

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

HELD AT

BRIGITTE MABANDLA JUSTICE COLLEGE

27 FEBRUARY 2026

DAY 69



PROCEEDINGS ON 27 FEBRUARY 2026

CHAIRPERSON: Good morning, Mr Chaskalson. Good morning, Mrs Magula.

ADV CHASKALSON SC: Morning, Chair.

MS MAGULA: Good morning, Commissioner.

CHAIRPERSON: Good morning, Mrs Gxasheka.

MS GXASHEKA: Good morning, Chair.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Chair, I am not sure if we are
10 ready to begin at this stage. I understand that there was a
request for a possible postponement. I do not know where
we stand.

CHAIRPERSON: Ms Magula?

MS MAGULA: Thank you, Mr Chairman. Mr Chairman and
Commissioners, today, we are meant to proceed as
arranged yesterday, but there is a bit of a predicament that
we are facing. So I am requesting that, it is my humble
request that the matter be rolled over until the 4th, until the
2nd of March because there are documents which were
20 received during midnight and when we perused those
documents, we found that we have to give a thorough
attention to them before Ms Gxasheka can proceed and they
are voluminous, hence, we request that the matter stand
down.

And also, there are documents that were received

this morning, a document that was received this morning, and it is very crucial that we go through it thoroughly and consult through it before we can proceed. So that is my request, Commissioner.

CHAIRPERSON: What is the nature of the first documents regarding, one set, we have been advised, in fact, the Commission's attorneys gave us copies of an arbitration award ...[intervenes].

MS MAGULA: Yes, Commissioner.

10 **CHAIRPERSON:** Involving Mr Revo Spies.

MS MAGULA: Revo Spies, yes.

CHAIRPERSON: That is the one type of document we are aware of, but you seem to be referring to two categories. What is the nature of one of those, the remaining category?

MS MAGULA: The first one is the one that was received yesterday, mid or early hours of the morning.

CHAIRPERSON: What is the nature, that is my question.

MS MAGULA: The nature of it is the, it is tender documents and they are in a very big volume. They have
20 about, it is 411 pages, if I am not mistaken.

CHAIRPERSON: Is that not the tender itself, because if it is the tender itself, I do not know how, Mr Chaskalson, I am still going to ask him to respond, but I, if the voluminous document is the tender document itself ...[intervenes].

MS MAGULA: Yes.

CHAIRPERSON: I wonder if the Commission would want to hear evidence on the contents of that document, paragraph by paragraph or clause by clause.

MS MAGULA: It is not, Commissioner, it is not only the tender documents.

CHAIRPERSON: Yes.

MS MAGULA: There are also transcripts of Dr Mashazi in the very same volume of documents and some spreadsheets in that document of which it needs to be thoroughly, when, I
10 need to thoroughly go through them and thoroughly consult with my client and make sure that we have everything, we do not leave anything that is required from us to assist the Commission in finalization of her testimony. So it is those documents and the other three emails that we received. This morning we received one and the other two were received late last night. Yes, Mr Commissioner, those are the documents that I am referring to.

CHAIRPERSON: Okay.

MS MAGULA: And in order for her to proceed, we need to
20 go through, yes, we have consulted from yesterday, from the time that we were offered, we have consulted, but we are not yet finished due to the bulkiness of the documents. Mr Commissioner, it is my humble submission that we are not willing to waste any time of the Commission. We want to assist the Commission as much, as soon as possible as

we can, so that we can reach at least to the finality of our, of Ms Gxasheka's testimony.

So, Mr Chairman, on the last occasion when the matter was postponed, it came to my mind that we were given the dates, that is the 26th of yesterday, the 27th and the 2nd. So my request is, can we fall off at least to the 2nd of March to proceed with the testimony so that we can expediate because she has already started and we just need to just to sort this issue out, then we swiftly proceed
10 with her evidence if the Commission can allow us that opportunity. Thank you, Mr Commissioner.

CHAIRPERSON: Thank you, Ms Magula. Mr Chaskalson?

ADV CHASKALSON SC: Chair, we have a difficulty with this request. I think one needs to get clarity on what documents were provided when. The tender bundle was provided on late Wednesday night. That was the document, that was the bundle of documents that I agreed not to ask questions on yesterday and in respect of which we stopped early yesterday so that Ms Gxasheka and her legal team
20 could work through them.

Those documents are not, well, they are not new in the sense that nothing has changed in relation to those documents since we agreed to start this morning. Yesterday, Commissioner Khumalo asked a question in relation to the evidence of Dr Mashazi and we said we

would extract the relevant passages of the evidence of Dr Mashazi and make them available so that the witness could look at them overnight. The transcripts of Dr Mashazi have been there for weeks. They have always been in the possession of the witness. What we did yesterday is we specifically extracted six pages from a bundle of documents that has already been there for a long time and said, these are the six pages that are relevant to Commissioner Khumalo's question.

10 There are two additional documents that are new documents. The first is a two-page letter written by the witness herself that was emailed that relates to the rules in respect of the retirement fund and taking early retirement and medical benefits. That was made available to us after the hearing yesterday and as soon as it was made available to us, we had it forwarded to our learned friends.

 This morning, we were given a copy of an arbitration award in the arbitration between Mr Spies and the Municipality. The arbitration award itself is date
20 stamped 23 February. I do not know, we received it from Mr Spies this morning. I do not know when he received it, but we received it this morning. We made it available. It is not a particularly voluminous document. the Commissioners have seen it themselves, and there are a few short questions to be asked in relation to it. The award speaks

for itself. This is not a matter that requires much answer.

So we, and we, and we cannot just roll over onto Monday. We have another witness scheduled for Monday and we certainly would oppose this postponement. At best from our side, if Ms Gxasheka and her legal team need a bit more time now, we would ask that they be given a little bit more time now, but we cannot waste a day.

And in relation to what is new, it is the arbitration award and a two-page letter, and the arbitration award itself
10 is, it is ...[intervenes].

CHAIRPERSON: 14 Pages long.

ADV CHASKALSON SC: 14 Pages long and the letter is 2 pages long. This is not something that takes a great deal of time to consult on.

CHAIRPERSON: Ms Magula, do you agree with Mr Chaskalson's description of the documents, even including the times of receipt, time/dates of receipt?

MS MAGULA: Yes, Mr Chairman, I agree with Mr Chaskalson with the time and the documents that have been
20 received and the number of pages that, of the evidence that has been received. Yes, I agree with him. I fully agree with him on that. But, Mr Commissioner ...[intervenes],

CHAIRPERSON: Yes.

MS MAGULA: I would like to request that the Commission should at least take into consideration that It is not about

only the documents that we have been received that makes us to request for a postponement. In these documents, she has to answer on them. The client has, Ms Gxasheka, has to answer on them and for her to answer on them, there are annexures maybe that she will need that will support maybe her ...[intervenes].

CHAIRPERSON: You say maybe.

MS MAGULA: Let me remove the maybe, corrections. There are annexures that she may need to support her
10 answer and that will assist the Commission. That is the request, that is the reason why we are requesting that we stand just the matter down until Monday.

CHAIRPERSON: Ms Magula, the only voluminous document is the tender document, on my understanding.

MS MAGULA: Yes, Mr Commissioner.

CHAIRPERSON: And Mr Chaskalson says that that has been with you and Mrs Gxasheka from Wednesday already.

MS MAGULA: Yes.

CHAIRPERSON: So, insofar as that document is
20 concerned, I would not understand the request at all. In fact, I should not say I would not, I do not. I do not understand the request at all. So why would you not be ready if you have had the document from Wednesday already?

MS MAGULA: Not that we are not completely ready, Mr

Commissioner. We are partially ...[intervenes].

CHAIRPERSON: Are you, the completely I do not understand.

MS MAGULA: Not that we are not completely ready, we are partially ready. If maybe we can then be afforded an opportunity that the matter stand down for at least some time, then ...[intervenes].

CHAIRPERSON: Why are you not ready from Wednesday, if you have had that document from Wednesday?

10 **MS MAGULA**: We started with the document we consulted, as I have already explained to Mr Chaperson, that it, to me it was very crucial and for my client, it was very, very crucial that we go through each and every item that is in the document that ...[intervenes].

CHAIRPERSON: You mean clause by clause, go through that tender document clause by clause?

MS MAGULA: Yes, Mr Chairman.

CHAIRPERSON: Let me just quickly, I am still going to come back to you because I have not dealt with all the
20 documents.

MS MAGULA: Thank you.

CHAIRPERSON: Mr Chaskalson, are you proposing dealing with the tender document clause by clause? I would be surprised.

ADV CHASKALSON SC: Not clause by clause, but I can

provide a list of pages to which I will refer.

CHAIRPERSON: Perhaps, perhaps, ja, please, do that. Then let us go on to the document, the transcript, pages of the transcript that were provided pursuant to a question by, a question by Commissioner Khumalo. That is only six pages long. Surely that cannot detain you.

MS MAGULA: No, it cannot.

CHAIRPERSON: So that is not an issue.

MS MAGULA: That is not an issue.

10 **CHAIRPERSON**: Okay. Then there is a two-page letter by Mrs Gxasheka. That too ...[intervenes].

MS MAGULA: That is not an issue, Chair.

CHAIRPERSON: All right. And then the arbitration award is only 14, one four, pages long. That too, I think, should not detain you.

MS MAGULA: That will not be an issue.

CHAIRPERSON: So we are left with only the tender document.

MS MAGULA: Yes, Commissioner.

20 **CHAIRPERSON**: Mr Chaskalson has offered to give you the relevant pages that you should focus on and on which he is going to be questioning Mrs Gxasheka.

MS MAGULA: If that is the case, Mr Chairman, then we can ...[intervenes].

CHAIRPERSON: We are ready to start.

MS MAGULA: Yes, if that is the case, we can stand down the matter for a while, then we would ...[intervenes].

CHAIRPERSON: I propose that we start. Then what we will rather do, let us see during the tea break what we should do, whether we should extend the tea break or we will decide, we will decide.

MS MAGULA: Thank you.

CHAIRPERSON: Let us start now.

MS MAGULA: Thank you for that.

10 **CHAIRPERSON**: Is that in order?

MS MAGULA: It is fine. It is fine.

CHAIRPERSON: Thank you very much. Yes, Mr Chaskalson.

ADV CHASKALSON SC: Thank you, Chair. There was an issue of my, there was a possibility that there would be a supplementary witness statement dealing with the emails in relation to the in relation to the tender, sorry, no, sorry, in relation to the issue of vetting of EMPD members, because there were emails that were relevant. Now, those emails
20 have been provided to us, and I understand the request is that I take the witness through the emails, and can I just check that the Commissioners have copies of those emails? Sorry, the Commissioners will not have copies of those emails, but they are about to be handed up. And can I just see the pagination, if any? Okay. It is not paginated.

Okay. Chair, these documents rightly belong in the main annexure file because they are an annexure to the witness statement itself that ought to have been included. Can I suggest that we actually paginate them at the end of volume 6 so that they would start on page 2062. And if we start at page 2062 and just continue ...[intervenes].

CHAIRPERSON: Thank you, Mr Chaskalson. We request the attorneys to do the pagination for us and appropriately marking the documents for us. You will just identify the
10 documents so that we are able to follow Mr Chaskalson.

ADV CHASKALSON SC: The problem is that they are sequenced in a way where it will be quite tricky to do that. Can I make a suggestion ...[intervenes].

CHAIRPERSON: Yes, yes.

ADV CHASKALSON SC: In view of the fact that we are, there has been a request for extra time. We are going to have to paginate before I can start this.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Might I suggest that we stand
20 down until tea time now and then so we take the break now rather than at an extended tea time?

CHAIRPERSON: What time are you suggesting we will come back?

ADV CHASKALSON SC: 11 o'clock, 11.15, whatever the Commission deems appropriate. But in that period, that

time can be taken advantage of. I will give the list of the page references in the tender document. We will get your documents bundle paginated and we will move much more smoothly afterwards.

CHAIRPERSON: Thank you. Thank you very much. Let us adjourn and resume at 11.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Ms Magula, I assume you are ready now?

10 **MS MAGULA**: Yes, we are, we are. We are ready to proceed.

CHAIRPERSON: Thank you, thank you. Thank you, Mr Chaskalson.

EXAMINATION BY ADV CHASKALSON SC

(CONTINUES): Thank you, Chair. I think where we will pick up with this is for me briefly to lead Mrs Gxasheka on the email correspondence in relation to the legal opinion and the vetting issue. You should now have had your little bundle of email correspondence paginated. It starts at
20 2062 and it would be at the back of File 6 if it has been put into a file. 2062.

And Chair, because it is an email chain, we have to jump around a little bit. I think that the starting point, the earliest email I can see, is at page 2070. If one goes to the foot of 2070, which is page 9 of 11, the chain starts with an

email from Chief Mapiyeye. It is to Mrs Gxasheka, and it is on the 26th of March 2024, just before 3 pm. And if we go down, essentially Mrs Gxasheka, the Chief was asking you for a meeting, was he not? To deal with *inter alia*, the issue of criminal records.

CHAIRPERSON: You see that, Mrs Gxasheka? It is at 2070 and 2071.

MS GXASHEKA: Yes, I can see that.

ADV CHASKALSON SC: And one of the people who was
10 copied on that email is Lefu Makhoba or Makgoba. I am not sure how to pronounce it. Can you just explain who that person is?

MS GXASHEKA: Good morning, Chairperson, good morning, Commissioners and everyone. Thank you, Evidence Leader. Lefu Makhoba was the Acting Divisional Head for Employee Relations. Thank you.

ADV CHASKALSON SC: So, she was reporting to you in the HR department?

MS GXASHEKA: Certainly, yes.

20 **ADV CHASKALSON SC:** So, the next step in the chain is if we go up to the middle, or to the top of page 270, we see that Mrs Makhoba then writes to Njabulo Zulu, who I assume is in the legal department.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: And says:

“Dear colleagues, how far has your progress on the legal opinion on the EMPD employees with criminal records.”

So, she is writing to legal saying, where is the subpoena. If we go up the page, just sort of middle of page 269, you thank her. That is an email from you to Lefu Makhoba still on the 26th of March, 7 pm.

MS GXASHEKA: Yes.

ADV CHASKALSON SC:

10 “Thanks for following up on this.”

And then, at the foot of page 2068, a response is received from Thabo Makhwiting, who I assume is in legal, and he says:

“Good evening colleagues, I have signed off on the comments today, Adv Zulu will send to you first thing tomorrow. Please accept my apology.”

And so, this is legal saying to you, you will have the opinion tomorrow, we are sorry. Sorry it is late.

20 **MS GXASHEKA:** That is correct.

ADV CHASKALSON SC: Then, the following day, the tomorrow, which is the 27th of March, we see at the top of page 2068, Mr Zulu of legal emails you are saying:

“Dear colleagues, please find attached legal comments on the EMPD matter,

regards Njabulo.”

And was that the email that actually attached the opinion?

MS GXASHEKA: Yes.

ADV CHASKALSON SC: My next step, and I do not think I have missed anything, but if I have, call me out. On the 5th of April 2024, Lefu Makhoba emails Chief Mapiyeye, Julius Mkhwanazi - sorry, that is on page 2067, emails Chief Mapiyeye, Julius Mkhwanazi, and Revo Spies, Ivan Du Plessis, and various others:

10 “Dear colleagues, as per the discussion of the meeting of 2 April 2024, with Chief of Police and his management team, as well as the HOD management team, kindly receive the legal opinion for your processing and way forward.”

So, this seems to be the first time that the opinion was given to the EMPD.

MS GXASHEKA: Yes.

20 **ADV CHASKALSON SC**: But it refers to a meeting that is taken place in the meantime between yourselves and the Chief of Police, or yourself, the Chief of Police, and his management team, and your management team on 2 April. And that we do not see in - well, we do not see a minute or anything of that meeting. Do you have any recollection of what happened at that meeting? And just to contextualise it

for you, you would have been in possession of the opinion by that stage, which came to you on the 27th. It had not yet been forwarded to the police department.

MS GXASHEKA: Thank you, Chair. In best of my recollections, I think, and also my evidence yesterday, was that this is where we are discussing the processes. The legal opinion, as we are reading it, it was confirming some of the things that needs to be done.

ADV CHASKALSON SC: Sorry, maybe if I can assist you
10 in that regard, can we go to 2043? We will just keep this bundle open, but 2043 of the annexure bundles - it is the same file, page 2043 of the same file. It should be File 6, because I think that is the legal opinion that we are talking about. Your File 6 of 6, 2043.

MS GXASHEKA: Yes, we were summarising the issues that were discussed regarding the legal opinion, which it talked to, I think, in page 2043. It was talking to the description, for instance, of the employees that were vetted and activities that happened and so forth and so forth. The
20 following page, it was about the EMPD reports, the master fingerprints results and so forth, and then the questions to be answered. If I can go straight to those questions, the first one on page 2044, paragraph 4:

“That for the sake of clarity and convenience in application of the law to

the facts, we will categorise the employees, those who acquired criminal convictions prior to employment, those who acquired criminal convictions during employment, and those who acquired pending criminal cases during employment.”

I think we all understand the challenges that the EMPD and IPID would be found with criminal cases at their work time:

10 “Those who were declared unfit to possess a firearm during employment in the city and those who failed to submit their fingerprints.”

Then they came and discussed the law fits to the issue where employees who acquired convictions, how should we deal with it, and the processes that we needed to follow, including disciplinary hearings, I am summarising, Chair, that we need to have, especially where you are declared unfit to hold a firearm and so forth and so forth. So, at a
20 high level, my recollection was in that meeting that we needed to come with a process of embarking on these different categories.

And also, I have said yesterday that the issue of getting consent and the expungement way is required. So, this is what we were finalising after they have given us the

categories that they had. So, we are just cleaning the house. I then further, we agreed that HR does not have capacity to hold - to conduct that process. Therefore, they will have to source it and get it done by themselves.

But then they keep myself and the accounting officer abreast. And as I said yesterday, again in the meeting, you could find the back and forth among themselves, back and forth. Others are suggesting this process, others are suggesting that process. So, the email
10 of Lefu was focussing on that Chair, that what process we are supposed to follow and what we are agreeing that needs to be done.

And I would like to reiterate, from what I said yesterday, there were challenges. Because some of them said, I already have this, I do not need to do it. But you are pushing that others must be done. You know, and the issues of capacity that we discussed. I think that is what I can recall at this point in time. Thank you, Evidence Leader.

20 **ADV CHASKALSON SC**: Thank you. If we continue in the chronology, it goes to the top of page 2066, where you then write shortly after the email from Lefu, you write to Chief Mapiyeye and Revo Spies, copying Julius Mkhwanazi:

“Dear Chief Revo, please provide us a report regarding the category of

employees, as you explained in our meeting. Also find attached the legal opinion, so you proceed with your internal proceedings.”

And what were you referring to as the category of employees that they had been explaining in the meeting?

MS GXASHEKA: Can you take me back to the annexure now?

ADV CHASKALSON SC: The annexure is LRG the 5th.

10 **MS GXASHEKA**: I have got it. I think I did read in terms of the description of how it should be done, the types of employees that they need to categorise. I have read that in terms of the legal opinion. So, we are referring to that basically.

CHAIRPERSON: Can you please just restate that category for clarity.

MS GXASHEKA: Employees who acquired criminal conviction prior to employment.

20 **ADV CHASKALSON SC**: And can I just clarify that you are on page 244?

MS GXASHEKA: Page 2044, paragraph 4.

CHAIRPERSON: If you are referring to that longish list, it is fine. You do not need to.

MS GXASHEKA: Thank you, Chair.

ADV CHASKALSON SC: Now, your email was on 5 April at

01:46 pm. The next email is from Julius Mkhwanazi, and that is on the same day at 04:21 pm. And he responds. Although your email was addressed to Chief Mapiyeye and Deputy Chief Spies, Julius Mkhwanazi responds directly to the email and says:

10 “Good afternoon, colleagues, responding directly to you. I have set up a team within operation to verify the fingerprints as submitted to us by Deputy Chief Revo Spies and Deputy Director Wanda Van Rooyen. We have discovered that this is the old criminal record data, some of the people on no retirement.”

I am not sure what that means:

 “Cleared by the courts, resigned.”

And then he says:

20 “I suggest we start the process of verification afresh, so we get the correct data of criminal record for every employee. As the HOD was explaining, this is going to affect the whole city. It would be wise if we start with the correct and clean data. As operations, we are combat ready to start the process since we are the most affected one according

to this old criminal record.”

So, if I understand correctly, he is saying this data is not accurate. Some of it is incorrect. We need to start from scratch. And because it is my section that is most affected according to the existing data, let my section take responsibility for checking or getting proper fingerprints. Is that a fair summary of what he is saying?

MS GXASHEKA: That was my understanding as well.
Chair. Thank you.

10 **ADV CHASKALSON SC:** You then responded the following day. And that is at page 2064. And you respond to his letter on Saturday the 6th of April 7 in the morning:

20 “Please note this is your EMPD process and I concur that it must be done seamlessly to ensure accuracy. At all times employees must be vetted and the final outcomes report must ensure that the data provided is correct, current, accurate, valid and reliable and legally and relevant. Legally, all the correct processes and SOPs must be observed and adhered to. Please keep the accounting officer and HR informed of the process to embark upon and timeframes by rather providing a

comprehensive report to this whole process where possible.”

