasted from start to finish on why is he not able to work with Mkhwanazi and told that whether you like it or not, you will work with Mkhwanazi. If you do not want to work with Mkhwanazi, you better leave.

So these HODs expressed the frustration to say, how can we go to an SMT meeting and we must sit there
20 and listen to this type of engagement. And the poor Chief was stunned. You know, both of them are like, he was like, no, ma'am, it is fine. We will work. No, no, no, no. I know that you hate Mkhwanazi. You know, I stopped you from doing this nonsense that you wanted to do against Mkhwanazi. You and your Spies ...[vernacular] you and

your white man, two senior people experienced that.

And when we talk about this relationship, and this is soon after Mkhwanazi was appointed as Deputy Chief of Police and this is at a point where indeed Mapiyeye, as he had testified, was still having problems about how that appointment had been effected. And then he gets lambasted in the senior management team meeting that is supposed to discuss how we must deliver services. That meeting became about Mkhwanazi and why Mkhwanazi must
10 be treated as the prince of Ekurhuleni.

ADV MOHLASEDI: Thank you, Mr Nciza. We have then reached the final topic in your witness statement, paragraph 123. It is titled, impact on my life. I would invite you to make some remarks to the Commission on this aspect.

MR NCIZA: Commissioners, the impact on my life that this whole ordeal has had has been rather devastating. Professionally, my standing in the local government sector has been severely dented by this experience. As much as I was the Divisional Head of Employee Relations in
20 Ekurhuleni, but I was also the Provincial Chairperson of the SALGA Human Resource Practitioners Forum, which also made me the lead or Chief negotiator of the employers in local government in Gauteng, which is a role that I had held in the sector for more than 10 years as the chairperson of that forum and leading negotiations on behalf of all the

municipalities with the three denouncing the Bargaining Consulting Gauteng Division, Central Gauteng Division.

Of course, except for Tshwane and Johannesburg, I do not want those colleagues to say that I represented them. I represented all the other municipalities. These two municipalities have their own divisions where they negotiated. But I was also the leader of the employer in Ekurhuleni on negotiations with Organised Labour since 2003.

10 In December 2022, I had received a 20-year recognition award for my contribution to the Bargaining Council in terms of its establishment, its progression into a full-fledged Bargaining Council, its engagements in terms of stabilising the local government sector. I was one of the people that was actually awarded for my 20 years of service in the Bargaining Council because I served in the Executive Committee of the Bargaining Council at a national level. I have served, and at the time of my dismissal, I was still a member of the employer party in terms of the Bargaining
20 Committee at a national level.

I was also the chairperson of the Technical Advisory Committee of the Bargaining Council, a committee that dealt with processes of how the rules in the Bargaining Council are to be implemented, the appointment of Commissioners. You know, I was the chairperson of such a

committee. But the treatment that I received sought to annihilate my career just because people had to protect a criminal enterprise.

Personally, the impact on my wife, my mother, and my children as well as my brother's family has been immense because, I mean, when this whole thing erupted in 2023, my name was brandished all over the place. I was in newspapers. I was on TV. People had issued statements about my suspension and all sorts of things. So my family
10 then had to now respond to a situation that was created to place me as a person of questionable integrity. And indeed, my family has been stigmatised by the flagrant lies that have been spewed impugning my image and standing in society.

Communally, this ordeal had resulted in an attempt to remove me from Ministry in the Anglican Church, where some congregants had invoked a process of a petition due to the lies that have been spread and the falsehoods that have been spread regarding my name. A petition was then
20 lodged with the office of the Bishop of the Anglican Church in the Highveld Diocese seeking to remove me from all Ministerial positions in the church.

At the time, I was a church warden in a parish and I am also a lay colonel, which is an advisor to the bishop in the Anglican Church. So a petition premised on a notion

that I had been dismissed for fraud and dishonesty, you know, was then submitted in an attempt to indeed make me sever my ties with the church. And this was all because of the shenanigans that are happening in the City of Ekurhuleni.

ADV BALOYI SC: What came of that attempt, if you do not mind saying?

MR NCIZA: Cool heads prevailed. Cool heads prevailed. As much as there was that petition, I was summoned to the
10 bishop's office. I sat with the dean of the cathedral and we had a two-and-a-half hour conversation where I was able to also, without getting into the type of detail that I have gone into in this proceedings, but just to alert and highlight to him the intricacies that are involved and the fact that what is in the newspapers is not always what is actually prevailing.