So, do you want to explain your response here?

MS GXASHEKA: Thank you, Chair. My response is exactly what I have said yesterday and today, Chair, that I have said in our meeting it is their process. They have got capacity. They assisted their city anyway. They must run with it. And we already provided guidance in terms of how it should be done and so forth. And all we need is a
10 seamless process.

And obviously, Chief is leading the department and me concur specifically he talks to the Chief and the senior management, but specifically to the Chief. And eventually, based on our agreement previously, was that it keep us informed as we embark on the process because once it is concluded, then it also determines the labour relations processes that we must commence with and be able to assist them where HR gets to start to be involved. Thank you.

20 **ADV CHASKALSON SC**: Then there seems to have been a delay of a full year because the next email in the chain is at page 2063, the middle of the page. And it is Sunday, April the 6th, but now it is 2025, not 2024. And you write to Julius Mkhwanazi saying:

“Dear Acting Chief, this is the issue the

councillor is referring to. We need to act on this before they use it against HR and EMPD.”

And below what you are doing is you are forwarding your last email of 6 April 2024, exactly a year ago, that:

“Dear Colleagues, please note this is your EMPD process.”

So, it seems to me, and again, correct me if I am wrong, that what had happened is that the matter had sometime
10 later been raised in council, closer to April the 6th 2025, and at that point you went back to Julius Mkhwanazi and said, we need to act on this. If we do not, they are going to use it against our departments. The Councillors are going to take action against our departments. Is that correct?

MS GXASHEKA: If I recall events, it may not have necessarily been the council meeting, but where we report the majority of our issues is at OCMOL. So, it might have been the OCMOL. The structure I have discussed yesterday.

20 **ADV CHASKALSON SC:** Sorry, can you just explain that structure?

MS GXASHEKA: It is the oversight of the Executive, Mayor and Legislature offices committee. So, they have been following up on majority of EMPD issues. I think that is where we get to engage about EMPD issues. I think it

could have been Councillor ...[indistinct], where it was discussed. And it was not for the first time. They kept on discussing these issues.

And where it would have been in council as well, it would have been the EMPD MMC, MMC Community Safety, that would have responded. So, it became an ongoing matter that needed to be resolved. So, my aim of the meeting was to say, can this happen? Can you follow up on my email that was sent to you guys a year ago? Thank you,
10 Chair.

ADV CHASKALSON SC: And were there any other communications in relation to this issue between yourself and Mr Mkhwanazi in the intervening year?

MS GXASHEKA: After this one?

ADV CHASKALSON SC: No, no, between April 2024 and April 2025.

MS GXASHEKA: Directly so, I am not sure. It might have been verbal. But where we have been meeting and discussed these issues, it was in the OCMOL. As I said,
20 OCMOL kept on following up that EMPD get this process done. I do not sit in their executive management meeting. I was not sure what was happening there. But in the OCMOL, all of us will be sitting there. So, it will be discussed that it must happen. And I was also trying to emphasise that time is running. Why is this not happening?

Thank you.

ADV CHASKALSON SC: That seems to be the last email in the chain, because the next email is on page 2071, which is just your own personal email where you have sent the email chain for filing.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: Is there anything you would want to add further in relation to this topic? Because from my side, I am happy – well, I mean, I will come back to ask you
10 questions. But that, from my side, seems to conclude the initial process of just taking you through the emails.

MS GXASHEKA: I am comfortable so far. Thank you, Chair.

ADV CHASKALSON SC: Chair, that concludes the process of leading the witness. So, I am afraid now the questions get a bit more intrusive. And maybe we can start.

ADV BALOYI SC: Maybe before you start, there was also the issue of the tender. What has been decided about that?

ADV CHASKALSON SC: I have given a list of references
20 that I am going to refer to. In fact, I am proposing to start right there. So, can I ask you to go to page 168 of the supplementary bundle? Two of two.

MS GXASHEKA: Thank you so much.

ADV CHASKALSON SC: 168.

MS GXASHEKA: Can you mention the page again?

ADV CHASKALSON SC: 168.

MS GXASHEKA: Apologies, for that. 168.

CHAIRPERSON: 6168.

MS GXASHEKA: Thank you, Chair.

ADV CHASKALSON SC: And there you will see a document saying:

10 “Bids are hereby invited for the following.
Human Resources Department, Strategic
HR and Talent Management, Contract
PSHR13 of 2023, the appointment of
accredited skills development providers
to implement various qualification and
skills programmes on an as-and-when-
required basis from date of award till 30
June 2026. And the closing date is 24
July 2023.”

The foot of the page, you will see that that invitation is issued in the name of Dr Mashazi. Did she play any role in this process?

20 **MS GXASHEKA:** In its entirety or the advertising process?

ADV CHASKALSON SC: Well, in advertising the bid or the bid more broadly?

MS GXASHEKA: I do not think so. Because the advertising – from the process, my understanding, the HR will draft the specification, and then the specification will be

taken to the Bid Specification Committee for endorsement. The only role that the city manager will play is to appoint the committee. In fact, all the committees, the Bid Specification Committee, the Bid Evaluation Committee, and the bid education committee. That is their role.

And the main stakeholders, it will be the Chairperson and the whole committee of the Bid Specification Committee. I would not know 100 percent of the supply chain processes, Chair, if it goes to her for signing or not. Normally, HODs, they do not get involved in the tender processes, so it would be very difficult to give every detail. One area I think should be involved is to appoint the committee. Thank you so much.

ADV CHASKALSON SC: If we go up to 162, which is the bid document itself, it says that it is prepared by the HR department, division strategic HR and talent management, and it is prepared for the Department of Human Resources head office. In fact, your name is given there. It gives the email address of Makosi Makamba, both prepared by and prepared for. What role did you play in relation to the preparation of this bid?

MS GXASHEKA: Chair, as much as my name is put there, as you can see, the email is not my email. The role that I will probably play, because I say these documents, HODs are not involved. It will be the agreement, maybe on how

the spec will be, just to look at the documents. Because in terms of technical expertise, it is the divisions, training and development, who will understand what the requirements are.

And my understanding, this specification should have remained the same for the longest time. I did make comments at some point that their current tender, because it has been following the same process all along, it does not cover everything. I said where preferable, I would love us
10 to see having formal education as part of the tender. Where we do have challenges, Ekurhuleni are formal qualifications.

I think as I speak now, it can be verified, I am not 100 percent sure. I know we have media space here. Even at EMPD, if I am sure, there might be no acting chief now, it will be only the acting HOD. Because of lacking qualifications at those levels. I cannot recall if they included it on the tender, but I know that the appointment of service provider for formal qualifications, it did not happen.

20 **ADV CHASKALSON SC**: And what is your distinction between formal qualifications and informal qualifications ...[intervenes]

MS GXASHEKA: I do what I meant ...[intervenes]

ADV CHASKALSON SC: Are we talking degrees and diplomas versus other NQF qualifications?

CHAIRPERSON: Please repeat the part referring to degrees and diplomas, because you spoke at the same time, Mr Chaskalson.

ADV CHASKALSON SC: What do you refer to by formal qualifications? Is it a distinction between degrees and diplomas on the one hand and other NQF qualifications on the other?

MS GXASHEKA: Thank you, Chair. Yes, exactly, that is what I wanted to confirm. That majority of the time, our
10 tenders are focussing on unit standards. And that is what is confusing the institution. Because unit standards, it basically means you would have done certain modules with certain credits. And majority of the time, it is very difficult to consolidate and translate it into a formal qualification, especially timeously.

But if you take a route of having a formal certificate, diploma, degree, honours, masters, it will then assist to improve in our qualification profile of the city. Then you accumulate those unit standards over the longest
20 time. And majority of the time, employees tend to get tired and never get to finish a formal qualification. So that is what I was aspiring towards, that let us just go once and get formal education. That is my own definition between the unit standards and the degree certificate and so forth. Thank you, Chair.

ADV CHASKALSON SC: Where does Makosi Makamba work? Presumably she is in HR somewhere, but where is she?

MS GXASHEKA: I do not know where she is. I think her contract expired or she resigned, I cannot recall. But she is no longer with the city.

ADV CHASKALSON SC: Who would have been responsible within the department for this tender?

MS GXASHEKA: It was her.

10 **ADV CHASKALSON SC:** But presumably it must have been allocated to her for a reason. Would she have sat in strategic HR and talent management? How do you do this with him?

MS GXASHEKA: She was the divisional head for strategic HR and talent management, and the training and development was falling under her. It was a subdivision in the strategic HR and talent management division.

ADV CHASKALSON SC: And you talked about three different committees, a Specifications Committee, a Bid
20 Evaluation Committee, and I think you said bid application, but I think it is Bid Adjudication Committee.

MS GXASHEKA: I said adjudication.

ADV CHASKALSON SC: You did say adjudication, I apologise, I misheard. So, the Specifications Committee would finally sign off on the specifications that go into the

tender?

MS GXASHEKA: Yes.

ADV CHASKALSON SC: And who sits on the Specifications Committee, who decides what those specifications are?

MS GXASHEKA: I will respond from a position of assumptions. As I say, I do not normally go and do this, I have not done it in a long while. My understanding, the city manager will appoint an HOD for a particular department
10 and then will also sit with other HODs and with a mix of divisional heads. So, it would be comprising of high or senior management.

ADV CHASKALSON SC: In relation to the Specifications Committee?

MS GXASHEKA: Yes.

ADV CHASKALSON SC: Did you sit on the Specifications Committee, this one?

MS GXASHEKA: No.

ADV CHASKALSON SC: So, the HOD in this case was not
20 appointed to the Specifications Committee, because you were HOD?

MS GXASHEKA: Can you repeat your question?

ADV CHASKALSON SC: You were HOD.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: But you did not sit on the

Specifications Committee?

MS GXASHEKA: Yes, I did not.

ADV CHASKALSON SC: So, there would not have been an HOD on that Specifications Committee?

MS GXASHEKA: If I were to go and sit there, I would sit to go and present it, to present the item. But what I am saying, the committee comprises of different HODs and divisional heads from different departments.

ADV CHASKALSON SC: I understand now. What about
10 the Bid Evaluation Committee? Who sits in that?

MS GXASHEKA: Also, it will be HODs and divisional heads.

ADV CHASKALSON SC: Drawn across all departments?

MS GXASHEKA: Yes.

ADV CHASKALSON SC: But presumably, if you have an HR tender, and the Bid Evaluation Committee is checking for compliance with the requirements of the tenders, is it not?

MS GXASHEKA: Yes.

20 **ADV CHASKALSON SC**: Before you get to 9010 or 8020, you need HR people in there who will understand what is being asked for.

MS GXASHEKA: The divisional head would have sat in that as well. I think she will sit in the bid specification, and she will also sit in the Bid Evaluation Committee.

ADV CHASKALSON SC: And that would have been Makosi Makamba?

MS GXASHEKA: Yes.

ADV CHASKALSON SC: And, again, on the Adjudication Committee, who sits?

MS GXASHEKA: My understanding on that one, it will be the group chief financial officer, who might be the Chair, if I am not mistaken. It will be the HOD legal, and then it will be other HODs as well. I am not sure if you will find a
10 divisional head in that particular committee. Thank you, Chair.

ADV CHASKALSON SC: And the bid Adjudication Committee is the one that makes the final recommendation of an award?

MS GXASHEKA: Yes. Thank you.

ADV CHASKALSON SC: If we look lower down on page 168, sorry, we moved from 168 but let us stay on 168. Let us go back to 168. It says that:

20 “Acceptable bids will be evaluated by using a system that awards points on the basis of 90 points for bid price, and a maximum of 10 points for specific goals.”

Do you see that? It is the 90-10.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: Now, in a system where you are

operating 90-10 and 90 goes for price, would you agree that you need to have an objective means of comparing prices, that prices must be, you need to compare apples with apples, that if 90 percent of the points are going to go on price, the price must be a number that is in fact the price?

MS GXASHEKA: I think we are giving opinions, Chair, right here, because I want to give you my opinion, but in terms of the technical knowledge and expertise, I think finance department can be able to do that. But my opinion,
10 I think I fully agree with you. If the laws and the statutes could change and not only focus on the price, in some particular areas we could get quality of work done. I think before COVID, around 2019, 2020, I served in a Bid Evaluation Committee for a year or less than a year, and it is one of the frustrations I had that in some instances you miss a very brilliant, good company that can deliver. But because of the price, then you have these problems.

ADV CHASKALSON SC: No, I understand that dilemma, but if the system says 90-10, then price is 90 percent of the
20 points.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: Now, one of the successful bidders here was a company called Buena Vista Learning Academy, and we see that they were one of the successful bidders in a document that is – the document starts earlier,

but there is an announcement in November 2023 that we see at page 128 of the same folder. It starts at 128, and if we go down the next page, if we go down to 130, we will see that the second from last item, row on that item says:

10 “PSHR13 of 2023, the appointment of a panel of accredited skills development providers to implement various qualifications and skills programmes on a as and when required basis from the date of appointment until 30 June 2026, Buena Vista Learning Academy.”

So, they were one of the successful bidders here.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: Buena Vista, are a company which are controlled by the partner of Mr Cat Matlala, a woman called Tsakani Baloyi, and if you go to page 168 - sorry not 168, if you go to page 124, you will see a WinDeed search on Buena Vista, 124. And you will see under company information that starts at the foot of 123, on 20 124 it says that the registered address is 23, well I will not give the address, it is a registered address, and that registered address, if we go down to the next item, is the same address as the residential address of Tsakani Baloyi. You see that?

MS GXASHEKA: Yes.

ADV CHASKALSON SC: And if we go down to page 123, we will see that at the time of the bid, there was only one director in Buena Vista, and that was Tsakani Baloyi. Both of the other two previous directors had resigned. And we see also, if we go back up to 124, that Ms Baloyi only became a director of the company on the 26th of June 2023. That was a week after the bid invitation had been advertised, and it was less than a month before the closing date for the bid. You see that?

10 **MS GXASHEKA:** Yes.

ADV CHASKALSON SC: And that, I want to put to you, ought to be something of a red flag if one is adjudicating tenders. If one sees that the only director becomes a director after your bid advertisement date, and very close to submission date, that should raise some suspicions. Would you accept that? You are nodding.

MS GXASHEKA: Yes, I do.

ADV CHASKALSON SC: There are more red flags here, because when she became a director ...[intervenes]

20 **CHAIRPERSON:** Your mic, Mr Chaskalson.

ADV CHASKALSON SC: If we go down to 127, we know that as a director of this company, she applied in the name of Buena Vista Learning Academy, but at the time she became a director, the company was called Mokoko Grill. It seems to have been a Shisinyama company. That we see at

page 127. And the very first item, there was a name change on the 11th of July. And in brackets underneath is the previous name, Mokoko Grill. So, after the bid was invited, and less than two weeks before the deadline, Mokoko Grill became Buena Vista Learning Academy. I want to put to you that that was another red flag that might have been picked up if you accept that.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: Let us look at the bid price. We
10 see that at 169. There it says seven programmes, and it says total bid price 66 500. But if we go to page 158, we see a spreadsheet that the municipality had provided to us of the payments to Buena Vista Learning Academy on this contract. And although they bid with a total bid price of 66 500, in the period from 23 July 2024 to 5 September 2025, they were paid 3 484 987. Do you know how that could have happened?

MS GXASHEKA: Okay, I want to understand that the total
20 bid price, it means that you are going to tender for 66 000 for the whole tender. I want to have clarity on that, Chair. So, as I say, I am not an expert on that. But on the spreadsheet, it will be the allocation of training as required by departments where she will then go and train.

ADV CHASKALSON SC: So, these are payments that are made, and I think I remember recalling in your statement

you said that HR itself does not have a budget for training.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: Is that correct? So, you cannot pay for training, but the line function departments will pay for training.

MS GXASHEKA: I have said they are also battling to pay for training. Majority of the time, the training will be paid by the CETA, and Ekurhuleni were still striving to get our own budget.

10 **ADV CHASKALSON SC:** So, when you refer to the city, it is not clear to me what you mean. Technically, every department is part of the city, but who do you mean when you say it will be paid for by the city?

MS GXASHEKA: The CETA.

ADV CHASKALSON SC: Oh, by the CETA.

MS GXASHEKA: Yes. We receive grants from the CETA on an annual basis. There have been indications that they submit money in the city on a quarterly basis.

ADV CHASKALSON SC: So, when it says departmental, if
20 we look at page 158, when it says departmental cost centre description, projects, HOD's office, projects, management, HOD roads and stormwater, what does that reflect? Surely that reflects payments from particular departments.

MS GXASHEKA: It means is the money allocated. The departments, they will ask for a particular training, and then

we will allocate that training for that department, and once they are done with the training, it will be paid from the CETA's grants. So, when it says departments, it means training happened in those departments.

ADV CHASKALSON SC: So, what you are saying, if I understand you correctly, is that the city has access to CETA funds.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: Or funds that it can use out of its
10 skill development levy payments and the like, and it will allocate from those funds, or certain departments will have a claim on those funds for training.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: And so, the money is ultimately paid for by the city, albeit what it results in is a credit on skills development levies, or the funds that the city would otherwise pay to the CETA.

MS GXASHEKA: Yes, technically you can say that.

ADV CHASKALSON SC: I flagged some of the red flags in
20 this bid. I want to suggest that there were a wide range of others. The first is the CSD registration report, and that one sees at page 311, and it records that the CSD registration on the created date was ...[intervenes]

MS GXASHEKA: Apologies, Chair, I am still getting the page.

ADV CHASKALSON SC: 311, 311.

MS GXASHEKA: Thank you.

ADV CHASKALSON SC: It records under created date, which is when the CSD registration takes place, that CSD registration took place on 20 July 2023. So, this company was registered with the CSD four days before it submitted.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: It also obtained its BEE certificate four days before it submitted its first BEE certificate. One sees that on page 311. You see BEE's certificate issue date, 20 July 2023.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: We have already seen that the only director was appointed on 26 June 2023. If one goes down to 389, one sees that the bank account was only opened on 17 July 2023.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: Will you agree that all of these are red flags that ought to have been picked up in the tender adjudication process either by the BEC or the BAC?

MS GXASHEKA: I fully agree, Chair.

ADV CHASKALSON SC: Can I point to another one? If we go to the CSD report, it says that the vendor is not VAT registered. That is at page 313.

MS GXASHEKA: Okay, I do not see that part.

ADV CHASKALSON SC: If you go to page 313 under tax information, it is got an income tax number, and then it says, is the supplier a VAT vendor? And it says no.

MS GXASHEKA: Okay, yes, I can see that.

ADV CHASKALSON SC: But if we look at the bid, we see that the turnover that is claimed in the bid, and I have unfortunately lost my reference, is I think it was R35 million in the previous financial year. So, there was R35 million. I will get you the reference in a minute. R35 millions of
10 turnovers in the bid. It is cited in the bid.

ADV KHUMALO SC: 191.

ADV CHASKALSON SC: Sorry? Commissioner?

ADV KHUMALO SC: Turnover on 191.

ADV CHASKALSON SC: On page 191. Thank you very much. What was your turnover in the previous financial year? It says R35 174 600. And what is significant, if we go back to page 311, is that if we look at the industry classification that is described for Buena Vista Learning Academy, it says its core industry is not, in fact, training,
20 but construction. So, it says, on page 311 ...[intervenes]

CHAIRPERSON: Perhaps you should have concluded the point about not being VAT registered, and yet there is R35 million.

ADV CHASKALSON SC: I need to refer to construction because there are training providers who do not have to be

VAT registered.

CHAIRPERSON: Okay, thank you, thank you.

ADV CHASKALSON SC: But there are no construction companies that do not have to be VAT registered. So, if we look at what is said in the CSD report, it says the core industry is construction, and the percentage share of annual turnover is 35 percent from construction activities. And if we take the R35 million quoted in the bid as the previous financial year's turnover, 35 percent of that would be over
10 R10 million, which is way over the VAT threshold. So, there seems to be a fraud of some sort taking place here. Either it is a VAT fraud. You are nodding.

MS GXASHEKA: I think so, yes.

ADV CHASKALSON SC: Or this turnover figure is a fictitious figure. Either way, there is a fraud, either on the city or on the receiver. There seems definitely to be a fraud on the city or the Department of Finance. Because if we go back to page 311, although the bid says we saw annual turnover was R35 million, we see that the CSD registration
20 says that the total annual turnover is R10 million or less.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: So, one of those two figures must be lying.

MS GXASHEKA: I agree.

ADV CHASKALSON SC: Possibly both. Do you agree that

this VAT fraud ought to have been picked up in the course of the adjudication process and ought to have resulted in a disqualification of this bid?

MS GXASHEKA: Yes, without having technical knowledge, I fully agree. As I say, finance, they can answer better on this. But as seen here, I fully agree with you. Thank you.

ADV CHASKALSON SC: Can I point to another fraud that ought to have been picked up in the process? If you go to page 181, you will see that Buena Vista described its
10 principal business activities as training and skills development.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: But if we go to the CSD at page 311, we see that we are told that its principal business is in fact construction.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: They cannot both be true. Do you agree?

MS GXASHEKA: As I say, from my level, I do not know
20 your expertise. It looks like really there is some discrepancies. Unless they are saying they are doing training on construction of buildings, I do not know. But from what we see, I see those irregularities. Thank you, Chair.

ADV KHUMALO SC: Mr Chaskalson, what do we do with

the industry classification 2? Because there they do mention that it is education.

ADV CHASKALSON SC: Indeed, but if one looks at principal activity, 35 percent is for construction. I think it was a 25 percent for education.

ADV KHUMALO SC: 35.

ADV CHASKALSON SC: 35 percent for construction is a 25 percent for education. So, the principal activity of this company, according to the CSD report, is construction. Can

10 we go to page 184 of the bid?

MS GXASHEKA: 100?

ADV CHASKALSON SC: 184. There it says that the legal entity is a company, not a joint venture. Do you see that?

MS GXASHEKA: Yes.

ADV CHASKALSON SC: But if one looks at the bid, it is based on partnership agreements, which is what one would expect to see in a joint venture, not a company. So, we see that at page 303, the bid is supported by a subcontracting agreement, where the principal is CTC College (Pty)
20 Limited, and the second partner is Buena Vista. And I would ask you to note that CTC College is represented by MJ Madzibadela.

We can come back to MJ Madzibadela later. There is a partnership agreement there. And if we go to page 375, we see another partnership agreement, this time

described as a memorandum of understanding, between Nceda Cleaning and Security and Buena Vista Learning Academy. Now, the bid had to be based on a partnership, because Buena Vista, being a Shisanyama company, or apparently a Shisanyama company that until recently was in a completely different industry, had no training accreditations of its own.

So, if we look through this bid, we will see that there are no training accreditations that Buena Vista itself had and let me take you there. But for now, before I take you there, would you agree that if Buena Vista had no training accreditations of its own, it could not qualify for this bid? Certainly not without entering into a JV with somebody who did.

MS GXASHEKA: I am going to repeat that I am agreeing with you from the layman's point of view, and I do not want to say I am talking here on behalf of finance department. From the layman's point of view, but I am sure finance will have reasons and understanding of how subcontracting works. So, I do not want me conceding to be a position of the finance department. I am just from the layman's point of view all this looks very strange. Thank you, Chair.

ADV CHASKALSON SC: Let us go to accreditation. There were a series of accreditation letters put up by Buena Vista. There were five in all. The first one appears at 343. Sorry,

the first one appears at page 332, and you will see that that accreditation letter is issued to a company with a similar name, but a different company, a company called Buena Vista 143 (Pty) Limited.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: But it was issued, if one looks at the print date, on 5 April 2023.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: When this company was not
10 called Buena Vista Learning Academy, it was called Mokoko Grill. Recall that?

MS GXASHEKA: Yes, I recall that, the name.

ADV CHASKALSON SC: So, it had to have been issued to a different company altogether, because if it was issued to this company, it would have been addressed to Mokoko Grill. The name only changed in July 2023.

MS GXASHEKA: Chair, I keep on agreeing on certain things, and my concern here, I am not a technical expert on this, and I do not want to sound like I am going to be
20 supporting irregularities, but I see something that says, attention, Mpho Madzibadela, excuse me.

ADV CHASKALSON SC: Mpho Madzibadela, yes, we are going to get to Mpho Madzibadela.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: You recall that Mpho Mathebula

was part of CTC, the partnership agreement.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: So, this is an accreditation letter issued to a different company with a similar name, that issued to a company belonging to the person who has now apparently, if indeed these are not forgeries, who appears to have gone into partnership with Buena Vista Learning Academy.

MS GXASHEKA: Yes.

10 **ADV CHASKALSON SC**: But it is not an accreditation letter for Buena Vista Learning Academy.

MS GXASHEKA: Well, it says here, Buena Vista 143 (Pty). I do not know what that means, or it is another company of Buena Vista. Yes, but I agree with you, it is not the same as the initial name on the tender.

ADV CHASKALSON SC: Indeed, it is not the same, and it could not have been the same.

MS GXASHEKA: Yes.

20 **ADV CHASKALSON SC**: Because at the time that this letter was issued, if this letter is not an entire forgery, 5 April 2023, the company had not changed its name to Buena Vista Learning Academy (Pty) Limited, it was still called Mokoko Grill (Pty) Limited.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: It only changed its name four

months later.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: Now, the fact that an accreditation letter to a company with a similar but different name is included in a bid for Buena Vista Learning Academy, strikes me as an attempt fraudulently to pass off this accreditation letter as an accreditation letter of Buena Vista Learning Academy. Do you have any comment on that?

10 **MS GXASHEKA:** I will repeat, in some areas I sort of agree with you, where I see irregularities, but I will not make deductions on behalf of another department. Thank you.

ADV CHASKALSON SC: Well, I also want to put to you that this attempted fraud ought to have been picked up, and it should have resulted in the disqualification of Buena Vista Learning Academy. You are nodding.

MS GXASHEKA: I am nodding. As I said, from our layman's point of view on my side, it should have been
20 picked up. I agree with you, Chair. Thank you.

ADV CHASKALSON SC: The second accreditation letter is at page 343. That is an accreditation letter issued to CTC College (Pty) Limited. The third, and again it is not for Buena Vista, the third accreditation letter at page 357 is issued to CTC College, and here we see Mr Mpho

Madzibadela as the addressee. Again, it is an accreditation not to Buena Vista, but to another entity. The fourth accreditation, page 370, is again to CTC College, not to Buena Vista. The fifth accreditation is to Nceda Cleaning, and you remember that Nceda Cleaning were the second entity with whom there was a partnership agreement.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: Again, there is no accreditation of Buena Vista.

10 **CHAIRPERSON**: Did you mention the page?

ADV CHASKALSON SC: 370.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: So, Buena Vista produced no evidence of any accreditation that would have qualified it for this contract. Do you accept that?

MS GXASHEKA: Yes, from the layman's point of view, I accept that. Thank you.

CHAIRPERSON: What do you mean by that? This one does nothing because in respect of everything else you
20 have been saying, you lack the necessary expertise. I do not see the expertise here. This is about letters of accreditation. If you think there are letters elsewhere, maybe that is what you should say. This one has nothing to do with the expertise you have, which has been your refrain throughout.

MS GXASHEKA: I think, Chair, what I am trying to say, there is certain processes regarding subcontracting and also working with certain institutions on matters. I am just grappling to understand how those agreements work. Hence, I am saying from my point of view, indeed, something does not look right, but I do not want to speak for the finance department because they will be technical experts in understanding how maybe these things are done, Chair.

10 **CHAIRPERSON:** Technical experts who will say there were letters of accreditation directed to Buena Vista training. This is a simple factual issue. I do not see this expertise that you keep referring to, at least not on this instance or not in this regard.

MS GXASHEKA: Chair, maybe we are not understanding each other. I am saying ...[intervenes]

CHAIRPERSON: I understand you perfectly. I understand what you are saying, but I do not understand what you mean by it. Yes, please.

20 **MS GXASHEKA:** Thank you, Chair. I am saying, Chair, there are ways finance will do things about partnership, about memorandum of understanding to ensure that there is compliance. I do not want to speak for them, for that department, but I am saying from where I am sitting, I am not from finance. Things does not look good. I agree with

you, but I am saying my position, I would not say - I might say it does not look good as Linda, but they can come and say the reason these things happened, it was because of this and this and have an explanation.

CHAIRPERSON: I will not take it any further ...[intervenes]

MS GXASHEKA: Thank you, Chair ...[intervenes]

CHAIRPERSON: But I just do not understand because this is about is there or is there not a letter. It is a simple fact, nothing about expertise, but as I say, I will leave it there.

10 **ADV CHASKALSON SC:** One of the other requirements of the bid was letters of reference. There was a letter of reference at page 317. It came from the City of Johannesburg, but it was a reference in support, not of Buena Vista, but of CTC College.

MS GXASHEKA: Yes, I see that.

ADV CHASKALSON SC: So, that tells us nothing about Buena Vista.

MS GXASHEKA: Yes.

20 **ADV CHASKALSON SC:** Then at 328, we see a reference which is in favour of Buena Vista, but it comes from CTC College and ubiquitous MJ Madzibadela. So, at 318, we see there is a letter purporting to be a reference in favour of Buena Vista:

“In recognition of their exceptional performance in successfully delivering

the training. Recognition of prior learning assessment and moderation for National Certificate in Occupational Health, Safety and Environment, NQF Level 2 programme for AT learners. Buena Vista has consistently demonstrated their dedication to providing a comprehensive and high-quality education. The training programme developed and executed by BVLA has effectively covered all the necessary components of the National Certificate.”

On and on it goes, but it comes from Mr Madzibadela.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: Who is their ostensible partner in this project. Then there is another one, also a reference letter for Buena Vista. That is on page 319, coming from a company called Symbol Consulting. Would you believe it?

It is also signed by Mr Madzibadela. Page 319.

MS GXASHEKA: Yes, I can see that, Chair.

ADV CHASKALSON SC: And just to complete the picture in relation to Mr Madzibadela, he also pops up in the bit at page 357, where he is, and I think we have been there already. Yes, this is the third accreditation letter, which is

for CTC and which is addressed to him personally. So, it seems to me that what is taking place here is definitely a fraud, and it may or may not involve Mr Madzibadela.

It may be done completely without his knowledge. All of these things may be being put up without his knowledge. Or he may be colluding in it, we just do not know. But what we do know is that Ms Baloyi and Buena Vista Learning Academy have, in this application, perpetrated a fraud on the city and have taken almost R3.5
10 million out of the city as a result of that fraud. Would you agree with that?

MS GXASHEKA: From the deductions that I made, I agree with you, Chair. Thank you.

ADV CHASKALSON SC: Before I leave this topic, let us look at the financials that were put up by Buena Vista. Page 395 is where we find the 2023 financials, and they purport to be certified by an accountant. I will not mention his name, but we are going to call him, because if he did certify these financials, he has something to answer for. If
20 he did not, then we need to know that his name has been used fraudulently.

On the following page, page 396, there is a of the signature of Ms Baloyi as director. And what you would notice about both of these pages is neither of the signatures are dated. One does not see a date on any of

this, which I want to put to you ought to have been another red flag. One does not see financials that are signed without a date in the ordinary course of business.

MS GXASHEKA: I fully agree, Chair.

ADV CHASKALSON SC: There is another fraud, which is that if one looks at page 403 of the financials, and bear in mind that these are financials for the year ending February 2023, we see there is a note in relation to director's remuneration, which says that a salary of over a million
10 rands was paid to the director Tsakani Baloyi or T Baloyi, but of course, in the year ending February 2023, Ms Baloyi was not a director of this company.

MS GXASHEKA: I agree, Chair.

ADV CHASKALSON SC: So, what we have is a bid that is full of transparent frauds, but none of them seem to have been picked up in your procurement process, in the city's procurement process. Do you have any way of explaining how this could have happened? It is not just one disqualifying feature that was missed. It is about ten.

20 **MS GXASHEKA:** Thank you, Chair. As I said, I am not involved in the procurement processes. I have explained it. All those three committees, I do not sit. The line department who is got a tender that is ongoing does not sit there. Finance might need to explain. It is going to be very important, Chair, that I explain. I have never seen this lady

in my life. The only time I saw her, it was on TV when this whole thing started. If she goes in a mall, I go in a mall, we probably pass each other. I do not know her. I have never seen her. If what happened here, the perception is she was done favours, it will have to be taken with finance. I am not involved in these processes. Thank you, Chair.

ADV CHASKALSON SC: You see, on the strength of a bid that should have been disqualified on any one of a number of obvious grounds, the city has paid 3.5 million, and it is
10 paid it to a person who just happens to be the partner of Cat Matlala, who is driving around with blue lights that were obtained through the city. Does that not strike you as somewhat worrying on both fronts?

MS GXASHEKA: Chair, when I was speaking to my legal team yesterday, and we were going through the payments, this is one of the companies at some point I said, they must not be utilised. Initially, when I took over, after I think Makosi left, I started being involved here before we could feel the position on training issues. I picked up that there
20 was no rotation, therefore we could not guarantee equitable share of service providers.

I called my team in that division, and I said, this must be done correctly. I further called the head of EPMD to come and assist in terms of coming with the system to ensure that bidders are given equal opportunity. There

were about two or three bidders I was not necessarily happy with their work, and if I recall, this was one of them. I said, when I saw that there was a payment that happened in, I think, November last year, I was a bit concerned because in my take, I said, let us stop utilising this bidder.

But because I would have been involved probably to sign the order, I am not 100 percent sure I did not find those documents here, and I cannot explain why did we continue with this bidder, but there were two of them I was
10 not happy with their work, and there were certain demands that I understood that they might have wanted to do work specifically for EMPD, and I put a red flag on that, and I will still take full accountability that continued to be utilised, despite the fact that I said I am not happy with them.

There were two or three of them I said I am not happy with, and I really want to emphasise, never seen this lady in my life. But I did pick up that the work that they were doing, I was not 100 percent happy with, and some of the demands that were starting to be made. Thank you,
20 Chair.

ADV CHASKALSON SC: So, can I ask a couple of issues flowing from your response? You seem to have had a range of concerns. The one is that the work was not satisfactory, is that this company was not providing training of a sort that you have regarded as satisfactory.

MS GXASHEKA: In terms of the tender, that we agree what must happen on the tender, if I can recall some of the areas, you train, after training you give certificates, and sometimes how the certificates are done and how long they take to be done, it gives problems. So, as I say, as much as I cannot recall all the events, there were three of them I was not happy with how they do the work, and how long it takes to get the certificates. I think it was in one of those reasons that I said let us not use this particular company.

10 **ADV CHASKALSON SC:** And this was one of those companies?

MS GXASHEKA: Yes, Chair. Hence, I was saying I got shocked when I saw that there was - again, I am not sure that the payments that happened towards the end of the year, because we do not always pay immediately after the work has been done. If it was after I have stopped, or it happened before I said they must stop being utilised, that I could not answer to Chair. Thank you.

20 **ADV CHASKALSON SC:** And when would you have raised your concerns and asked for this company and two others not to be paid any further?

MS GXASHEKA: I think it would have been, let me check, I do not have specific dates, I do not have specific dates, but it was during the time I started looking at the allocation of work and the equitable share, and then also the

performance, because one of the systems I have put in place was we must report to finance of the work that is done quarterly. So, I cannot recall which quarter and when did I do that red flag, but I did pick up as one of the red flags and the companies I was unhappy with. Thank you, Chair.

ADV CHASKALSON SC: I mean, can you give us any specificity? Are we talking about 2024, 2025, when would this have been?

MS GXASHEKA: If I can just get the page of the invoices,
10 I think it would have been towards the end of 2024 or early 2025, Chair. I think, yes, towards the end. It would have been maybe, let us say, around that April 2025, maybe.

ADV CHASKALSON SC: There is another issue with this payment schedule that, well, before we get to the payment schedule, can I ask you, you said that there was an allocation issue that concerned you. Do I understand you correctly, meaning that there was, as it were, a panel of service providers who would be appointed. There was more than one successful bidder on that bid, and this
20 service provider was getting more than their fair share. Is that what the concern was?

MS GXASHEKA: It might not be this one in particular who would have got more share. There would have been others that would have got more than she would have. So, when I was talking about equitable share, I was not specifically

focussing on this particular one. I was just talking in general for the whole panel that has been appointed.

ADV CHASKALSON SC: So that was one of the issues you were addressing. You are addressing two issues. You are addressing allocation and you are addressing quality of work.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: And you recall that this provider was flagged for one or both of those issues.

10 **MS GXASHEKA:** Yes. Thank you, Chair.

ADV CHASKALSON SC: Who did you raise these issues with, and where would there be a documentary record of it?

MS GXASHEKA: The documents, it will be the allocation schedule, and I raised it with, as I said, head of EPMO, and the lead was assisting after Makosi left. But in terms of records, what records you can get in the city is the allocation schedule. Thank you, Chair.

ADV CHASKALSON SC: But if you raised it with someone, there should be a documentary record of that. I mean,
20 presumably it would be written down somewhere in an email or in a memorandum. Where would we go to find that?

MS GXASHEKA: The allocation schedule, you should find it in HR, or you should find it in finance. As I say, if I recall, we also submit quarterly reports. So, between, I would not know the name specifically in finance, but in HR

from the training team, I think the acting HOD will be able to assist where the team can collate the documents and make them available.

ADV CHASKALSON SC: But that is the allocation schedule, but I understand that, or maybe I am misunderstanding your evidence. Did you issue any instruction to someone saying, do not allocate work to this service provider, either they have got too much already, or they are not giving us certificates? Will we find an email or
10 a memorandum to that effect?

MS GXASHEKA: I am not 100 percent sure if there will be an email, Chair. When my team raised the issue, their concerns, and I follow up those concerns, I then made that decision there and there that do not allocate this person work. Sometimes when they do bring the allocation schedule, I do make comments, but I cannot recall. Hence, I am saying, I think in the allocation schedule, you should get some of the answers you are looking for.

ADV CHASKALSON SC: But I am still trying to understand
20 the process here. There must be written records of decisions of this nature. Where will we find them?

MS GXASHEKA: Hence, I am saying on the allocation schedule, it should give you a direction. Rather than that, I doubt you have any other information. But I can check the emails. I will ask the city, or they can assist you, because I

think they do have access to my emails, to check if there would be any discussions of that nature.

CHAIRPERSON: Who produced the allocation schedules?

MS GXASHEKA: It is the divisions, HR Strategic and Talent Division. There are two ladies, there is a gentleman and a lady, there is Zama, and the gentleman, I think he is called Nkosi, I forgot his name. They will be the ones that will bring the schedules.

CHAIRPERSON: Mr Chaskalson is asking for proof of you
10 having queried the allocations, and you referred to the allocation schedules, which you say were produced by other people, not by you.

MS GXASHEKA: Yes.

CHAIRPERSON: So, he wants to understand how you referred to that, if it was not your document.

MS GXASHEKA: As I said, Chair, I would normally make
20 comments, I am hoping that those comments can be found, and another way, it will be seeing the pattern. There should have been a change from the beginning of when we started allocating, and how the tenders started going. I cannot recall all the events now, but sometimes, for instance, I would not sign a document. I will just return it and say I am not happy. So, that is why it becomes difficult to get all the evidence, but I am sure the lady is very helpful, which I am able to assist.

CHAIRPERSON: Thank you.

MS GXASHEKA: Thank you, Chair.

ADV KHUMALO SC: Just to clarify, I had understood your evidence earlier to be that when purchase orders were brought to you, you refused to sign them, so you are surprised that subsequent to that, there were payments made to this company. Did I understand that correctly?

MS GXASHEKA: I said, Chair, I was shocked that there was a continuity up to towards the end of 2025, and I said, I
10 take full accountability. That is what I said to the legal team. I should have picked it up. So, you know, so I am taking full accountability, but surely, I know for sure that I was not happy with their work.

ADV KHUMALO SC: But what, did you say something about purchase orders and the fact that you had to sign them, and you refused to sign them?

MS GXASHEKA: No, I said, Chair, I made a note and maybe an instruction that says let us stop utilising this company because of the challenges they brought to me.
20 However, ...[intervenes]

ADV KHUMALO SC: Sorry to interrupt you. Where would we find that, where you made a note that we should not use this company anymore?

MS GXASHEKA: I said we might not have that. The only thing that can assist is the schedule because sometimes I

do make comments. I am hoping that we can be able to find that. Number 2, you will see in the schedule that he is - I do not think it is the worst company - it is the best company we paid, the highest. It is probably the lowest of the lowest. That you will be able to see that penalty can guarantee you. So, to me, what lacked in this evidence was that schedule or looking at all other companies instead of focussing on this one, it will tell you how the funding was allocated. If that can be found, it will really assist this
10 Commission. Thank you.

ADV KHUMALO SC: Thank you, Mr Chaskalson.

ADV BALOYI SC: Ms Gxasheka, just to understand about the purchase orders, did you - were you responsible or were you in the chain of signing purchase orders?

MS GXASHEKA: I would have been in a chain, Chair. As I say that, the work will start at that division and then ultimately come to me. Even that evidence will be important because I would like to know was I signing everything if I did not, maybe I might find that I did not even sign the last
20 ones, you know. So, I really would like us to find that information.

ADV BALOYI SC: Would any payments be approved if they did not have your - if the purchase order - there was no purchase order with your signature on it?

MS GXASHEKA: It might be if the signing document, the

purchase order does not need my signature. But if it needs my signature, I cannot be paid. So hence I am saying I am not 100 percent sure if I was signing after I said they must stop or I did not. I would like to see those documents for me to comment.

ADV BALOYI SC: Yes, I am not asking a question about before or after. I am trying to understand how the system works. You, this is a service for your, for your department. You are the HOD. You said something about purchase
10 orders and you signing, and I am trying to clarify that evidence that in the normal course, do you as HOD, if things are done regularly and properly, do you as HOD sign purchase orders?