Unfortunately, and quite honestly, Commissioners, everything that had happened to me, I do not believe that if I was not in the church, I would have been able to survive
20 it. The fact that I was suspended, fortunately, the rector of my parish at the time held a meeting with me because my name was all over the place, called me to a meeting. We had a three-hour session, a one-on-one, and that then provided me with a pillar. And I poured my life, my time, my resources into devoting myself to the service of ministry in

the church, and that soothed my spirit.

ADV KHUMALO SC: Mr Nciza, when you address 128, I would like you to address the reasons given for your dismissal. You will recall that one of them was you did not provide the advanced diploma in labour law, but the second one was that you did not sign your contract of employment. So when you deal with that, can you just address those reasons and whether or not they were valid or if they were used as a smoke screen? Whatever your view is, can you
10 just address the reasons for your dismissal as set out in the dismissal letter?

MR NCIZA: Thank you. Thank you, Commissioner. Commissioners, firstly, let me start with the issue of the contract, non-signing of the contract. Fortunately, in the course of the arbitration proceedings, you know, I submitted an unfair dismissal dispute. The employer then said, no, there was no dismissal. And they alleged, these are the funny things that Adv Behari does. There was an allegation that there was no employment because I did not sign the
20 contract. The Commissioner in the proceedings said, but signing of a contract is not a requirement for the existence of an employment relationship.

You know, and the reasons why I did not sign the contract are well known to the employer. My second contract, my first contract I had signed, it was perfect. My

second contract had issues. And I said, no, but I cannot sign, correct these issues. You know, and I submitted to Gxasheka's office. You know, for some reason, they were not corrected. But this was usual in the municipality. There is quite a number of – even HODs, there is an HOD or three HODs that I know of that had not even signed their contracts, even though section 57, especially for HODs, is very clear that if there is no signed contract within 60 days, then the offer of employment is withdrawn and therefore the relationship is terminated.

But this is now, in respect of myself, 22 months down the line, you know, the issue that there is no signed contract was raised. There is a basis upon which I am terminated. But if you look at the letter that we have requested, Commissioner, where there is the call for representations, the issue of the unsigned contract is not raised to say that make a representation on this. So make a representation why the contract is not signed.

And then on the issue of the so-called non-submission of the advanced labour law, there was a submission of the advanced labour law, Commissioners. Firstly, UNISA had provided, they provided, because I had lost the certificate around about 2009. We had applied, and then they provided a record, a transcript to say that this gentleman, Xolani, I mean, Mr Nciza, you have done this

course, you have passed the exams. Indeed, you have the course, and even indicate the mark I had gotten in the exam.

And then in 2022, again, UNISA issued a similar letter to say that, no, no, no, no, you have got this. Now, the argument that effectively gets raised is to say, but this communication from UNISA, as much as they are from UNISA, the academic institution that you went and did the course at, and surprisingly, I was part of a cohort of
10 employees, 20 employees of the municipality that went to do the advanced labour law programme at UNISA. We did not even register ourselves. We do not even have student numbers.

It was a workplace skills programme in partnership with UNISA to do the course, paid for by the City of Ekurhuleni. Administered on our behalf by the City. We did not even go to campus. The lecturer went to the municipality and lectured us in a lecture room of the municipality. Beautiful arrangement. I then get dismissed
20 that I do not have that course, even though everything was submitted to the municipality and all the records.

So indeed, when this thing was becoming hot as it was, I communicated again with UNISA and I copied Gxasheka in all my communication to say, UNISA, you know what, as much as you have given me these documents and

you have given the municipality these documents, the municipality still insists on a certificate. And the people at UNISA then said, okay, fine, do these processes. We are going to issue with a replacement certificate, and Gxasheka is copied. And the person who signed the termination letter, Maseko, is also copied.

On the 20th of March, UNISA then submitted a replacement certificate. That replacement certificate was then also sent. What they did, they emailed and then
10 indicated in the email that they are also sending a courier to my house with a replacement certificate. So I took that email and I sent it to Gxasheka and Maseko to say that this thing that you are complaining about, here it is. Two days later, I got dismissed.

ADV KHUMALO SC: That certificate exists?

MR NCIZA: Exists.

ADV KHUMALO SC: So can you share it along with that letter that you referred to of 1 March?

MR NCIZA: Exactly.

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

ADV MOHLASEDI: Yes, we will get into that. Thank you, Commissioner.