MS GXASHEKA: Yes.

ADV BALOYI SC: Okay, and would they be paid in the normal course? If in the normal course you sign purchase orders, would they be paid without your signature?

MS GXASHEKA: In fact, the payment does not happen after purchase order, Chairperson, Chair. It happens after
20 the invoice has been signed off by the department and my team and say that the work has been done.

ADV BALOYI SC: Yes.

MS GXASHEKA: Then under normal circumstances, I must sign that invoice before finance pays.

ADV BALOYI SC: Yes.

MS GXASHEKA: Yes.

ADV BALOYI SC: So, so, so unless there was any irregularity as in removing your name as one of the signatories or someone forging your signature or representing that they are you, payment would not be made unless you have also signed off.

MS GXASHEKA: Yes, it should be like that.

ADV BALOYI SC: Thank you.

MS GXASHEKA: Thank you, Chair.

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

ADV CHASKALSON SC: Thank you. I propose to move to a different topic at this stage unless there are further questions from the Commission on the issue of this tender.

ADV BALOYI SC: Can I just ask, I am not - I am not sure how you, that I understood, I know I did not understand what your answer is if you gave it. You, Mr Chaskalson asked you about your role and involvement with this procurement process and somewhere in your answer you said, I would have made a presentation to the Bid
20 Specification Committee.

Correct me - you would correct me if I misheard you or you were just speaking generally, that is one. Keep note that and then the second one was you explaining who sits in the BAC, the Bid Adjudication Committee. You said the CFO and then you said HOD, according to my notes, you

said CFO, HOD and other HODs. Can you just explain that? So, clarify first whether I under, I heard you properly to say you would have made a presentation and then the second is who in fact are the other HODs. When you say HODs, who, how do they get selected?

MS GXASHEKA: Thank you, Chair. I said at the beginning, Chair, my role on the Bid Specification process. I commented on a document that is crafted by MACOS[?] and I said they have been doing this kind of documents for
10 years now. My only concern was that it does not have formal qualifications like a degree or honours and postgrad. If I am not mistaken, let me correct myself, they might have a few diplomas and certificates but a degree and majority of our adverts and they want a degree. That was my comment. Going to the Bid Specification Committee, I need to be understood. There is about 20-something HODs.

So, the City Manager will appoint committees, Bid Specification Committee, Bid Evaluation Committee and Bid Education Committee and those committees comprise of
20 HODs and Divisional Heads. Then on the BAC Committee, it will comprise of, you are correct, I did say, I think the Chairperson is the group CFO and then he will sit with other HODs from the City. And my understanding, once a document, a tender has been adjudicated, it then goes to the City Manager for the final signature. But the

Adjudicating Committee would have made a recommendation. So, that is my understanding of how these processes go.

ADV BALOYI SC: I think what I wanted to understand is the other HODs, when you say HODs, who sits there? Does the client department, such as you, for example, in this contract that we are talking about or in this bid we are talking about, would - so you are the client, you are procuring the service, do you get as HOD to sit in the BAC?

10 **MS GXASHEKA:** No, no.

ADV BALOYI SC: Is there a rule that says you do not sit, or it is just, it just happens that way, that you were not selected to come and sit on this one?

MS GXASHEKA: I was not part of any of these committees. The City Manager used her discretion to appoint these three committees, and I do not serve in any of the three.

ADV BALOYI SC: Thank you.

MS GXASHEKA: Thank you.

20 **CHAIRPERSON:** Just a small matter of clarity, when you commented about the sort of qualifications that you thought should have been specified, or rather, which Ms Baloyi did not have, according to you, in what capacity did you comment?

MS GXASHEKA: I commented as endorsing the bid

specification document from the division, my division, one of the divisions I am responsible for, when they come with the criteria. So, I have said you are always using these similar qualifications. I am aspiring that we move beyond just having diplomas or unit standards. Can we include degrees and others? That is all my comment was.

CHAIRPERSON: At what stage of the process was this?

MS GXASHEKA: It would have been before they go to bid specification.

10 **CHAIRPERSON:** So, during the, once bids were in, you never participated at any stage?

MS GXASHEKA: No, as I said, I do not know if it is a rule, but my observation for all the years I have been in the city, if it is your department, that is tendering. I have not seen an HOD who go and present an item in any of those three structures.

CHAIRPERSON: Thank you. Thank you.

MS GXASHEKA: Thank you.

20 **ADV CHASKALSON SC:** Sorry, I said I wanted to leave this topic, but just flowing from those questions, it does occur to me that there is something else I need clarity on. At what stage, before the bid, or how long does it take before the bid goes out for public invitation for the bid to be finalised in - for the bid specifications to be finalised at Bid Specification Committee?

In fact, if you can take me through the process from the very beginning, because presumably this process is triggered by a decision in your department, we need to procure these services. Then there is a process of finalising specifications, then the specifications are adopted by the Bid Specification Committee, then there is an invitation that is put out publicly, then tenders get submitted and go through the BEC and the BAC. I am interested in understanding the length of the process before the
10 invitation. So, at what point in relation to this tender would a decision have been taken, we need to ask for new service providers for training?

MS GXASHEKA: Without specifying through you, Chair, understanding how National Treasury craft the circulars, but the ideal situation, it must be six months before the current running tender expires. So, it normally should start, if it is going to end in June, the following year, it should start about January.

ADV CHASKALSON SC: And there was a running tender
20 in place in this case that was going to expire. Was there a training tender in place?

MS GXASHEKA: Yes, there would have been a tender in place in place.

ADV CHASKALSON SC: No, not there would have been a tender I mean you were head of department. Was there or

was not there?

MS GXASHEKA: There was.

ADV CHASKALSON SC: There was. So, six months before the expiry of that tender, there would have been a decision taken, let us get ready for the next tender. And do you know when that tender expired? Because the closing date for this bid was the 24th of July. So, I would imagine you would have wanted to leave some time for the bid to be awarded rather than having a period where your old tender
10 expired, your new one had not been awarded, and you then had to extend or find some other solution.

MS GXASHEKA: What is your question?

ADV CHASKALSON SC: So, when would the old tender have expired?

MS GXASHEKA: It would have been, normally it expires end of June. So, it would have been end of June 2023 or 2024. Our financial year ends in June. So, it would have been June between those two, 2023 or 2024.

ADV CHASKALSON SC: But the closing date for this
20 tender was 24 July. So, the bids had to come in on the 24th of July.

MS GXASHEKA: Which year?

ADV CHASKALSON SC: 2023. But if the bids are in on the 23rd to 24th of July 2023, it certainly could not have been that the old tenders were expiring in June 2023 unless

there was mismanagement of the process. Do you accept that?

MS GXASHEKA: It happens sometimes. And the reason being, hence, even the National Treasury standard says that six months before. But sometimes you will find out between the department and the Bid Specification Committee, there is left and right, and eventually they find each other than enforced and then it gets advertised. Then after being advertised, it goes to evaluation processes.

10 Even there, sometimes there will be back and forth. And the aim is to identify these irregularities we identified here today. And in those instances, it does not always happen. There might be an extension of the previous tender.

ADV CHASKALSON SC: So, you cannot tell us exactly when the old tender would have expired. But you think it is likely that it would have expired either in June 2023 or in June 2024.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: Thank you. That clarifies that for
20 me. The next topic that I want to move to is very briefly just to deal with two issues relating to Mr Spies. And I do not want to spend too much time. But the first relates to your allegation yesterday that what Mr Spies did in respect of the, I think it was the Syntell tender, was misconduct and you slightly backed off from the allegation that this was

fraud. But were you aware yesterday that Mr Spies's challenge to his suspension in that regard has gone to arbitration and an arbitration award has been made in favour of Mr Spies against the city? Were you aware of that?

MS GXASHEKA: No, I was not aware. In fact, I was shocked when I saw it because when it was supposed to have happened and the next appearance date, I think it was a month ago, we had an understanding with the city's
10 lawyers that they will allow me to appear here at Matlanga Commission and then thereafter I will go and present my case there. So, I was not aware. I only saw it when you sent to the legal team I work with. Thank you.

ADV CHASKALSON SC: Because there are certain features of this arbitration award I want quickly to run through with you because it is not just an award in favour of Mr Spies, it is a truly emphatic award in favour of Mr Spies. On page 521, sorry 421 of the bundle.

ADV BALOYI SC: Mr Chaskalson, we put away the tender
20 documents file.

ADV CHASKALSON SC: Yes, although I think it is probably going to be in the same file. It is page 421 of the same file the award.

ADV KHUMALO SC: 418 of File 2 of 2.

ADV CHASKALSON SC: It should have been filed at the

back of your ...[intervenes]

ADV KHUMALO SC: Yes.

ADV CHASKALSON SC: Is it? It is.

ADV KHUMALO SC: Yes, in the supplementary.

ADV CHASKALSON SC: Sorry, yes. So, at page 421:

10 “On 5 February 2025, the applicant was served with a letter of intention to suspend dated 4 February which was signed by Linda Gxasheka and Mariba Machokocha[?]. The applicant stated that he had handed in his uniform, equipment, *et cetera* on 6 and 7 January because he was leaving the city already.”

Is that correct?

MS GXASHEKA: I do not know, Chair. Apologies, I would not know. He would hand over to if it is in case that is how they work, you do not work your notice, then it would have handed over to EMPD. Apologies.

20 **ADV CHASKALSON SC:** But is that not something that you ought to have investigated before you decided to issue a notice of suspension? Because if he, in fact, had already handed in his uniform and equipment and was not working off his notice because he had accrued leave or whatever, then what on earth was the point of a suspension?

MS GXASHEKA: It is something that I will learn from it

and it will need to be investigated and ensure it does not happen going forward. In terms of Basic Conditions of Employment Act, when you serve your notice, you do not take leave. So, if it happened in that department, they would need to correct it.

ADV CHASKALSON SC: But if he had handed - I mean, surely this is something you ought to have investigated before you decided to suspend someone. You suspended someone who, at least on the factual finding in this
10 arbitration, was not going to be at work for any period of the suspension anyway.

MS GXASHEKA: As I said, Chair, I would not think that the department will not comply with Basic Conditions of Employment Act. In your last working month, or your last working month specifically, you do not take leave. So, I would not proactively think that let me investigate that an employee who is serving a notice is not at work, because it is not supposed to be like that. But now that we learn from here, in the future it is something that a person would look
20 at. Thank you, Chair.

ADV CHASKALSON SC: But is it not something that you should have investigated? I mean, one of the reasons this suspension was set aside is that you did not afford Mr Spies any hearing whatsoever before deciding to suspend him. Is this not an illustration of what purpose a hearing might have

served? If you had heard him, he has said, well, look, I am not going to be here anyway, so why suspend me?

MS GXASHEKA: As I said, Chair, I expected that if you are serving a notice, you should be at work. Now that we know that he was not at work, it is something that I would look at in the future.

ADV CHASKALSON SC: That was not my question. My question was, if you had given him a hearing, this would have come out, and you would have understood that a
10 suspension would have served no purpose, but you did not give him a hearing.

MS GXASHEKA: What happens, you get a notice of the intention to suspend, you respond to that, and then the suspension happens. And after that suspension happened, there was an investigation report that was done. So, the process was followed. I am not 100 percent sure when you say we must have given him a hearing. Maybe I am missing you, Chair, truly, Chair.

ADV CHASKALSON SC: Well, let me leave that one. Can
20 I take you to ...[intervenes]

ADV BALOYI SC: Can I just ask, the process that we have come to know works at EMPD is you first give an intention, a notice of intention to suspend. That is what Mr Chaskalson is discussing with you, that there is an intention to suspend before you say, I have suspended you now. And

that hearing is they respond to your intention to suspend and say why they should not be suspended. That did not happen here. In fact, what Commissioner Spies said is, the same time as he got his intention to suspend, he actually was told you are suspended. And you are responsible for that process.

MS GXASHEKA: Chair, I would have to go through the document thoroughly. I think we are speaking the same thing, that my understanding of the process is it would be
10 the notice to suspend, you reply, and then we suspend. If there was an irregularity on that, I will need to investigate. It should not have happened that way. And as I say, I have not had enough time to thoroughly go through these documents and get the award. Maybe after lunch, can I respond to that? But ideally, the process is we suspend. Where we normally differ, it is when we say, while you are being served, then bring the documents. But normally, we respond. After responding, then the determination is made.

ADV BALOYI SC: When we come back from lunch, I would
20 like you to provide an explanation of what happened here. Thank you, Mr Chaskalson.

ADV CHASKALSON SC: There is another significant finding here. If we go to paragraph 12 on page 423, where the arbitrator appears to have had regard to the recommendation of the Bid Adjudication Committee and the

decision of Dr Mashazi, because he refers to documents:

10 “The Syntell contract was extended from
1 July 2024 after the contract was re-
evaluated by the Bid Evaluation
Committee. The applicant referred to the
minutes of the Bid Adjudication
Committee dated 28 June 2024. He
pointed out he was not present at the
meeting. The Bid Adjudication
Committee *inter alia* recommended to the
city manager on 28 June that the
appointment of Syntell be extended to 31
December 2024. He cites page 170. On
30 June 2024, the city manager,
Mashazi, approved the extension of the
Syntell contract until 31 December 2024,
A171.”

20 What is your comment to that? Have you ever seen the Bid
Adjudication Committee recommendation and the decision
of Dr Mashazi?

MS GXASHEKA: Thank you, Chair. I have seen them, but
I will just need to check again in terms of the dates where
there was a discrepancy. In the documents and the
minutes, if I recall properly that I read, it said it was
approved for 90 days, but then after the 90 days expired, it

continues beyond the 90 days. I will just try and find that document, but the issue was the discrepancy in terms of the additional three months.

ADV CHASKALSON SC: We have an arbitrator saying that there is a recommendation that is approved that says the appointment of Syntell (Pty) Ltd... be extended to 31 December 2024. Are you saying there is no such recommendation?

MS GXASHEKA: I will have to check, Chair. All I know is
10 if there was a six-month extension, then there was an additional three months that was not approved. The issue that was concerned was the additional three months beyond what has been approved by Dr Mashazi.

ADV CHASKALSON SC: But look at what the arbitrator finds:

“On 30 June 2024, the city manager approved the extension of the Syntell contract until 31 December 2024.”

There is a reference to a page. Can I take you to another
20 document that actually reinforces this? It is page 256 of your annexure bundle, not the evidence bundle, so it will be File 2 of 6. 256, 256. This is a letter from Syntell to the city. There are two paragraphs I would emphasise. The first is paragraph 2:

“As you are aware, the extension letter

was ambiguous regarding the term of the extension. Upon verbal confirmation between Ms Agnes Van Rooyen and Mr Johnny Van Der Merwe, it was confirmed that the extension is for a minimum of three months up to 30 September and a maximum of six months up to 31 December.”

That is the letter that is given to the supplier. And then
10 paragraph 3:

“Over the past three months, we received various informal communications, since neither WhatsApp nor email communication constitutes an official notice to terminate the contract. From Colonel Van Rooyen and DCOP Spies, that the contract terminated in September.”

So, here is the supplier saying, Chief Spies has told us that
20 the contract terminates in September, but in fact, the letter of appointment says it runs to December. And you are taking disciplinary action against Chief Spies for allowing a contract which an arbitrator finds runs to December to run beyond September when he has written to the supplier saying this contract terminates in September. Do you have

a comment on that?

MS GXASHEKA: The issue, Chair, is exactly that there were verbal discussions that were taking place and they were also understanding it was the 30th of September. And putting somebody on suspension, Chair, it is not being punitive. It is for us to investigate the matter. So, in this instance, we needed to ensure that Revo Spies and John Van Der Merwe are accounting for the confusion.

The intention was not to punish anybody. So, the
10 disciplinary process started because we needed a clarity that these verbal discussions versus what the contract might have ran. And decisions were made by EMPD. And our role as HR was to just assist them to ensure that there is clarity with this tender. Yes, I agree with you the tender would have said up to three months and a maximum of six months. But the decision to ensure its maximum of six months, it was the decision of EMPD. And we were assisting EMPD with the investigation.

ADV CHASKALSON SC: But what this letter says is the
20 opposite of that. It says that Mr Spies has written to them either on WhatsApp or email saying this contract terminated in September. Did you do any process of investigating whether that had taken place and whether Mr Spies was totally innocent of the alleged misconduct that it seems Mr Mkhwanazi and yourself wanted to lay at his door?

MS GXASHEKA: The reason for putting him on suspension was to conduct that investigation, exactly that, Chair. If maybe he did not leave the city, we could have even exonerated him. But we all know the intention of putting someone on suspension is to ensure that you investigate further without the interference of that witness. And that is the approach and the support we are providing from HR.

ADV CHASKALSON SC: But you knew he was already leaving the city. You knew already in January that he was
10 leaving the city. He had given notice of early retirement in January. And he was going to leave the city with effect from the end of February. So, you, in the first week of February, knowing that he is going at the end of the month, put him on suspension. Can you explain why?

ADV KHUMALO SC: And if I may add to that, he is already at home because he is serving one month notice. So, he is saying, my one-month leave, which I am owed, my notice period, I will serve it while I am at home. So already he is not at work. What is the reason for suspending him when
20 he is at home and not at work?

MS GXASHEKA: As I said, Chair, the suspension is to investigate the issue that an employee is sitting at home and serving notice at home. It should not have happened. A notice you serve at home. And the issue of suspension, let us say he was at work serving a notice, it was for him to

be away from the process. But I was not aware he was already at home from the side of the HR because I would have stopped that and said he was supposed to be at home. And just because you are serving a notice, Chair, it does not mean you cannot be investigated.

CHAIRPERSON: Perhaps we should take the lunch adjournment at this stage.

ADV CHASKALSON SC: Can I just make one last comment? If you look at paragraph 28 of this arbitration
10 award, the arbitrator makes an extraordinarily far-reaching finding. He says:

“I am not satisfied that the respondent ever believed that there was a *prima facie* case of misconduct against the applicant, either regarding his alleged appointment of Syntell or regarding his extension of the Syntell contract.”

When an employer suspends an employee without having any reasonable basis to do so, it is axiomatic that the
20 suspension of the employee constitutes unfair disciplinary action short of dismissal. Essentially, you have an arbitrator finding that the city has acted in bad faith towards Mr Spies. And that is in a process that you appear to have driven. What is your comment on that?

MS GXASHEKA: Chair, an arbitrator will always make its

own judgment based on the evidence that is provided in front of that arbitrator. And awards that are made are always subject to review. And what is shocking in this matter is that it was concluded without my evidence, where I would have fully prepared and go and testify on this matter. So, every arbitration is subject to review. I am not in the city now.

The city can decide that they want to review or they want to pay Revo Spies. My comment is that every award is
10 subjected to a review. And without me participating in that arbitration process, I will not take accountability for those who went and embarked on this process. They must take accountability. At least if they waited for me to prepare after coming here next week, I would have been there and I would have put my story.

And then the arbitrator makes a final decision. At this point in time, all I can say, every arbitration award is subject to a review and is subject to the facts that were put in front of the arbitrator at that point in time. And, Chair, I
20 want to agree that I have seen that there are things that we could have done better. I want to agree on that. We could have done things better. And I have gone through that document. I did not even browse. I just lied just through it. And I think if I can put my detail into it and go through it, and if I was given an opportunity, I do not know what the

arbitration outcome would have been. Thank you, Chair.

ADV CHASKALSON SC: What I do want to say is that in your statement, you accused Mr Spies in this regard of fraud. Now, do you want to withdraw that allegation at this point? Do you want to apologise to Mr Spies?

MS GXASHEKA: Chair, I already spoke yesterday about issues of fraud. And I think Commissioner Baloyi, we discussed that thoroughly. And I said ...[intervenes]

ADV BALOYI SC: It was in a different context.

10 **MS GXASHEKA:** I was about to say ...[intervenes]

ADV BALOYI SC: It was about the pension payout. You are being asked about these charges, this charge of disciplinary.

MS GXASHEKA: I need to respond to that.

ADV BALOYI SC: Yes.

MS GXASHEKA: The issue, Chair, we discussed about fraud yesterday and was asked to withdraw. It was exactly the issue of pension fund. And the issue of the extension of the contract is something else. And what I am saying, I do
20 not know if my statement, I spoke about fraud when it comes to the Syntell issue, or I was referring to the process that we embarked upon in terms of the allegations that were brought to the fore. If there are, I will go through my statement and I will come and give another answer if there is need to have another answer after lunch. But I do not

recall talking about fraud issues on this particular matter.

ADV KHUMALO SC: Let me help you. Paragraph 104 of your statement:

“He was suspended for the fraud and related matters of the extension of the service provider contract.”

Page 35, paragraph 104.

MS GXASHEKA: Yes, hence I have said that the issues of fraud, I will come and clarify after lunch, the issues of fraud
10 that we embarked upon, it was in relation to how the, what you call this, the retirement was embarked upon.

ADV KHUMALO SC: No, no, you say he was suspended for the fraud related matters of the extension of the service provider contract. You say that in paragraph 104 of your statement.

MS GXASHEKA: Okay.

CHAIRPERSON: Do you want to look at paragraph?

ADV KHUMALO SC: 104, page 35. That does not require consideration and a response after lunch. It is your
20 statement, so please have a look.

MS GXASHEKA: Come again, Chair?

CHAIRPERSON: I am saying that does not require that you consider it during lunch and come and respond after lunch. It is your own statement, so please have a look at that paragraph and respond.

MS GXASHEKA: Okay, I am looking for it.

CHAIRPERSON: And respond to the question.

MS GXASHEKA: Okay, in terms of the disciplinary action, paragraph 62:

10 “Revo Spies's disciplinary proceedings emanating from an unauthorised extension of the service provider's contract beyond the BAC Bid Adjudication Committee agreed three months. Revo Spies informed the Commission that he has retired and he still...”

ADV KHUMALO SC: Ms Gxasheka, page 35 of your statement, paragraph 104, in line 5.

MS GXASHEKA: Okay, may I read? On the supplementary, may I read?

ADV KHUMALO SC: Yes, sorry, I mean the original in the supplementary.

20 **MS GXASHEKA:** Oh, okay. Okay, 104 says:

 “It is important to elaborate and make the Commission to comprehend that Revo Spies was not dismissed. He took early retirement in order to go and work in the city of Tshwane. He, therefore, did not leave the city as a result of a new staff

establishment, but rather because he found a job at the city of Tshwane. While he was serving a notice, it was discovered that the city of Ekurhuleni, in the city of Ekurhuleni, he was suspended for fraud-related matters of the extension of the service provider contract, and the evidence is labelled in the funds.”

Chair, I would like to say that I see the discrepancy. In my
10 original statement, when I was talking about the fraud issues, I was relating to how the retirement process was dealt with. And we engaged on that issue yesterday, that what is fraud versus maybe misleading, you know, and I agree that maybe misled. I would like to correct 104 to read the same way as the old statement, if possible. So, I am asking through you, Chair, that we can correct that.

ADV KHUMALO SC: Withdraw the fraud allegation.

MS GXASHEKA: I am withdrawing the fraud. I do not think it is a fair word to anybody. There was a misleading
20 in terms of the pension fund issues. We have dealt with that very well, better than he could have done. But on this matter, it was indeed about the extension of the contract. It is either three months and who went and extended beyond three months and the six months. Thank you, Chair.

ADV CHASKALSON SC: Can I just clarify? I mean, you

say that you want to frame it as you did in the first statement. Unfortunately, the same allegation of fraud is in the first statement, so I think you should withdraw it there, too. If you go to page 22 of the first statement, paragraph 64.3, can you just confirm that you are withdrawing that allegation of fraud?

MS GXASHEKA: I have already done that, Chair, that misleading might be different from fraud. It might be a definition issue.

10 **ADV CHASKALSON SC:** No, no, if you go to 64.3, fraud is mentioned twice. 64.3, the foot of page 22.

MS GXASHEKA: I am responding to that, Chair, that it was an issue of an extension of a contract between three months and six months.

CHAIRPERSON: Ms Gxasheka, it is a simple point. Are you withdrawing the reference to fraud even in respect of the original statement, yes or no?

MS GXASHEKA: I did withdraw it, Chair.

20 **CHAIRPERSON:** No, no, we are talking about the original statement now.

MS GXASHEKA: I am withdrawing it, Chair.

CHAIRPERSON: Thank you, thank you.

ADV CHASKALSON SC: Thanks, Chair. Can we resume after lunch at this point?

CHAIRPERSON: Let us adjourn and resume at 14:10.

INQUIRY ADJOURNS

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: Thank you, Chair. I want very briefly just to touch on the second allegation of fraud against Mr Spies, but very briefly. We traversed some of it yesterday, and I did not understand you to persist in the allegation of fraud, but I do want to draw your attention to a letter that you yourself wrote, and it is at page 410 of Supplementary Bundle 2, 410. It is page 410. It is a
10 memorandum addressed to all employees by, the heading says Ms Linda Gxasheka. It is dated 16 August 2022, and it is about extended medical aid membership. And paragraph 1 says:

“This memo serves to confirm that employees who retire from council service in terms of the provisions of their respective approved pension or provident fund rules will be eligible for extended medical fund membership and an
20 extended medical contribution benefit from the council.”

And then it is paragraph A, it indicates who it covers, and A says:

“Retire on pension. Employees who have reached their retirement age as per their

pension scheme rules and retire from the City's employment qualify to participate in the extended medical aid membership.”

Then in paragraph 2, it says:

“The term retirement also includes early retirement as contained in the rules of the respective pension provident fund.”

So would you accept that Mr Spies was entitled to take
10 early retirement and claim the extended medical fund membership, in terms of your own letter?

MS GXASHEKA: Thank you, Chair. If an employee takes early retirement, he is entitled to the benefit. Thank you.

ADV CHASKALSON SC: I want to move to a separate issue altogether, and that is the charges against then Brigadier Mkhwanazi, and those charges are in the annexure bundle to your statement, that would be File 2 of 6 and it is Annexure LLG18 on page 90 of that File 2 of 6. Do you have them?

20 **MS GXASHEKA**: Yes.

ADV CHASKALSON SC: Are you familiar with these charges?

MS GXASHEKA: Yes, I am.

ADV CHASKALSON SC: And you will agree with me that they are very serious charges?

MS GXASHEKA: I agree.

ADV CHASKALSON SC: And if we look at Charge 4 in particular, it seems to me that this is the most serious of the lot. Charge 4 reads:

10 “On or about the period 2021 and 2022,
 you directly/alternatively, indirectly
 allowed third parties to impersonate
 police officers through the memorandum
 which was contained on the letterhead of
 the City of Ekurhuleni, Ekurhuleni Metro
 Police, and furthermore allowed third
 parties to unlawfully use blue dash lights,
 knowing very well that the said third
 parties were not allowed to impersonate
 police officers by using blue dash lights.”

Will you agree with me that that is a particularly serious charge, allowing people to impersonate police officers unlawfully?

MS GXASHEKA: Certainly.

20 **ADV CHASKALSON SC:** And we now know with hindsight that the people who are alleged to have been allowed so to impersonate police officers are people under the control of someone who is currently standing trial for charges of attempted murder, kidnapping, and other serious offences. We know that. Will you accept that?

MS GXASHEKA: Can you repeat that, please, sir?

ADV CHASKALSON SC: That the people who were allowed to impersonate police officers, people working for CAT Security, were people who were working for someone, Cat Matlala, who is now facing charges of attempted murder, kidnapping, and the like.

MS GXASHEKA: I am really battling through you, Chair. I am really battling through ...[intervenes].

ADV CHASKALSON SC: Well, let me break it up. Who is
10 it alleged that Brigadier Mkhwanazi allowed to impersonate police officers?

MS GXASHEKA: I do not know.

ADV CHASKALSON SC: Surely you do know. To whom were these blue lights made available?

MS GXASHEKA: From what I have heard and seen in terms of the video clips, it was made to Mama Cat or something like that.

ADV CHASKALSON SC: Have you consulted the investigation file in relation to these charges ever in the
20 course of the last three years during which they have been pending, or potentially pending?

MS GXASHEKA: Remember, I have instituted a forensic investigation, so I am fully aware. I think initially I could not hear your question.

ADV CHASKALSON SC: You have done a forensic

investigation, but have you read the allegations that gave rise to these charges?

MS GXASHEKA: Yes, I have.

ADV CHASKALSON SC: So you say it was Mama Cat who is alleged to have driven with blue lights. Who else is alleged to have driven with blue lights?

MS GXASHEKA: As you read that they were allowed third parties to use or flash blue lights. I do not know who are those third parties.

10 **ADV CHASKALSON SC**: You do not know?

MS GXASHEKA: No.

ADV CHASKALSON SC: You do not know that they are allegedly people working for CAT Security, that it is CAT Security vehicles on which these blue lights were installed?

MS GXASHEKA: As I say, I do not know. I have never seen them. I do not even know how they look like. But from what you are saying, I agree that they were third parties that were allowed to use blue lights.

20 **ADV CHASKALSON SC**: Are you saying here today that you are not aware of the fact that these allegations relate to the use of blue lights by CAT Security?

MS GXASHEKA: No.

ADV CHASKALSON SC: How can that be?

MS GXASHEKA: I do not think we are getting each other here, Chair. I think we are missing each other a lot this

afternoon. I am saying I am aware of the charges and I am aware of what transpired. But the question that says, do you know these people, I am saying I do not know these people. That is all I am saying.

ADV CHASKALSON SC: So you are aware that the charges are that CAT Security was allowed to use blue light vehicles that were registered through the EMPD?

MS GXASHEKA: Yes.

ADV CHASKALSON SC: Yes.

10 **CHAIRPERSON:** Please do not nod. Please speak. Are you saying yes?

MS GXASHEKA: Yes, yes, Chair.

CHAIRPERSON: And what ...[intervenes].

ADV CHASKALSON SC: And where ...[intervenes].

CHAIRPERSON: Ms Gxasheka, that is what the question was throughout.

MS GXASHEKA: Yes.

ADV CHASKALSON SC: You are aware that CAT Security is a company controlled by Mr Cat Matlala?

20 **MS GXASHEKA:** Yes.

ADV CHASKALSON SC: And you are aware that Mr Cat Matlala is currently facing charges of attempted murder, kidnapping and the like?

MS GXASHEKA: I saw that on TV. I was shocked. Yes.

ADV CHASKALSON SC: Sorry, you were shocked?

MS GXASHEKA: Yes.

ADV CHASKALSON SC: What shocked you about it?

MS GXASHEKA: Everything that I saw on TV that was said about him, the attempted murder and all.

ADV CHASKALSON SC: And did it shock you, did it shock you because you knew him and were surprised that these charges were being laid against him or did it shock you for another reason?

MS GXASHEKA: Okay, can you ask one question at a
10 time?

ADV CHASKALSON SC: Why did it shock you?

MS GXASHEKA: That there was allegations against him of an attempted murder of a lady, a former girlfriend.

ADV CHASKALSON SC: Yes. Why did that shock you? Why did it come to you as a shock that Mr Matlala was alleged to have attempted to kill his former girlfriend?

MS GXASHEKA: I think every attempted murder in terms of gender-based violence concerning to a woman, it will shock anybody. I am not sure we would be expected to
20 have it normal.

ADV CHASKALSON SC: So it is not specific, you have no personal knowledge of Mr Matlala that caused the shock? It was just the nature of the alleged offence?

MS GXASHEKA: I have seen Mr Matlala. I have met Mr Matlala two or three times in my life. When I met Mr

Matlala, he raised a complaint of a woman who was pregnant and was beaten up by the senior member of EMPD. And number two, he raised other issues that, through you, Chair, I would not be comfortable to discuss here. Hence, when I asked for what is this risk-threat analysis I was serious about.

When he was complaining that Ekurhuleni were protecting these two senior members, who, as I said the first one, he sent a complaint of a woman who was beaten
10 up while she was pregnant. And the second one, it was that we were about to appoint a City Manager and there were favours that were done.

When this was brought to me, I said, I do not have the complainants, I do not have details. He then said I am protecting those two people and because I am protecting those people, he is going to take us to a public protector. In one of my last conversations with Mr Matlala, I said, I am going to say it in Xhosa, I am not sure how I am going to translate it in English because I said it in Xhosa. I said
20 ...[vernacular] if you have got issues, go and report them where they are relevant.

When I saw him in December or January on TV, that is where I was shocked that a person who wanted to complain about another person, he can also do violence. And I told my husband and I said I have met this guy

before. And what is shocking is that I said in my last conversation ...[vernacular]. So even some incidents that I have, maybe let me not get there, but I started panicking. That is the last time.

And I am going to reiterate because I can see I am being associated with him there. I am going to reiterate, I have never met his wife. I do not know them, two of them. All I know, I met him about two incidents. As I said yesterday, I do not think every incident of Ekurhuleni is
10 going to be discussed here. Because it is going to implicate, with due respect, you are in effect finding tragedy and we are here to assist you. But I have said to Ekurhuleni before they suspended me in the ...[indistinct], have your own task team and deal with other issues that the Madlanga Commission will not be able to. Thank you, Chair.

ADV CHASKALSON SC: So to take a step back, we have charges that a company owned by Mr Matlala is allowed to pass itself off as people employed by that company are
20 allowed to pass themselves off as police officers because someone inside the EMPD has unlawfully given them access to blue light vehicles through the offices of the EMPD. Those are the charges.

Those charges are sufficiently substantiated that independent attorneys engaged by the City have said there

is a case here, let us proceed with disciplinary action against the man who created this situation, Brigadier Mkhwanazi. You agree?

MS GXASHEKA: Yes.

ADV CHASKALSON SC: That took place in the first half of 2023. The charges were formulated and the attorneys were ready to proceed. And we sit now two and a half years later and nothing appears to have been done about this case. Mr Mkhwanazi still has not been called to his disciplinary
10 commission as far as I can work out. You are nodding.

MS GXASHEKA: I am waiting for you to finish.

ADV CHASKALSON SC: Okay. How do you explain that? You were in charge of HR over this period. How do you explain that?

MS GXASHEKA: I have explained yesterday. I am not going to start on the usurping of powers. I am going to focus on the LR procedural matters that count most here. I have taken the Commission through the emails where the charge sheet never got to see the day of light. Subsequent
20 to that, Mr Nciza never delivered the charge sheet and it was very clear that games were being played.

Communications happened, including where the Chief of Police wrote himself and said I am withdrawing the charges of Mr Mkhwanazi. In fact, he says I am withdrawing the investigation. Something like that. When

you look at how this was managed by Mr Nciza, even how the Chief has spoken to it, if you go to the forensic report, it is very clear when he talks to the charge sheet how it went. It starts when there was a decision to institute a disciplinary hearing.

When the Chief submitted that to Mr Nciza, Mr Nciza took almost a whole month just to appoint the attorneys. He took the whole month to even implement. He goes and says in his statement, I read all of it yesterday, 10 where he says because IPID has confirmed that an arrest will happen, we had a discussion and decided what is the point of me appointing attorneys if the people are going to be arrested. He took that decision on his own.

By the time he decided that he must appoint the attorneys on the 30th of May, the DC was already stopped. I mean, sorry, the suspension was uplifted. My role, I signed the upliftment, I did say that, through an instruction, through an engagement. And in all of our statements, the Xolani Nciza, Chief of Police and mine, there is a 20 collaboration that an instruction happened.

The next area where I was involved, I explained all of this yesterday, it was on the issue of advising on the deployment. The question that remains is, why did the DC not take place? And that is why I instituted a forensic that how clumsy can we be in having this DC concluded? The

report of the forensic report came back, I think it was on the June 2024. And I said yesterday, when that report came back in June 2024, it was supposed to have gone to council. And in the midst of issues, there was an IPID report and then finally a legal opinion.

Now I am going to come back to the issue of usurping of power. I have explained section 64(b), I have explained section 64(c), where everything ultimately lies with the accounting officer and ultimately lies with a Chief
10 of Police. My role, if it was not enough, Commissioners, I am sure there is room for improvement. But the latest I got myself involved in this matter, it was October just before my suspension, where I still said, can I have the final file from Mr Majang?

Mr Majang, remember, is the one who served the charges. If we paid Mr Majang and there was an instruction from an accounting officer to continue with this DC or where I could advise, it would have been if I had the file. I further said that in the forensic report, it spoke about limitations.
20 So with the gaps for me to go back to the accounting officer and say, look, we have to get this DC to go, it would not have been easy without having all the information we have. But most importantly, that the Commission must remember, there was a legal opinion. Beyond that, it becomes difficult for me to take full responsibility.

Lastly, the disciplinary process of Mr Mkhwanazi, as far as I know, has commenced. My advice on that was you do not even need to suspend this employee any further. Can we proceed with the DC? And that happens when there is a new City Manager. As far as I know, as much as I am not in the City, the DC, now that there is a new accounting officer, it is underway. And I am one of the people who advise that I think there is a case to answer to. Let us first try, we do not even need to suspend, but the DC must
10 happen. And that subsequently was suspended. Thank you, Chair.

ADV CHASKALSON SC: Let us take it step by step. The first issue, as I understand it in relation to this DC, was back in 2023 when there was a failure to serve the charge sheet on Brigadier Mkhwanazi. You remember that?

MS GXASHEKA: Yes.

ADV CHASKALSON SC: Now, we have conflicting versions. We have one version which says that that did not happen because you had given instructions that he should
20 not accept it. You deny that. Have you taken action against anyone for failing to serve the charge sheet on Brigadier Mkhwanazi?

MS GXASHEKA: If you read the forensic report, by the time that recommendation was made in that year, Mr Nciza was no longer in the system. So it would have been very

difficult to take an action against him.

ADV CHASKALSON SC: But why did you have to wait for a forensic report? On your version it is quite clear that Mr Nciza had the responsibility to serve the charge sheet. As you say, all that required was an email because Brigadier Mkhwanazi was no longer suspended.

MS GXASHEKA: As I said earlier on, Chair, there are decisions that were made here. In that, there is an accounting officer who must account on these issues.
10 There is the head of EMPD who must account on these issues. And at some point, some of the discussions were taking place without me.

When I got to fully focus on this particular matter on its own, it is after the anonymous email where I said, can we get to the bottom of this and understand what happened? In between, a majority of issues were discussed between the Chief and the accounting officer. When the Chief said I am stopping this process, he then says to me, let us go and talk about it outside the institution. I said, I
20 do not do talking outside the institution. It is your discussion with the accounting officer. I was not involved. Discussion took place between Chief, accounting officer, and legal. I was not involved.

And if those, they decided amongst three of them to stop the DC by saying the investigation is stopped, there

was nothing I can do. Where I started having interest, it is when it got to public space and we realised that there were irregularities.

ADV BALOYI SC: What are the irregularities that you now realise there are?

MS GXASHEKA: As I said, Chair, firstly, we took long to deal with the matter. And my understanding, I think even when the Chief of Police wanted to meet with me, probably wanted to raise his frustrations because you can see that
10 he signed this institution to discipline in April. You know, come in June, still nothing has happened. I think that is where his frustrations were. That is number one.

And number two is when decisions are made, I am not going to discipline around discipline. I am still making my mind. It is the second irregularity that we can improve from. And the third one is we appoint attorneys. After appointing attorneys, the process is stopped. It also becomes an irregularity, both on the procedure and also financial. And the last issue is I think the legal opinion, we
20 could have done much better on the legal opinion. And I think we have all learned from that.

ADV BALOYI SC: I am trying to understand your evidence and the chronological sequence that you put. You became involved with this matter and you became aware that Chief Mapiyeye has written a letter where he says the

investigation is withdrawn or something to that effect. You became aware of that. So at which point do you recognise there are irregularities? That is why I am asking you, what are the irregularities you are referring to? And at which, maybe let me add a second thing, at which point do you say you became aware of irregularities?

MS GXASHEKA: I became aware of all the irregularities after we have done the forensic, that indeed we could have managed this matter better.

10 **ADV BALOYI SC**: Hold on about managing it better. When is that? When you say after the forensic report, when is that?

MS GXASHEKA: It was in June 2024. But Chair, maybe let me rephrase this. When I said let us have a forensic report done, surely we did something wrong. I agree that with the current charges that we have, you could not just say I am stopping the process. And understanding that the Chief stopped the process based on frustrations, that is number one. Number two, there is also a legal opinion
20 ...[intervenes].

ADV BALOYI SC: No, he did not stop the investigation. That is not his evidence. Let us not restate his evidence incorrectly. His evidence is he stopped because he was instructed, not because of frustrations. He says I was instructed to stop.

MS GXASHEKA: Yes, I am correcting myself. In his letter, though, he did say I, Chief Mapiyeye, I am stopping. But you are correcting other evidence he did say he was instructed.

ADV BALOYI SC: Yes.

MS GXASHEKA: Yes.

ADV BALOYI SC: Okay. Yes, I am still interested in, or I still need to hear you, what are the frustrations, rather, what are the irregularities that you say you later picked up
10 and then you ordered a forensic investigation?

MS GXASHEKA: It is how the whole process was conducted.

ADV BALOYI SC: No, but you knew how it was conducted. You knew there is a letter from the Chief which says I am withdrawing the investigation. And the conversation that Mr Chaskalson is having with you is these are serious charges. You are head of HR. And then I tag on, you see a letter from the Chief that says I have stopped the investigation on these serious charges. You are head of HR. At that point,
20 what do you do about it?

MS GXASHEKA: When I got to know about stopping of the investigation, as I say, I started collating information after the anonymous letter from the, whatever, that says we favoured the City Manager and the CFO. They favoured Julius. Then when I am start collating information, as much

as it was enough, it was not enough, I have realised files were everywhere else except in HR.

Then I realised there is a problem here. And hence then I instituted that a forensic must be embarked upon. Number two, in the meeting we had with this accounting officer, we also felt that let us change even the disciplinary procedure so that HR and legal to take full accountability. Remember before that, I was not fully accountable. The main responsibility I had was more suspensions. Before
10 and after that, other people are involved.