MR NCIZA: Okay. So paragraph 128, with all my dedicated service and accomplishments in the municipality, and I can assure you, Commissioners, I have a lot of things

that I have done for the municipality. I do not even think that I actually took you through. My experience is where at some point I was held hostage. You know, there is a point where there was a red tax fund that was established in an attempt to assassinate me in 2011, and all sorts of other things where indeed I have experienced a lot of attempts on even on my life and my person as a result of me defending the municipality.

I was suspended surreptitiously without even being
10 afforded a contractual opportunity to advance the presentations to be heard. This matter is still to be finalised in arbitration proceedings. I referred a dispute in September 2023. Some 26 months down the line, I still have not been accorded justice, and primarily because the municipality has done everything to delay the matter.

The initial team that was dealing with the matter, Commissioners, to give you a picture of what has been happening, they had an advocate who had a pupil in the matter, then they had an attorney who had a candidate in
20 the matter. So we had four lawyers, effectively. And then that entire team is no longer involved. They started off, removed the attorney, and then the advocate. Now they have an attorney and an advocate. So six.

And then I was summarily dismissed without a disciplinary hearing for a qualification that the municipality

took me to. The academic institution provided evidence of the qualification, but nonetheless, I was terminated. In this particular matter, they had an advocate and two attorneys in the dismissal matter. That advocate also dropped the matter at some point. This matter commenced in March 2024, it is still ongoing as we speak, as well. And again, all sorts of things have happened to make sure that the matter does not finish.

ADV KHUMALO SC: Is it before the Bargaining Council?

10 **MR NCIZA:** Yes, both of them are before the Bargaining Council. So you had three legal practitioners in the dismissal matter. In the disciplinary matter, you had three. You had the attorney who was presiding, an attorney and an advocate. So all in all, the number of lawyers that have been used by the municipality in my matters are 12 attorneys. On top of the resources that were used to harass me, 12 attorneys, and I have only used a shop steward in all of them.

My suffering was for one thing and one thing only.

20 On numerous occasions, Commissioners, Doctor Mashazi would accuse me of not being loyal to her. She has done this in front of the Chief of Police, the CFO, the CIO. She has indicated, when you are not loyal to me, I appointed you, but you are not loyal to me. And that is exactly why I find myself in the predicament that I am in. I was not loyal

to Doctor Imogen Mashazi. Thank you.

ADV MOHLASEDI: Thank you, Chairperson. That is the conclusion of Mr Nciza's – my apology.

ADV BALOYI SC: Mr Nciza, it is unrelated to this last part of your evidence, but it is touched.

CHAIRPERSON: Mr Nciza, I will quote to you something that was said by Commissioner Spies, and then I will put a question to you. On the 10th of November 2025, Commissioner Spies said the following:

10 “Our disciplinary agreement has already been touched on. It deals with all municipal employees in exactly the same manner, irrespective if you are a plumber or an admin clerk or a police officer. We are dealt with in terms of that disciplinary agreement in that manner.”

I skip some parts of this evidence, and he continues:

20 “A municipal police officer is treated, does not matter what crimes they committed, they are treated as if they are a normal council employee, and they are not treated as if they are police officers, which can intimidate witnesses, and therefore the public

does not want to come and testify in
our disciplinary cases.”

I skip again:

“That is one of the problems that we
have in this environment where we are
dealing with officers.”

I end the quote there. As an expert in HR management
issues, do you share Commissioner Spies' concerns about
disciplining Ekurhuleni police in exactly the same way
10 civilian employees are disciplined? If you do, why is that
so?

MR NCIZA: I will deposit a response, Chair, by referencing
something that the second Chief of Police of the City of
Ekurhuleni once said. We were at a budget steer
committee. Unfortunately, I am an institutional memory
person, you know. This is around 2007 or so, and that
Chief of Police was one Robert McBride. We are sitting in a
meeting, we are dealing with the budget issues, trying to
make a determination of how to adjust the budget of the
20 municipality, and the then City Manager had problems with
the submissions that were made by EMPD.

And Chief McBride, as he was then, commented to
the Executive Mayor, the late Duma Nkosi, he says,
Comrade Duma, this is not correct. I am a policeman. I am
not going to be dictated upon by a civilian. This notion that

police will be treated like any other department or like any other employees is nonsense. It must stop. We laughed.

CHAIRPERSON: And perhaps for context, parts of what I skipped say, this being said by Commissioner Spies, that with SAPS the process is different. Please continue.