In Mr Nciza's statement, he also confirms that certain things were happening at an EMPD space without him being involved. However, there are decisions between Mr Nciza and myself that we have made ...[intervenes].

ADV BALOYI SC: Let me stop you, Ms Gxasheka. The matter is now with human resources. It is now with human, that is why Mr Nciza is there. That is your department at that point. The references to things were happening at EMPD do not quite work here because you have agreed to
20 this disciplinary process at the beginning. You agreed to it, you agreed to the suspension. You have one of your subordinates, and I think you say he was your direct subordinate, who is now providing the support to EMPD.

You become aware that Chief Mapiyeye has written a letter which says the investigation is withdrawn or it is

stopped, whatever that letter said, but you are aware this is about very serious charges. All six of them, not just charge four. All six of them are very serious charges. You are head of HR. You have your subordinate who reports to you, who is dealing with this.

You do nothing about it. You are happy to let it be. I am trying to understand that. You are the most senior person in HR. You are head of department. Employee relations falls under you. Discipline falls under you and you
10 do nothing about it. And then you say I ordered a forensic investigation. That cannot be a proper answer for this. If it was because you instructed not to do anything about it, it would be a different conversation with you. It is either that or you folded your hands and did nothing about it.

MS GXASHEKA: Thank you, Chair. I hope we find each other, Commissioner Baloyi. As I said that the minute this matter came to our attention, I will try and be slow, after the anonymous email, we were all called to account. I think if you read my statement, you read Chief Mapiyeye's
20 statement in Xolani, we are all called and say answer. What happened?

Roughly, things were explained. That is in August, if I am not mistaken, around July, August. And immediately after that, the same day, if I am not mistaken, to show how serious I was with this, I have changed the delegations

based on the discussion we had with Doctor Mashazi. After that, I instituted a, what you call, a forensic. The stopping of the investigation, Chair, I thought we discussed it yesterday, that it happened between Doctor Mashazi, Advocate Kemi, and Chief Mapiyeye.

I did speak to that, that I was not involved in those. When I started putting things, everything together, it is around August. What happened here, what happened there, what happened? I do not know if I am answering you.

10 **ADV BALOYI SC:** For now, I will leave it at that. You have not answered, you have not explained why you did nothing after you became aware that Chief Mapiyeye has written that letter. You did nothing. Fact is, you became aware of the letter, and you did nothing. And then, as you sit there, you say later on, I picked up irregularities. The point I am making to you is, you did not need the City Manager to say anything to you.

20 Once you became aware of that letter, you as head of department of human resources, would and should have said, if you were executing your duties, you would and should have said you cannot do that. You cannot withdraw the investigation or the disciplinary hearing because these are very serious charges, and we must proceed with them.

MS GXASHEKA: Chair, as I say, what happened, the discussion took place between Chief Mapiyeye, Advocate

Kemi and the City Manager. They made that decision without HR. And subsequent to that, there was a legal opinion that said stop. I even said, if I recall yesterday, even when they went to the press ...[intervenes].

ADV BALOYI SC: Did you said there was a legal opinion that said stop?

MS GXASHEKA: That says we cannot discipline Mkhwanazi.

ADV BALOYI SC: What legal opinion is that?

10 **MS GXASHEKA:** It was from legal to IPID.

ADV BALOYI SC: No, that opinion does not say you cannot discipline at all. We can pull it out if you want to. That opinion does not say to you, you cannot discipline. It speaks to a different issue, that there is no fraud, it is not properly justified, and it requires IPID to write back and explain themselves. It does not speak at all to – in fact, it does not say do not discipline.

MS GXASHEKA: Okay, let me rephrase then. What it was saying that there is not enough evidence for the City to
20 conduct a disciplinary hearing.

ADV BALOYI SC: No, it does not say that. It does not speak to discipline at all. It does not say there is not enough evidence to discipline. It says there is no fraud that has been committed. It says nothing about discipline. So you could not have been relying on it. The point I am

making is you could not have properly, if you relied on it at all, you could not have properly relied on that opinion because that opinion does not speak to the disciplinary action.

MS GXASHEKA: Chair, I said I am speaking to a holistic process here. Discussions took place and there was a decision not to discipline. I said the Chief of Police did speak about this. He said let us go and discuss this thing outside the City, and I said I am not willing to do that. The
10 discussions took place among three of them, and when Doctor Mashazi has spoken, it is done. The only reason – remember, even when this discussion ...[intervenes].

ADV BALOYI SC: Is your explanation then, which is what I said earlier, you did not do anything because Doctor Mashazi has spoken? If that is your answer, that is your answer. And that became the reason why you do not act. Is that what you are saying?

MS GXASHEKA: Chair, it is exactly what I am saying, but there is something I need you to pick up on. There is
20 something I need to pick you up, and I think you are missing it. Well, there is these discussions that they made. I continued to try and follow this thing because I always knew it was going to catch up with us. Despite, as I say, officially there is instructions, but there is other ways of managing your boss.

Hence, I still said, let us get what you call this forensic done. I said Majang Inc, bring back the file. And when ultimately we got the forensic report, yes, it did not go to council because of the limitations. The minute we had a different accounting officer, I am one of the people who said let us continue and proceed with this.

So what I wanted the Commission to hear is that despite that this process was stopped, from my side as HR, I did not stop. Because the minute, for instance, you
10 change the procedure and say, now, Mr Nciza, you are no longer responsible, I am taking over. Today, I will be here ...[intervenes].

ADV BALOYI SC: You say, why did you decide you are taking over?

MS GXASHEKA: Because there were a lot of things I could not account to because of the previous allegations.

ADV BALOYI SC: It had nothing to do with Commissioner Mkhwanazi's case, right?

MS GXASHEKA: It had to do with that and more.

20 **ADV BALOYI SC**: In your statement, I do not think you say that. I think you speak about there were many unresolved cases and there was a lot of money that is being spent and even the briefing of attorneys was an issue because the way they were briefing work was not being distributed evenly. So it was not because of the Mkhwanazi's case that

you changed the delegation of powers. In fact, I think yesterday you said to us this has always been an ongoing process within the City. So it is not correct to present it now as if that came about because you were concerned about the handling of the Mkhwanazi's case.

MS GXASHEKA: Look at the dates, Chair. Look at the dates.

ADV BALOYI SC: Yes.

MS GXASHEKA: The dates, remember, every time you are
10 called by your boss, accounting officer, you do not seem to know anything. You cannot fully account. I said that yesterday. When the Bhixi-Bhixi matter came, the same day, if it is not the following day, those delegations were changed. Because I am told, you know nothing about these matters, you are not following these matters the way you should.

ADV BALOYI SC: Can I, let me read you something from your statement. Ms Gxasheka, at paragraph 36, you say:

20 “On about July 2023, after numerous concerns raised by the accounting officer....” ...[intervenes].

ADV BALOYI SC: Apologies, Chair.

ADV BALOYI SC: Paragraph 36, at page 12, your statement. In fact, I am reading the old statement. Let us look at where this may be in your new statement. It is a

different paragraph. I am told it is 72 in your new statement. Yes. At 71, that is where I wanted to read for you. Are you there? Are you there, Ms Gxasheka?

MS GXASHEKA: Yes.

ADV BALOYI SC: Yes. So, this is your explanation for this change. You say:

10 “On about July 23, after numerous concerns raised by the accounting officer, NHOD, Kemi Behari, I revised the financial delegation due to increased labour cases that result in excessive exorbitant labour costs, meaning that the expenditure on labour costs was increasing in an uncontrollable manner, and the budget was allocated at legal risk, catering for all COE legal costs.”

And then at 72, you say:

20 “In August 23, the accounting officer raised issues relating to how labour relations cases are handled, especially EMPD cases, including the case of Brigadier Mkhwanazi, as it was now raised via an anonymous person or email.”

This is the Bhixi-Bhixi email. So, there is no account in

your own statement of you acting before this date, before you got the Bhixi-Bhixi email. You do not account for steps that you say you took to ensure that the disciplinary hearing does not die.

MS GXASHEKA: I think we are missing each other, but we are saying the same thing. I said I started consolidating issues when that Bhixi-Bhixi matter came.

ADV BALOYI SC: Yes, my point exactly, that when you became aware of Chief Mapiyeye's letter, you did nothing.
10 And the next steps you took was when now the story of the failure to discipline Commissioner Mkhwanazi now became public And you got this inquiry that was written to Jeff Wicks, the Bhixi-Bhixi message. That is what got you to start acting.

MS GXASHEKA: Chief did not share the letter. As I said, when I started to say the engagement on the stopping of the process, it happened between three of them and ...[intervenes].

ADV BALOYI SC: So, you never became aware of it before
20 you got this Bhixi-Bhixi inquiry?

MS GXASHEKA: That is what I am trying to say to the Panel, to the Commission, I got to consolidate and got to know everything, after the Bhixi-Bhixi matter. Then when I am following up these things, I am realising that we could have done things better. And if you hear me properly, I am

saying even when we change the disciplinary procedure, I realise it cannot end there, we will account for this at some point.

Hence, beyond decisions that were made by the three of them, I still pursue this matter. In 2024, before even the Madlanga Commission inquiry, I was still talking to the attorney asking for funds. The latest, it was in October 2023. I really appeal that can my side of the story be heard. They have stopped the process, I did not stop the
10 process. Yes, we could have done things faster and not be here, but at least I need that to be heard, while everybody else stopped. I alone, HOD HR, I did not stop. Thank you.

ADV BALOYI SC: Where do we see that in your annexures, that after Chief Mapiyeye's letter, you carried on, before the Bhixi-Bhixi whistleblowing, I call it whistleblowing loosely? Between the letter and when now you are called to account because now it is gone public that nothing is being done, where do we see that you actually took steps? I have not seen it in your annexures and I do
20 not see it in your statement either.

MS GXASHEKA: I think what I am saying, Chair, I got to be aware of this whole matter after the Bhixi-Bhixi matter. I really need you to record that. I have got to be aware, and I consolidated all these issues, and I have never stopped. Hence, I am here today to still talk to this issue. When they

had those conversations to stop this matter, I was not part of it. But the minute I got to be part of it, I still proceeded and said how best we can close this matter. Thank you.

ADV BALOYI SC: Thank you, Mr Chaskalson.

ADV KHUMALO SC: I want to just, if you can indulge me for a few minutes, Mr Chaskalson. Ms Gxasheka, the forensic investigation you are referring to, the one where you got a report dated June 2024, that report was investigating three allegations. One, whether Julius
10 Mkhwanazi had been defamed. Two, whether the person using the pseudonym Bhixi-Bhixi breached POPIA. Three, whether Nciza, by appointing Majang as the City's legal representative, acted without Mkhwanazi's written consent and therefore breached Mkhwanazi's rights.

Now, those are the three allegations this so-called forensic investigation investigated, and they reached their conclusions. You can find it in Mapiyeye Annexures on page 114. So when you say you took steps by instituting a forensic investigation to determine why the charges were
20 not proceeded with, that is not correct because all this forensic investigation does is to go after the whistleblower Bhixi-Bhixi. Those are the three allegations that are investigated. I do not know if you are in the Mapiyeye file, the annexures, or if you know where the forensic report is in your annexures.

MS GXASHEKA: It is just that I do not know the pages.

ADV KHUMALO SC: Are you there? Page 114, Mapiyeye Annexures. Sorry, in reverse, my apologies. My fault. Page 183.

ADV BALOYI SC: Page 183 for Mapiyeye Annexures.

MS GXASHEKA: Thank you, Chair. If you may repeat your question, Chair. Thank you.

ADV KHUMALO SC: All right, so that is the forensic investigation. If you look at 223, the allegations they were
10 investigating and the conclusions. Are you on 223?

MS GXASHEKA: 223?

ADV KHUMALO SC: 223.

MS GXASHEKA: Yes.

ADV KHUMALO SC: Look at Allegation 1, a proposed Allegation 1, criminal defamation. So they wanted to know whether Julius Mkhwanazi has been defamed or whether somebody in the City has been defamed. And then if you go to just before 13.6, Allegation 2, whether the person using the pseudonym Bhixi-Bhixi has breached section 11 of
20 POPIA by, again, disclosing information relating to Mkhwanazi.

And you go to the next page, 224, Allegation 3, whether Nciza by appointing Majang as the City's legal representative in the Mkhwanazi matter acted without obtaining Mkhwanazi's written consent and whether by

doing so they have breached the collective agreement. Now, those are the three allegations these forensic investigators were asked to investigate. And they reached conclusions, and that is the sum total of it.

Even when you read the front page of the investigation report on page 123, it tells you that it is a forensic investigation into allegations of defamation, breaches of protection of personal information, and appointment and payments to Majang Incorporated.

10 So you can use this as an answer to Commissioner Baloyi's question of what did you do when you became aware that the City did not continue with the serious allegations against Julius Mkhwanazi. You cannot say I instituted this investigation, because this investigation has nothing to do with why the City did not continue. This investigation is investigating three allegations. It is going after the whistleblowers who said what they said in the Bhixi-Bhixi email, and it says so.

MS GXASHEKA: Thank you, Chair. Chair, I would like to
20 say that the report, I would prefer if it is written and understood in its entirety. And also, beyond the report, my work that I continue to do on this matter, including where we strive to meet with Majang, and I wrote to them to give us the files. There were so many things that were discovered, and even on their recommendations, if you go

to their recommendations, I think there is about so many recommendations.

ADV KHUMALO SC: Ms Gxasheka, you are not going to answer my question because you are avoiding it. Let us just go to the report itself so that I can assist you. They tell us how this came about. Go to page 200, the introduction, on page 20, paragraph 7.6. I do not want you to read us this report. We have read it already. We know what it says.

10 Now, they tell us how the investigation came about in paragraph 7.6. They say a memorandum dated 21 August 2023 from you outlined concerns relating to defamatory statements by Bhixi-Bhixi in his or her email to Wicks, as well as possible violation of the Protection of Personal Information Act, POPIA, and requested that the City conduct an investigation and focus on those issues.

 Who are the recipients of the charge sheet? Who printed the charges? Who is Bhixi-Bhixi? Contravention of POPIA. Labour cases and how they are attended by ER.
20 Escalated labour costs. In a letter dated 23 August from Julius to ...[indistinct], Julius requested that the investigation be instituted into concerns raised by Gxasheka.

 5 September 2023, forensic investigation. Nowhere does it say why was the disciplinary proceedings against

Julius Mkhwanazi stopped. That is not what they were asked to investigate. And they say so, that your memorandum dated 21 August 2023 was more concerned about defamation, breach of POPIA, and the appointment of the attorneys.

MS GXASHEKA: And Chair, if I may add, I think let us focus, it is quite a wide scope, let us also focus on 7.6.5 where it says labour relations, grievances, and labour dispute in the Ekurhuleni Metro Police, and how they are
10 attended by ER division.

Now, let us understand workplace dynamics. Let us understand complexity of the matters. With the discussions that have happened, wherever they were happening, and stopping of this matter. If I were to say to the accounting officer and everybody else we are just investigating the Julius matter, it would not have worked. The way I have written here, I have said labour relations cases, grievances, and labour disputes in the EMPD, and how we are attending it as the ER division.

20 And to me, I have said yesterday, why this matter, I am not undermining it. It is very serious. There are other matters as well that we need to look at. And I am saying today as well that beyond even this issue and the decisions that were made, I felt that let us investigate these matters of EMPD ...[intervenes].

ADV KHUMALO SC: Ms Gxasheka, can I stop you there? I want you to accept that nowhere in the mandate given to the attorneys do you say investigate why the charges against Julius Mkhwanazi were not proceeded with. Can you just accept that nowhere in this mandate do you deal specifically with why charges against Mkhwanazi were not proceeded with?

MS GXASHEKA: Chair, if they need to be specific on a particular stance that says specifically why Julius
10 Mkhwanazi's investigation was stopped by Chief Mapiyeye, Doctor Mashanzi, and Advocate Kemi, it is understandable. But to me, I was looking at that matter specifically and other matters. I will check the engagement letter. I will try while we are busy and try and find it. Maybe in the engagement letter it might also have the specifics. I think there is where we speak about Julius, specifically the Julius Mkhwanazi matter.

ADV KHUMALO SC: I want you ...[intervenes].

ADV BALOYI SC: Okay, let me help you.

20 **ADV KHUMALO SC:** Where they say you told them here, it is not there. And then you will be helped about the other letters because I want to leave this page.

MS GXASHEKA: Okay.

ADV KHUMALO SC: In this letter it does not say that. In this letter it talks about cases within Ekurhuleni and EMPD

in general, in this letter, especially in 7.6.5.

MS GXASHEKA: Chair, I have been following how things are going. I agree, Chair, that it will not say specifically why did you stop a DC of Mkhwanazi. And you know why it would not say that? Because the ultimate decision maker, executive authority, has made a decision. And I have said yesterday, when you have discussions and debates sometimes, especially with the accounting officer, legally she already has answers. In my situation ...[intervenes].

10 **ADV KHUMALO SC**: Ms Gxasheka, we are talking about this document on this page. We are talking about decisions of Doctor Mashazi. I am limiting my question now, having accepted your answer because you said 7.6.5 says that. We went to 7.6.5. I am putting to you that 7.6.5 refers to labour relations cases in Ekurhuleni Metro in general. That is what it says, and we can leave it at that.

MS GXASHEKA: Chair, I know ...[intervenes].

CHAIRPERSON: Bear in mind ...[intervenes].

20 **MS GXASHEKA**: I am going to be punished for this ...[intervenes].

CHAIRPERSON: Sorry ...[intervenes].

MS GXASHEKA: I am begging for the last time, Chair ...[intervenes].

CHAIRPERSON: Sorry, Ms Gxasheka. Bear in mind that Commissioner Khumalo is asking you these questions.

MS GXASHEKA: Yes.

CHAIRPERSON: Because of a response you gave, answering a question by Commissioner Baloyi, you said that you instituted an inquiry, suggesting that that inquiry was instituted in connection with Mkhwanazi disciplinary process. So Commissioner Khumalo is seeking to demonstrate to you that this inquiry had nothing to do with that. That is the context. Do you now wish to respond to the last question?

10 **MS GXASHEKA:** Thank you, Chair. Chair, I am going to try my last time and I will give up and I will take inferences that are made. When you read this report in its entirety, for instance, I am going to take you, the majority of the time the report talks about Mr Mkhwanazi, even 13.83. For instance, it refers to Mkhwanazi matter subsequently being withdrawn.

It goes further and says recommendations that were made by Mapiyeye and, and, and, and. Even on the recommendations themselves, Chair, on page 26, if you
20 check this matter, it talks about Mr Mkhwanazi and what could have been done better, including where we should seek a legal opinion.

Where it disturbed this thing and it disturbed myself, for instance, where I was like, okay, this investigation report is, is raising other things. 14.4 of the

recommendation also talk where it says Mr Mkhwanazi must lodge a complaint against EMPD senior officials. All I am trying to say, as much as the scope was generic, but ultimately the scope was about the matter of Mr Mkhwanazi. And as I say, 13.83, it also assists, there are others that are assisting on this matter.

It might not specifically say, why did you stop the DC? However, it does talk to that it was withdrawn. Hence I have said yesterday, and I am done, Chair, I will accede if
10 I have to. I said yesterday, if this report went to council and it was deliberated, the same way it is deliberated here, I assure you, we would maybe not even been here. And I think I have given the best I could. All I want to leave you with, I did not make a decision to stop the DC. Yes, my scope could have been much better, but how do you say, Chair, investigate your own accounting officer?

ADV BALOYI SC: Well, I think, Ms Gxasheka, it is to try and make sure that what you say is factually what happened. You have said to us you ordered a forensic
20 investigation once you picked up irregularities, and you say it to show that you continue to do something to get this matter, to get to a disciplinary process, because that is what this engagement is about.

The accusation is you had a role in Mr Mkhwanazi not being disciplined. Now, what Commissioner Khumalo is

doing is to show you that, but this forensic investigation that you requested, you tell us you requested, does not support you saying that it was part of you pursuing the disciplinary steps against Mkhwanazi. You are correct that this report had something to do with the conduct of Mkhwanazi.

That is what the Bhixi-Bhixi email is about. So that way you are correct. But what I wanted to do was to read you paragraph 83. Now, if you look at page 202,
10 allegations, it states what you have said should be investigated, or what should be investigated. It is defamatory statements, 8.1, as Commissioner Khumalo says. 8.2 is about leaking of confidential information, and 8.3 is the important one. This is where, for the first time, there is mention of Commissioner Mkhwanazi. But this is what he said, and I want to read that paragraph for you. It says:

20 “Irregularities, weaknesses exist within the EMPD ER division relating to management of certain labour relations cases with specific reference to the Mkhwanazi disciplinary matter, which resulted in the matter...”

This is the complaint:

“...which resulted in the matter being

unnecessarily referred to external legal service providers...”

That is the one complaint that you are asking to be investigated:

10 “...and/or the City incurring escalated/wasteful legal costs, which constitutes a breach of applicable legislative prescripts, and/or applicable policies, processes, and procedures of the City, and/or fruitless and wasteful expenditure.”

So this has nothing to do with an instruction to find out why Julius Mkhwanazi has not been disciplined. In fact, you are investigating Nciza’s misconduct here, about expenditure in the briefing of the attorneys. So this report does not support you. Or what you ask them to do is not, has nothing to do with you seeking to ensure that Commissioner Mkhwanazi is disciplined. Not from this report.

20 **MS GXASHEKA:** In fact, Chair, I was looking for that area where it says specifically to reference to Mkhwanazi disciplinary matter. And I would like to concede that the way the matter will be understood from the other side, and how I understand it, it will be different. And I want to say to the Commission, also look on the complexity of the matters.

ADV BALOYI SC: What complexity are you referring to?

MS GXASHEKA: I am saying you are an HOD HR, you must write specifically and say you are looking at investigating senior management who made the decision to stop a disciplinary process, and you put it that way. It would not be as simple as that. And when you go to our contracts, we even have a clause on termination that says if you do not take the following instruction, that is a misconduct.

I am going to accept, Chair, that it might read
10 differently. But when I said specifically on the disciplinary matter of Mr Mkhwanazi, the outcome could have been any way. And one thing I want to leave the Commission with as well, this investigation is sent to an internal audit. It is an independent, separate department. They appoint an independent law firm that could have come at a different outcome of any outcome they want. It was an independent process.

I do not want to say it was investigating Mr Nciza. It was investigating the process of Mr Mkhwanazi. Where
20 we differ in terms of the interpretation, I will take that, Chair, for the sake of progress. Thank you so much.

CHAIRPERSON: For progress, I will not engage much on it, but I will just make the point that there is nothing about interpretation here. Although you do mention the disciplinary process of Brigadier Mkhwanazi, you are saying

in so many words that what you want investigated is why this matter, the Brigadier Mkhwanazi matter, was referred to external entities. That is what we are saying. And when you talk about interpretation, I think you are suggesting that perhaps from where we are sitting we are misunderstanding what you are saying. And if you are suggesting that you see that differently, I am surprised because it says exactly what I have just said now.

MS GXASHEKA: Chair, if we can go to page 205, for
10 instance. Hence I am saying I am sitting here, I have got my own, I am contemplating things differently. In 205, clause 10.5.1, in fact 10.5.

CHAIRPERSON: Is that the report now?

MS GXASHEKA: Yes, Chair. I just want to try for the last time so that ...[intervenes].

CHAIRPERSON: You see, earlier in response to Commissioner Khumalo, you were trying to support your point. You referred to the fact that the report refers to Brigadier Khumalo, I am very sorry, to Brigadier Mkhwanazi
20 a number of times. Obviously if in your mandate you have referred to Brigadier Mkhwanazi, the report will refer to Brigadier Mkhwanazi.

MS GXASHEKA: Yes.

CHAIRPERSON: That is only natural.

MS GXASHEKA: Yes.

CHAIRPERSON: And on my reading of what you referred to, that is exactly the context. So your point to me does not make sense. But anyway, let us hear what you want to refer to.

MS GXASHEKA:

10 “Objective, establish the processes followed in the management of employee relations at the EMPD and ER division. Obtain and review the SOP with regards to how labour relations cases are managed. Interview the relevant officials from EMPD and ER division to establish the processes followed in respect of labour relations matters. Which officials are responsible conduct interviews to determine above documents and annexure.”

I am going to leave it, Chair, because I do not think we are finding each other ...[intervenes].

20 **CHAIRPERSON:** I think ...[intervenes].

MS GXASHEKA: I think we are not meeting on the complexity of my position.

CHAIRPERSON: I also wanted to say, reading the report itself, I do not see how that will assist you. Because what is important is the mandate that you gave, and the mandate

is right at the beginning. And we do not see how the mandate supports what you said in response to Commissioner Baloyi. So going to whatever the report says, I do not quite see how that becomes helpful. But anyway, you said you were stepping off the subject. And we have dealt with it for quite some time now. So I think you are correct that we should step off it. Mr Chaskalson?

ADV CHASKALSON SC: Thank you, Chair. I want to just clarify a few things in the chronology and your role and
10 where you say decisions were taken over your head. The key moment it seems to me where things go horribly wrong is that on the 21st of June, there is a letter from Chief Mapiyeye addressed to yourself, to Advocate Behari, and to Lt-Col Erasmus.

And it essentially says, we have to serve the charge sheet by tomorrow, the 22nd of June. It is at page 180 of the Mapiyeye bundle. We discussed it yesterday. It says we have to serve the charge sheet by tomorrow. Please serve the charge sheet. Tomorrow is the last day.
20 Now that is addressed to you, and it is addressed to Advocate Behari.

I understand your evidence to be that sometime between the sending of this letter and the following day, the 22nd, a decision was taken at a meeting of Advocate Behari, not at a meeting, by three people, Advocate Behari, Chief

Mapiyeye, and the accounting officer, that this prosecution was not going to proceed. Now is that what your evidence is? That either later on the 21st or on the 22nd, those three officials took the decision we are not going to prosecute Brigadier Mkhwanazi?

MS GXASHEKA: Yes, I did say yesterday, it is my evidence. I even said, when you look at the Chief of Police, I think Revo Spies and Xolani Nciza, there is where it says as well that, I think Xolani Nciza is saying the Chief called
10 him and said Doctor Mashazi, Chief of Police and Advocate Kemi met, and that decision was made, so I am sticking by that.

ADV CHASKALSON SC: But you had a letter, you had a letter on the 21st that said tomorrow is the last day, please serve this charge sheet, tomorrow is the last day. What did you do in response to that letter?

MS GXASHEKA: I said yesterday I do not recall receiving that letter. I said I do not recall. I have seen somebody signed for it, but that did not look like my signature, I think
20 it is indicted, but it does not look like my signature.

ADV CHASKALSON SC: It looks like someone called Engelbrecht, does that?

ADV BALOYI SC: Mr Chaskalson, Mr Behari said there was someone in his office, Engelbrecht.

ADV CHASKALSON SC: I will take that back. At any rate,

when was it communicated to you that the decision had been taken by the accounting officer and by Chief Mapiye not to proceed with this disciplinary process?

MS GXASHEKA: I have said earlier on where I got to know issues of certain events that happened in this particular case, it was after August 2023, when I started collating information myself.

ADV CHASKALSON SC: So, are you saying that up until August, you did not know that the accounting officer had
10 said this prosecution must stop?

MS GXASHEKA: Yes.

ADV CHASKALSON SC: So what did you do between June and August when, as far as you were concerned, there were very serious charges that needed to be brought against Brigadier Mkhwanazi, that an external law firm had drawn up at some cost to the City, and that we are waiting for someone to serve a charge sheet on Brigadier Mkhwanazi?

MS GXASHEKA: I think already we debated this with the Commissioners, and it was clear that my report did not do
20 anything between whenever this happened up to when I instituted the investigation in August.

ADV CHASKALSON SC: So you took no steps to push the matter forward between June and August?

MS GXASHEKA: Ekurhuleni has got many cases. I might not have taken a step on this matter, because firstly, as I

said earlier on, the delegations at the time, they were between EMPD and Mr Nciza. The only time I revised delegations, it was after August 2020, around August 2023. Yes, steps could have been taken, but some of the issues I missed, they happened outside my space. So nothing I would have done about it.

ADV CHASKALSON SC: I just need clarity in that regard, because it seems to me that the job of serving the charge sheet was always a job of your department. Simply serving
10 a charge sheet to start proceedings was your department's job.

MS GXASHEKA: We have discussed this yesterday, where in the evidence in the form of emails, I have said that I have realised there were irregularities. The charge sheet was provided to Mr Nciza as early as 15 June 2024. And after that has happened, they were back and forth. Ultimately, the charge sheet was never ever submitted to Mr Mkhwanazi.

And I have said yesterday, I am really trying to be
20 slow. I am normally a person who talks fast, and I am realising it is not doing justice for me. I have said yesterday the first email from Majang Inc said serve via an email followed by physical serving. Mr Mkhwanazi was in the system. The emails of Mr Mkhwanazi were working. It could have been served.

Even when you make amendments, you still make amendments, you make them up to a disciplinary process, as long as it has not been concluded. That process, indeed, it was irregular and it is an area of improvement, and we will improve on it. And that irregular, again, it needs to be understood that it could have been an influenced irregularity.

I have already spoken about Doctor Mashazi. One thing I picked up when I was analysing this, I could not
10 understand that between the Chief of Police and Xolani Nciza what could have transpired. Because in Mr Nciza's statement he says on the day of upliftment of the suspension, he had a conversation with Mr Julius Mkhwanazi downstairs in my office.

So all these things that happened, Chair, influenced from executive authority down to my division. It is things that we learn from, but it is difficult to say the serving of charge sheets, I would have dealt with it without changing the delegations, number one. But most
20 importantly, most importantly, if decisions are made by the accounting officer, especially on my contract, I do not know of Mr Nciza, but in my contract it is very clear on termination that you do not follow an instruction, there will be a misconduct. But I have never said the charge sheet must not be served. I am really trying to be slow. I have

never said let us not serve the charge sheet.

ADV BALOYI SC: You have repeated quite a number of times that we do not understand the complexity of your position. You have repeated since yesterday that if you do not follow instructions, it has consequences from your superior. Were you instructed by Doctor Mashazi not to institute or to proceed with disciplinary hearing, a disciplinary process against Commissioner Mkhwanazi?

MS GXASHEKA: Chair, I want you to understand this. The
10 instruction, it did not happen with HR. It happened with Doctor Mashazi, Advocate Kemi and Chief Mapiyeye ...[intervenes].

ADV BALOYI SC: No, no, no, Ms Gxasheka. We do not have endless time. I am asking you a straightforward question. Do not repeat what you have been telling us. You have been repeating since yesterday that Doctor Mashazi, Chief Mapiyeye and Mr Behari, they met and they agreed that they are not going to proceed with a disciplinary. Please do not repeat that. I have asked you a
20 direct question.

I started off by explaining the basis on which I am asking my question. Since yesterday, including a few seconds ago, you keep saying if you do not follow instructions of your superior, I think you said you cannot even be terminated. You said something like that. All the

time you are referring to instructions from your superior, Doctor Mashazi.

Hence my question, and my question is simply this. Did you get an instruction, based on what you are saying, did you get an instruction from Doctor Mashazi not to institute or continue with disciplinary action against Commissioner Mkhwanazi? It is either a yes or no answer.

MS GXASHEKA: Chair, on the engagement of, I think, 22nd August after the Bhixi-Bhixi matter, because I think the
10 question was different initially that between the charge and whenever, why I did not do anything.

ADV BALOYI SC: Now I am asking you a different question, Ms Gxasheka, please. Now I am asking you a direct question. Did you or did you not get instructions from Doctor Mashazi not to discipline Commissioner Mkhwanazi?

MS GXASHEKA: On the 22nd, if I am not mistaken, of August, when we were called into a meeting, Chair, in the discussions that were taking place there it became clear what was the appetite on this matter. Hence when there
20 was an instruction that let us change the disciplinary procedure and I take full accountability, no more Xolani Nciza are taking accountability. I then took a forensic investigation process to find a way of protecting me without exposing myself ...[intervenes].

ADV BALOYI SC: Let me stop you there. You say in the

meeting there were, you have still not answered my question, but let me work with what you have said now. You say in that meeting it was clear what was the appetite. What was the appetite according to you as you saw it in this meeting? What did you see to be the appetite about this disciplinary process?

MS GXASHEKA: I would want to attest to what the Chief of Police has said that it started to look that certain people are targeting Mr Mkhwanazi.

10 **ADV BALOYI SC**: What was the appetite? You were in the meeting. You formed a view there is a particular appetite, whatever you mean by that, about this matter. What was the appetite?

MS GXASHEKA: The appetite is the same as the legal opinion ...[intervenes].

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

MS GXASHEKA: Can I finish?

ADV BALOYI SC: No, no. Do not do that. I am asking you a question that is, it is a second question that I am
20 asking that you are not answering, all to do with the instruction from Doctor Mashazi. That is what I am asking you. You have now introduced the appetite. It became clear.

That is your language, right? And you say that when you should have answered my question about whether

or not you got an instruction, you choose to speak of an appetite. Now I am asking you, what was the appetite that you descend, descend out of that meeting to do with disciplining Commissioner Mkhwanazi?

MS GXASHEKA: Thank you, Commissioner. I am praying that Commissioner Baloyi, you are going to allow me to finish. One of the discussions of the meetings, one of the key points in that meeting was there was a discussion that took place and there was an agreement that this whole thing
10 is going to be stopped.

I will not have the exact words. This whole issue of Mr Mkhwanazi, it is going to be stopped. Why is it still pursuing? And I got shocked because as I say, majority of the times, I am not involved in these things and I have been pressed. I have said that even on labour relations, cost management, it has been the issues I have been dealing with.

You are not managing. I said yesterday that Linda, you are not managing your department. Things are
20 happening beyond you. Discussions have taken place. We are going to stop this meeting. When I am talking about the complexity and I am going to end here ...[intervenes].

CHAIRPERSON: Just before you go to the complexity, so the appetite was not to pursue the disciplinary process. That is what the appetite was. Please, yes or no?

MS GXASHEKA: Yes, Chair. It is confirming ...[intervenes].

CHAIRPERSON: Can we stop there ...[intervenes].

MS GXASHEKA: The 20 ...[intervenes].

CHAIRPERSON: Can we stop there ...[intervenes].

MS GXASHEKA: The 20 ...[intervenes].

CHAIRPERSON: Can we stop there? You said yes, that is what the appetite was. And was this the appetite of Doctor Mashazi?

10 **MS GXASHEKA**: That is what I am saying. She was chairing the meeting.

CHAIRPERSON: It could have been the appetite of anybody who was in attendance. Was this the appetite of Doctor Mashazi?

MS GXASHEKA: Yes.

CHAIRPERSON: Thank you.

ADV BALOYI SC: Just to be clear, you never got an instruction. I think we all understand what you mean or it means when someone says I got an instruction. Just like
20 you got an instruction, you told us earlier yesterday that you got an instruction about the suspension, for example. So should I take it from your answer or should we take it from your response to my direct question and you are now speaking about an appetite in a meeting that it means you never got an instruction from Doctor Mashazi not to

discipline Commissioner Mkhwanazi? Whether in writing, whether in writing, whether in a meeting, Doctor Mashazi never instructed you not to discipline Commissioner Mkhwanazi.

MS GXASHEKA: I am going to respond to it, Chair, but can it just not end to a yes or a no? I need to give a context.

ADV BALOYI SC: Ja, I am hoping that at the end of it you will have a yes or no so you can give the context as well.

10 **MS GXASHEKA**: Thank you so much. The discussion says, I had a discussion with the other colleagues, we agreed this matter must stop. Why is ER continuing? You are not taking ownership of your department, Linda. We have agreed we must stop this matter and why is it still continuing? Why it has not stopped? You cannot control your people in your division.

It might not have directly said you stop, but it is asking me, why have not you stopped? If it does not stop, you are going to account. So I do not know if that means
20 an instruction, but it is a very clear tone that says if you do not stop, you are going to account. You are also not managing. The labour relations costs are increasing. The labour cases are increasing. You must stop.

ADV BALOYI SC: You see, it would be bad if we were to say in our report Doctor Mashazi instructed Ms Gxasheka

not to discipline Commissioner Mkhwanazi if, in fact, that is not what you say to us. That is why it is important to understand what are you saying. But I think you have answered as best as you can or as best as you are prepared to answer and I am happy to leave it at that. Thank you.

MS GXASHEKA: Thank you, Chair. As I say, maybe it was an instruction. It was an instruction. Let me not say that. But the way it was said, it was not just say stop this
10 disciplinary hearing. It says why are you not controlling your department? Why is this matter still continuing whereas I have stopped it? You are not managing your department. Hence, I am saying it becomes complex. It was not just, it says stop this hearing, but also manage your department. So I wanted to give that context that it was clear that you must stop this hearing.

CHAIRPERSON: Ms Gxasheka, as observed by Commissioner Baloyi, from yesterday to today you have repeatedly said that the instructions of Doctor Mashazi or
20 the accounting officer must be complied with. Can that be said appropriately by an HR practitioner, especially one at the highest level like you?

MS GXASHEKA: Chair, let me also remind you what I said yesterday. When discussions are taking place and instructions are made, we deliberate. And I have said

yesterday, majority of the time, I find that she already has a legal position. I am not sure where she gets to be capacitated. We debate on issues and ultimately, once I could see that she has her point and it is taken, you cannot move.

I am going to make a sensitive example just to give another context. When the matter of Chief came, for instance, saying let us ...[indistinct], I still went and I said, from the humanitarian point of view, he is left with less than
10 a year. I spoke to the lady who was involved in the matter and she agreed.

I go to Doctor Mashazi and I said, let us settle this matter. She agrees. 30 minutes, 40 minutes later, I am called again. We are not settling because she now has a different view from the legal side of things. I think that is the complexity I am trying to explain that from HR's side of things, we do things in a particular manner. I will advise in a particular manner.

I have said yesterday consistently that there is HR
20 who will advise. After HR, there is legal. Ultimately, once legal has made a decision for that institution, it is binding and it has got its own risk and one person can account it is legal in the accounting office. I am appealing to the Commission that you hear where I am coming from. I do advise.

I think if you have not seen my character today, I do not know. I am a person who would be persistent, who would be advising. Ultimately, when a person has made a decision and is your boss, there is little you can do. An example that would have happened, maybe it would have been better than coming here.

Let us say my report says investigate why the DC of Mr Mkhwanazi has not happened but we had a meeting. I would not be here. Maybe it would have been a blessing. I
10 can guarantee you she would have instituted a DC on me. Maybe it would have been better than coming here.

CHAIRPERSON: I am beyond the stage of you giving advice. At the stage of an instruction. Let us assume that this after the advice that you keep referring to. Then there is an instruction. What you say is once an instruction, I will refer you in a different context but it still makes the same point, different in the sense that it is not in the context of what Commissioner Baloyi was engaging you on. I will take you to page 22 of your latest statement, paragraph 65,
20 fourth line.

There you say when instructions are given – I will say by, you say at, I will say by – given by the accounting officer one has to comply. My question is a simple one and I hope you will give a very brief answer. My question is, can something like this be appropriately said by an HR

practitioner, especially one at the highest level like you?
Can you say that once the accounting officer gives an
instruction, I just must comply? Can you say that as a
senior, senior HR practitioner?

MS GXASHEKA: Thank you, Chair. Chair, I have given a
context. I think when you write the statement you will not
necessarily put everything with the hope that other things
will come and talk to it. I will rephrase my statement, Chair.
What I was trying to say is when a reasonable instruction is
10 provided, you must comply. I would like to revise that.

And number two, Chair, if we are to talk about the
character of Doctor Mashazi, I would like you to even, for
instance, call the highest authority here. Call the
...[intervenes].

CHAIRPERSON: I am not sure that we want to go there.
You just said what you meant to say and you are now
seeking to revise is that what must be complied with is a
reasonable instruction. I think that is enough.

MS GXASHEKA: Yes, a reasonable instruction.

20 **CHAIRPERSON**: Okay, but ...[intervenes].

MS GXASHEKA: But, Chair, I wanted to say where we did
not do right, the character as well, you might need to call
one of the senior people who are here to come and speak
about the character itself and the complexity I was talking
about. Thank you, Chair.

CHAIRPERSON: But I will not let you avoid this that easily. How you phrased it appears to have been quite conscious and deliberate. You see, it actually does make reference to reasonable. It is not as if you did not think about reasonable. Let me read the full thing. I stopped midway. You say:

“When instructions are given by the accounting officer, one has to comply, comma”

10 That is a stand-alone clause in that entire statement, and it is full and complete in and of itself. And it suggests that you are saying, in fact, it is not even suggesting, it is actually saying that you just must comply under any circumstances, reasonable or unreasonable. Do you agree that that is what that means? Before this idea of you wanting to change this comes in, do you accept that that is the meaning of this, up to the comma, comply, comma?

MS GXASHEKA: Chair, I have requested that my statement be amended, Chair, to talk to reasonable. As you
20 say, HR person ...[intervenes].

CHAIRPERSON: Ja, I have said I am going to take you up. In fact, I am going to engage you quite seriously on that, that you cannot easily seek to change the statement in accordance with what you are saying now. And for now, I just want you to agree that that part, up to comply, comma,

means exactly what I have said to you. Do you agree, yes or no?

MS GXASHEKA: Chair, you said I have intentionally wrote it that way ...[intervenes].

CHAIRPERSON: I am coming to that.

MS GXASHEKA: Okay.

CHAIRPERSON: I am coming to that. Do you agree with what I have just said now up to comply, comma, do you agree that it means I have said?

10 **MS GXASHEKA**: Yes, yes.

CHAIRPERSON: You agree.

MS GXASHEKA: It means what, Chair?

CHAIRPERSON: What I have said to you. I have said, when you say, when instructions are given by the accounting officer, one has to comply. So I say to you, I read that to mean you just must comply whether the instruction is reasonable or not reasonable. At this stage, you are not where you want to change that to bring in the idea of reasonableness. But do you agree that as it stands,
20 it means you just must comply whether reasonable or unreasonable? That is my question now.