MR NCIZA: Yes. We laughed. I mean, it was Robert, but there is truth to what he was saying. And one agrees, and indeed, I know that the Chief's Forum has raised this issue, and it is something that SALGA, as the employer
10 organisation, needs to zoom into. You cannot have a one-size-fits-all arrangement. The police are in a command structure. They are a uniformed service, the Metro Police. There is, for instance, a notion of you obey and complain later, whereas in the civilian structure, you know, you seek consent.

Employees will tell you that, no, I am not going to agree to this transfer. I am not going to agree to that. There must be some consent. There must be some agreement. There must be some procedure. And
20 sometimes police require a different approach. You know, I agree fully that, indeed, it is an issue that the sector must look into. This collective agreement that we are talking about has been extended to 2028. It expired in 2023. Parties extended it, and then now they have extended it to 2028.

I think this is an opportunity. Such things that are actually going to be coming out of this Commission, it is an opportunity that the parties in the Bargaining Council revisit their approach to collective bargaining in the sector, you know. I once made a presentation, Chair, to the effect that local government is a multilateral sector. We are not like your engineering services sector, because we have engineering services within local government. We have got health within. We have got police within.

10 So there is a multiplicity of sectors in local government. We do not have it as a singular sector, because we have got various occupations in the sector. So, indeed, perhaps when we look at our processes, there is a need for us to identify that, recognise that, appreciate it, so that our collective bargaining approach is able to cater for the different functional dispensations that will then pertain to specific functions.

20 You cannot treat a Metro Police officer like a water services, like a plumber. A Metro Police officer and a plumber are totally different. They are totally different. The environment in which they work is totally different. I totally agree that, indeed, the issue is in the approach that the employer must adopt in the negotiations. I know organised labour would prefer a situation where there is a singularity of processes because it is their members that

they seek to protect, but it is not protecting the citizens, and it is not protecting the sector itself. So I want to agree with it.

CHAIRPERSON: What exactly within a command structure, as I think you referred to it, dictates that the processes must be different? Right at the beginning you referred to the fact that the nature of the environment within the police is one of a command structure, and what you said then seemed to flow from that structure. So what I want to
10 understand is what exactly within the command structure dictates that the process should be different, as you and Commissioner Spies suggest.

MR NCIZA: The police structure, Chair, you cannot have room for insubordination, for insolence, you cannot have room for situations wherein a commander's command can be subjected to question, because the problem that you are faced with is these people deal with serious issues where indeed lives can be at risk, lives can be at stake. So if indeed in a command structure the commander would not
20 have the authority because he must be subjected to certain processes, you know, because now those that he is commanding cannot actually have got leeway or have got room to challenge the command, and they have got room to challenge the command because, hey, I am going to submit a grievance if you do this, if you instruct me like this, if you

are commanding me to move from this deployment to that area, because sometimes you find that the levels of crime and the levels of, what you call, of risk to the community differ.

And, therefore, you need to move resources and move them with immediate effect, and people tell you, but you are transferring me, you are doing this to me, you know, and my terms and conditions of employment require that you must consult me before you can transfer me, and if
10 you are going to transfer me, you know, this, this, this, this. That is what a normal employee raises, and that is what we are faced with, even in Metro Police where, indeed, because, as much as they are in a command environment, but they have got the rights and everything that accrues to a normal civilian worker.

Now, then your command structure is compromised, you know. It is a command structure. There are instances wherein, indeed, decisions that are taken by the commander must be implemented with immediate effect, otherwise we
20 are not able to respond to life-threatening, to risky situations with immediacy, you know. that is where I find the challenge.

CHAIRPERSON: And lastly, again, right at the beginning of your response you said within this command structure, it is a case of obey and complain or challenge later.

MR NCIZA: Yes.

CHAIRPERSON: Why do I seem to think or recall that there is something that police are entitled not to obey an unlawful order? I may be wrong, but it is something we can check because it is a question of law. It does not really require evidence, but I am asking you or I am engaging you on it because you mentioned it in the context of saying it is justified to have a different process for police. So why do I seem to recall that there is something that says exactly
10 what I have said?

MR NCIZA: You are correct, Chair, that, indeed, where the instruction or the command is patently unlawful, you know, an officer would have the right to disobey it at the instance of the instruction being issued, you know, as opposed to follow it and then – because if indeed the command is that shoot this person and the person is unarmed, the person has not done anything, and the instruction is that commit murder effectively, you know, then we do not excuse an officer because it was an instruction from a superior, you
20 know, because that is patently unlawful.

You know, but I am transferring you, you know. There is nothing unlawful about transfer. It might not be procedural, and therefore you would want to lay a grievance or do whatever. But if indeed there is a basis upon which I am saying as a commander that you need to move as much

as you are deployed or allocated in Precinct A, but the situation requires that we need you at Precinct B, you know. As much as you might not agree with it, but we need you because the situation calls for it now.

You can go to Precinct B. That is what is obey and complain later. You go to Precinct B, then you submit your processes, but you go to Precinct B and you perform as instructed at Precinct B, you know. Otherwise if indeed you allow that a policeman would say no, because he is citing
10 that, you know, there is a labour process that must be followed before I say yes, I need to consult with my union, which will be available next week, and then the union, when it comes to the meeting, and then they are going to require that you give them these further particulars about the risk assessment that you have conducted, why you need more police officers. I mean, ja, in that time the people at Precinct B, you know, the residents that must be serviced by Precinct B are suffering.

CHAIRPERSON: Thank you, Mr Nciza.

20 **MR NCIZA:** Thank you, sir.

ADV BALOYI SC: Maybe, firstly, just as a follow-up to this discussion. Commissioner Spies said, and his words was, it has been presented, this issue has been raised at the highest level in SALGA, and then he used the words, and I want you to maybe explain if you know anything about it,

and then he says, but to date we have been denied that. Now, the question is, has this been debated and rejected at SALGA, or it is simply a matter of it has been shelved, and all he was conveying was it has not yet been legislated?

MR NCIZA: Madam Commissioner, remember SALGA is an institution of organised local government, and it deals with the many facets that inform local government. Indeed, Commissioner Spies might have had that discussion in one area, that deals with community safety processes in local
10 government. You know, from an HR working group perspective, like I indicated that one even made a presentation in Gauteng, you know, where indeed we are talking about the ...[indistinct] of the sector and the need to differentiate in terms of our terms and conditions, in terms of our processes, in terms of our discipline management processes, and all sorts of things, to differentiate amongst the various categories and occupational arrangements, you know.

So, their process as the cluster of community
20 safety and the likes might have raised the issue, but at a national collective bargaining level, you know, the issue has not actually taken root yet. And before, before you can even get to that point of the collective bargaining regime, the employer body, the employer body as SALGA, inclusive of the HR components of SALGA, must first come to a

determination that as the employer, we want therefore to advance this ...[indistinct] of the conditions of service, inclusive of discipline management, as informed by the various occupational categories.

ADV BALOYI SC: Thank you.

MR NCIZA: At this point, we have not gotten there.

ADV BALOYI SC: It has not come up yet. Lastly, Commissioner Spies also testified to three police officers who are in Brigadier Mkhwanazi's section, who have
10 appeared in court, and, and, and he did name them. This is Stols and ...[intervenes].

MR NCIZA: McKenzie and Twala.

ADV BALOYI SC: Yes, and this relates to the matter of Smokes & Kings supermarket where cigarettes and someone was kidnapped. Now, his testimony was that that did get to a disciplinary process being instituted, but then the matter was taken away. I think they were supposed to start on day one, and he attended to testify. And then he says that when he got there, he was told it had been taken away, and
20 nothing has ever happened about it. Do you know the circumstances in which this would have happened?

MR NCIZA: I did testify on this, Madam Commissioner, I think sometime early yesterday. We had appointed effectively the same disciplinary committee that we had appointed for Brigadier Mkhwanazi as well, you know. Now,

I testified earlier on that the presiding officer, you know, withdrew from the matter, citing non-payment of his invoices by the municipality on other matters, you know. And unfortunately, this happens in August, you know, and I get shipped out. I got shipped out. So as I understand it, no other presiding officer was then appointed, you know.

ADV BALOYI SC: Thank you. Thank you, Mr Nciza. Thank you, Ms Mohlasedi.

ADV MOHLASEDI: Thank you, Chairperson. That is the
10 conclusion of Mr Nciza's evidence this afternoon.

CHAIRPERSON: Thank you very much, Mr Nciza.

MR NCIZA: Thank you, sir.

CHAIRPERSON: Thank you. Who do I look to?

ADV SELLO SC: Chair, we proceed normally at 09:30 tomorrow morning with the next witness.

CHAIRPERSON: Let us adjourn until 09:30 tomorrow.

INQUIRY ADJOURNS TO 14 NOVEMBER 2025

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