MS GXASHEKA: Chair, I have requested that the statement ...[intervenes].

CHAIRPERSON: Yes, I get your request to change and bring in reasonable, but do you agree that it means

...[intervenes].

MS GXASHEKA: No, I do not agree, Chair.

CHAIRPERSON: What does it mean?

MS GXASHEKA: Chair, I am saying there is an error that happened and I want to take full responsibility for the error ...[intervenes].

CHAIRPERSON: Before the error and wanting to change, do you agree that it means what I have just put to you?

MS GXASHEKA: The way it is written?

10 **CHAIRPERSON**: Yes, the way it is written.

MS GXASHEKA: Yes, Chair.

CHAIRPERSON: Yes, thank you. Thank you. Now, my point is you said what you said here consciously and deliberately because it is not as if the idea of reasonableness was lost to you. You actually do refer to 'reasonable' in the same sentence. You say after the comma:

“...especially if they seem reasonable.”

20 So, it is not as if you did not think of reasonableness. First part, you say you must comply under whatever circumstances, but then you make the emphasis that you must especially do so if the instruction is reasonable. But you are basically saying otherwise, once an instruction comes from the accounting officer, you comply.

MS GXASHEKA: Chair, I do not agree with that. I think

hence I said earlier on it is the interpretation. And I do not like the statement that I am going to use. I have seen people using it and it is probably going to be the first time I use it.

CHAIRPERSON: Yes.

MS GXASHEKA: I think in the law space you will probably have to do commutations in English as part of your curriculum. In other areas, Chair, we really struggle with English and what we are learning from this Commission and
10 other places, we learn every day, Chair, that we need to continuously improve on business English or language or legal language.

I am glad, Chair, that you do mention it, that after the comma you do talk about reasonableness. I have learned from that. I had an example where we had a legal opinion on the appointment of the GCFO Ekurhuleni. When we met with the lawyers in a particular prescript or clause that was written, they taught us that a comma, just putting a comma, it means it changes the whole definition. Where
20 there is a full stop and then there is a continuity, it changes the whole definition.

Hence, I am going to say, Chair, we learn every day. But I am glad you raised it that I did put reasonable. It could have been the way it was said. And as an HR practitioner, I can do better. I am not undermining my

English. But as I say, legally, in terms of how we write, we can learn from that. But I am glad you mentioned it, Chair, that there is reasonable.

And hence, I said yesterday, I do debate. I do debate with the accounting officer. But majority of the time, you realise that they tend to incline on the legal opinion than an HR opinion. In majority of issues I would advise, I do agree the following day you are told, no, because legal has spoken. Thank you, Chair.

10 **CHAIRPERSON**: Oh, I thought it was my English that you were suggesting is lacking. So towards the end, I see that you are saying it is yours. I wanted to also, when I said you deliberately and consciously said what you say in paragraph 65, you actually do say the same thing, exactly the same thing in paragraph 30. So there as well you are basically saying once an instruction comes from the accounting officer, you just must comply. Reasonable or not reasonable? Is it paragraph 30? I hope it is. Sorry, sorry. Yes, yes.

20 **MS GXASHEKA**: Chair, paragraph 30 reads:

“Based on the instruction of the accounting officer, my advice and guidance will be based on that. If the charge sheet is ready to be served and the investigation concludes, there is no

need to redeploy the employee to any other position.”

If you remember, I said yesterday when we started with this conversation, she spoke about the ...[intervenes].

ADV BALOYI SC: Ms Gxasheka, you are reading 30 from your old statement.

MS GXASHEKA: Sorry.

ADV BALOYI SC: So maybe let us find it in the – because we have been working on the new statement.

10 **MS GXASHEKA:** Yes.

ADV BALOYI SC: Let us find it there. Paragraph 65? 65.

MS GXASHEKA: 65?

ADV BALOYI SC: Ja.

MS GXASHEKA:

20 “Based on the instructions of the accounting officer, my letter sought to advise and guide where, based on that, if charge sheet is already served and the investigation is concluded, there is no reason to deploy to another position unless dealing with financial related issues. Again, when instructions are given, one has to comply, especially if they seem reasonable.”

And I think we are repeating ourselves, Chair. As I said, I

would like to rephrase that to read that as just a reasonable instruction. And again, my paragraph ends by saying:

“Once more, one has to emphasise that my guidance was never directed to anyone to stop the proceedings.”

So even that sentence, Chair, talks about the procedure, its fairness, and how HR operates. But I will rewrite the issue of the legal instructions or lawful instructions.

CHAIRPERSON: I will leave it at that.

10 **MS GXASHEKA**: Thank you, Chair.

CHAIRPERSON: I will just refer you to the paragraph I wanted to refer to in the old statement. It is paragraph 31. Yes, old statement or first statement. It says exactly the same thing about complying with an instruction from the accounting officer, and it is on that basis there that I say you are quite consistent in this and that therefore you made a conscious and deliberate decision to say that you must comply with what the accounting officer says. I will leave it at that.

20 **ADV KHUMALO SC**: Can I just say something, just one? Having looked at the charge sheet and based on what you say here that if the accounting officer gives reasonable instructions they must be complied with, do you accept that it would have been an unreasonable instruction to say do not proceed with the charges, especially bearing in mind

how serious the five charges are?

MS GXASHEKA: Thank you, Chair. I accept it will be unreasonable. Hence now after the account, there is a new accounting officer, the DC has commenced again.

ADV KHUMALO SC: But that creates the impression that you were not willing to act until there was a new accounting officer, that you were prepared to wait for three years and if Doctor Mashazi was still there, you would not have done anything because you were scared of her. That is the
10 impression you are creating now. Because you are saying in November 2025, because there was a new accounting officer, we could proceed, but these things date back, the allegations against Mkhwanazi, they are February 2023 allegations. We are now in 2026. I just wanted to make that point. Thank you, Mr Chaskalson.

ADV CHASKALSON SC: Thank you. We discussed the failure to proceed with the charges. I just want to clarify two earlier decisions that you were involved in. I am hoping to be brief. The first is the decision to uplift the
20 suspension. That is a decision that is communicated in a letter from that is sent by you. I understood your evidence to be that that was done on instruction of Doctor Mashazi. Is that correct? Did I understand it correctly?

MS GXASHEKA: I did not hear the part of the letter.

ADV CHASKALSON SC: The withdrawal of the – the

upliftment of the suspension was done on the instruction of Doctor Mashazi.

MS GXASHEKA: Yes, remember, I spoke to that, Evidence Leader, and I said ...[intervenes].

ADV CHASKALSON SC: No, I just wanted to clarify that I had not confused more than one. I do not need you to go further there.

MS GXASHEKA: Okay.

ADV CHASKALSON SC: But what I do want to do, 10 because there is a direct conflict between what your evidence is in that regard and Doctor Mashazi's, and I need to put to you what Doctor Mashazi says. So if one goes to page 31 of Supplementary Bundle 2, there is an exchange between Commissioner Baloyi and Doctor Mashazi. Do you have page 31? I am sorry, yes, it is Supplementary Bundle 1, not Supplementary Bundle 2, I apologise.

MS GXASHEKA: Okay.

ADV CHASKALSON SC: Do you have it?

MS GXASHEKA: Yes.

20 **ADV CHASKALSON SC**: So if you see around about line 11, the line numbers on the left-hand side, Commissioner Baloyi says there is also testimony that you were involved in the discussion or in the decision ultimately of Ms Gxasheka to uplift his suspension and have him return to work. That is why the interest in my questions, at least that

you are copied on an HR matter that involves a junior employee. And there are these allegations that we have had that you had a direct involvement in how the disciplinary process against him eventually was aborted and scuppered. Her response there is:

10 “I want to state categorically that I did not participate in the suspension nor the upliftment of the suspension. I deny all the facts that they indicated that I participated.”

So she is saying she had nothing to do with the decision to uplift the suspension. And that passage should also be read with a passage on page 22 of the same file. There at the top of the page, Advocate Sello says:

 “Your response to that question is reflected in paragraphs 85 and 86. You may summarise for the record what your response is.”

Doctor Mashazi says:

20 “My response is that I did not get involved in this because Julius at that point was a junior official. I have no knowledge of this and therefore I cannot make further comments because it was done at the departmental level, at the

level of Julius being a director in the department and being a level like a lower level that reports to the accounting office, the redeployment and the withdrawal and so forth, I was not part of the process.”

So she is washing her hands of the suspension, of the decision to uplift the suspension and of the decision to direct that his redeployment should be back to his initial
10 position. What is your response to that? I mean, there is a direct conflict between your evidence and her evidence. Are you standing by your evidence? Are you saying that she has testified falsely to this Commission?

MS GXASHEKA: Thank you, Chairperson. I think on the initial transcript, the first page you read, I cannot get to it ...[intervenes].

ADV CHASKALSON SC: 31, 31.

MS GXASHEKA: Ja, page 29. There is where she talks about they. What I would like to put to the Commission,
20 then I am going to answer. If anybody has been following up all our statements here, one way or the other, Chief of Police, Xolani Nciza and Advocate Kemi, if I am not mistaken, there is some consistency of Doctor Mashazi being involved.

And I do not think all of us, we can just throw her

name and say she was not involved. I also do not think all of us, we can just say, we want to protect Julius Mkhwanazi, all of us and put ourselves in this situation. And I have even said yesterday that we got involved when in fact, Chief of Police and Xolani started bringing this thing to Doctor Mashazi where they met in some place. I cannot remember now. And then she said also involved HOD, or I was acting at the time.

10 In our statements, we further say that at some point, he, she had a meeting. I even said yesterday sometimes it was telephonically. I am saying it was in person. This is our evidence, most of us. And up to the end, Chair, to the end of the DC, the last evidence in all of our files, people that are involved here, when it was decided to stop the process, whereby in one of the evidences said herself, Advocate Kemi in and Chief sat and have this discussion. It would be very strange that all of us were turning against Doctor Mashazi. And I think on balance of probabilities ...[intervenes].

20 **ADV CHASKALSON SC:** Sorry, Ms Gxasheka, I do not need you to justify it. I just needed to put it to you. And I have seen all of the evidence and you are right, it is consistent, but I just needed you to know clearly that she is saying something else. And I just needed you to confirm that notwithstanding what she says, you stand by what you

say and what is independently confirmed by several other people.

MS GXASHEKA: I stand by what I said. Instructions were given ...[intervenes].

ADV CHASKALSON SC: No ...[intervenes].

MS GXASHEKA: Sorry, Chair. I think majority of the time we are lawful and we had to abide. Thank you.

ADV CHASKALSON SC: Thank you.

ADV KHUMALO SC: The last one, Mr Chaskalson, sorry.

10 On the same transcript, the end of page 24, continuing up to 25, line 10, where Doctor Mashazi is even more explicit because she says both the upliftment of the suspension and his redeployment were done on the advice of HOD, Gxasheka. Do you see that, Ms Gxasheka? It starts from page 24, the very last line.

She is being asked whether you were advising or you were instructing and she says as if she was instructing because it was emails back and forth between the two HODs. If she was instructive in nature, I was actually going
20 to intervene. But now it was between the two of them. And subsequent to the emails between the two of them, the Chief himself uplifted the suspension and redeployed Mkwanzazi to how he was advised by the HOD. And then he says that is you.

MS GXASHEKA: Chair, in my letter of suspension, I think

page, the first paragraph, second sentence or the first sentence, it says it came to my attention. And I said when I was referring to that yesterday that the attention I got to be told by the accounting officer. And another way of trying to support what I am saying, I think majority of the time when I communicate, even with Chief of Police or anybody, I cc her. And the cc'ing, it shows that whatever we discussed and she said we must do, it is done.

10 It is going to be difficult and it is a bit disappointing where we are in this situation because of the instructions of the accounting officer and then she feels she must re-exonerate herself and all of us must take the brunt. And it is a very disappointing situation, Chair, but I am sticking by what I said. The instructions were given by her and all of us, we confirmed the people who brought statements, ja. Thank you so much, Chair.

ADV BALOYI SC: Mr Gxasheka, in your discussion with the chairperson you were talking about complying with and you comply if it is a reasonable instruction. If the City
20 Manager gave you, as you say, she gave you the instruction to uplift the suspension, why did you consider that to be a reasonable instruction to comply with?

MS GXASHEKA: Thank you, Chair. I read yesterday the DPCA, 16.4, and I said it gives you either or. And because it at least allows, remember, it does say three months. In

exceptional cases, you can extend. So she is covered in that three months. And in the debate we will have with her, when I am saying but we can extend, she will say, no, it says three months and therefore it must happen. And as I say, the mere fact of it, Mr Nciza drafted the letter and I signed it, there was a leeway for her for us to continue with that process.

ADV BALOYI SC: You agreed to extend the suspension. So you obviously would have applied your mind to the
10 request to extend the extension and you considered it appropriate. And within the prescripts, you now get a call from the City Manager who is not an HR person. She is not an HR. You are the HR boss in Ekurhuleni. She is not that. She is your client when it comes to matters of HR, right? You are nodding, yes.

MS GXASHEKA: Yes.

ADV BALOYI SC: You have considered and you found there is merit to extend. That is what you agree with, Mr Nciza. You were prepared to do it. The City Manager gives
20 you, who is a lay person on issues like this, gives you an instruction not to extend, to actually uplift the extension. You do not even let it lapse. You write a letter, you say it is not being extended. You change your mind because you get an instruction.

And my question is, and DPSA has nothing to do

with it. She has not told us that she looked at the DPISA. As Mr Chaskalson says, she says she relied on your advice and I accept that you say that is not true. So we know from what she said in testimony that she did not apply her mind to it at all. According to her, she depended on your advice. What did you consider to make her instruction to be reasonable that you comply with it?

MS GXASHEKA: It was the first part of, as I say, our debate and discussion was on the first part of 16.4 that the
10 disciplinary process must take place within three months. And at that time ...[intervenes].

ADV BALOYI SC: Did you, let me just check this. Did you advise the City Manager not to extend?

MS GXASHEKA: No, no, no.

ADV BALOYI SC: Because that is what she says. Right, so it can be both. You have to choose that, yes, I advised her that it is okay not to extend or I was acting on instruction. She ordered me that we will not extend. It is one of the two.

20 **MS GXASHEKA**: Respectfully, Commissioner, I do not think there will be two possibilities in this situation. And I appeal for your indulgence to hear what I am getting at. I am saying let us extend and conclude so that EMPD can conclude the matter. She says, and I was consistent yesterday, she says, why did HR not complete this process?

You have concluded the investigation. You are at an advanced stage. That is what my statement says. Therefore, there is no need for you, HR, to extend the suspension. Mr Mkhwanazi must come back to work. This is where things were.

ADV BALOYI SC: Which then makes me ask, and again, it is about, I am going to use the word competence because I cannot think of another word now. It then raises questions about your own competence then, that you initially agreed, 10 so you would have considered those things that you now say came from the City Manager. You would have considered them, otherwise you are incompetent, that you did not think, oh, they have conducted the investigation. They are close to finishing. It is actually not necessary to keep the extension, I mean, the suspension in place.

If you did not consider those factors, then it says something about your competence. If you considered them, and then the City Manager simply repeats them to you, you still have to say, why did you consider hair to be superior to 20 you in terms of reasoning or factors to be taken into account?

And so, ja, I am back to it is one or the other. You considered them, and you satisfied yourself that this can be extended. That is why you agreed with Mr Nciza. Something else happens, and it cannot be the City Manager

repeated the same things to you. Something else happened that made you change your mind because you already had a view. She cannot repeat the same thing, and then you say, ja, because it comes from the City Manager, it is reasonable.

MS GXASHEKA: Chair, through you, I am saying there are discussions that are taking place. Initially, I satisfied myself. We do it. We do extend, or sometimes we do not extend. That is how it is, based on how far the
10 investigation is.

ADV BALOYI SC: So there was no instruction from the City Manager. You had a debate, and she persuaded you differently. There was no instruction from her.

MS GXASHEKA: I think you are battling to hear me. That is why I am really trying to explain ...[intervenes].

ADV BALOYI SC: I am not, no, I am not. No, I am not. I am not battling to hear you. I understand you. I hear and I understand you perfectly. You either had an instruction from the City Manager, or you did not. You now speak
20 about a debate, and I say, well, you either acted because of an instruction, which you say I must comply with, or you debated. You had formed a view, you debated, and she persuaded you differently.

In the latter case, it is not an instruction. If the latter happened, then there was no instruction from the City

Manager. Then she is right when she says I never gave an instruction. Or, she did give you an instruction, and it takes us back to, why did you think this was a reasonable instruction?

But forget that second part of why do you think it is a reasonable instruction, is I am saying to you, you either were persuaded to, and there is nothing wrong if you had started with that, without saying she instructed me. If you had started with, yes, I formed a view, but when I had a
10 conversation with the City Manager, I actually saw things differently. I think that would have been the end of this debate with you, but that is not what you say. You say you have got an instruction, and she is not telling the truth when she said she never instructed you.

MS GXASHEKA: Thank you, Chair. I have said from yesterday, I am really trying to be slow because I think maybe yesterday I was rushing and I was not heard properly. You will debate issues with her. She will give you an instruction. I think that is the part I need you to
20 hear.

She will give you an instruction, and if I was not competent, I would just say, yes, boss, and then move with it. I will advise against the instruction where I am uncomfortable. We will engage, and I have said most of the time you find out that legally she is equipped. After the

debate, she will still say I am saying to you do this and that. And I wanted to talk to the competence issue because now you have raised it, and hence, yesterday, I have said before and after the instruction has been given, I engage on issues, because you cannot be at my level where you are told, do this, you say, yes, boss.

I have been very consistent on that. Instructions are given, I debate, and I am still told you are going to go and do it this way. And I was not trying to be disrespectful
10 when I was saying you can test her character to the highest level. She will allow you to debate, but after debate, what she has said must happen, must happen.

I do not think, I am finishing. Between me, Chief of Police, Xolani, Advocate Kemi, we do not even know, I do not know Mkhwanazi. I started knowing Mkhwanazi during this case. I do not think all of us would want to shield Mkhwanazi, and I do not think we had any reason to shield Mkhwanazi.

ADV BALOYI SC: The suggestion is you are shielding him
20 to please the City Manager. That is the evidence, that is a complaint against you. It is, you may not have known him. Maybe you met him for the first time at the City of Ekurhuleni. That is not even the conversation. The complaint against you is you did not, firstly, you uplifted his suspension because you were pleasing the City Manager

and you were rewarded for it financially.

Two, you did not do anything. You frustrated or contributed to the frustration of the disciplinary process against him because you were doing the City Manager's bidding, and you were rewarded for it. That is the accusation against you. So it does not help for you to say I did not know him.

We are looking at your conduct, where there is a clear case of serious misconduct, serious, which in another
10 forum should see Commissioner Mkhwanazi go to jail. You become aware of it. You see the charge sheet. It is serious matter. You say, well, they made an agreement. I was not involved with it. You say I was instructed. You say I did a forensic investigation, which has nothing to do with the charges.

And the explanation from your colleagues who have testified is your role in all of this is explained by you were working with a City Manager who was protecting, they say, she was protecting Mkhwanazi. You helped her, and you
20 got rewarded for it. Those are the allegations against you.

MS GXASHEKA: Let me give you an example that is sensitive. Beyond this, I will not say much. Today, in 2023, I think that was the first month we suspended Mkhwanazi, my mom passed on. The following weekend she was buried on Sunday. Monday, I was called to come

back to work. And I said, on Mondays, since ...[indistinct] because we bury on Sunday, I was told if I am not back at work the following day, I will be dealt with.

That was around 4 o'clock on Monday, that conversation. I had to drive from Queenstown to here, to Joburg. Did not sleep ...[indistinct] my firstborn at all. We never slept. When we are driving, my husband had to stop me, we were sleeping at Bloemfontein, because you are tired and the car keeps on getting out of the road. The
10 following day, I was in the office doing interviews. I never mourned my mom.

On top of that, five days were deducted from my salary for burying my mother. So in that period, between February and up to the end of 2023, why would I be loyal to such a person? So I really wanted this misperception that says some of us were loyal to Doctor Mashazi to be seen differently.

It was not about loyalty. It was about how we advise and if our advice is taken or not taken. And I
20 thought yesterday I was assisting myself in the Commission when I said, there is an executive authority, Ekurhuleni. And ultimately, she is fully accountable in everything that is done.

And I am refuting anything that says in that year I was loyal to Doctor Mashazi, whereas I went through what I

went through. What I am saying to the Commission, we debated on matters. We debated on instructions. Ultimately, she will hear you. Hence, I am saying, get somebody who is not involved. Leave all of us. Bring another witness who is going to tell you that after debate, she will still have her work done.

I really, that means, hence I said yesterday, even on the issue of our increases, she came to me and said, why is Mayoral supporting you? She pushed it because
10 maybe she had no choice. We did the motivation. It went to the Remuneration Committee. It went to Mayoral. That is the loyalty issue. Maybe we are loyal to the authority, the position, not the individual.

And lastly, Commissioner, I want to leave here with a clear tone. Instructions are given. I advise. After advising, if there is an ultimate instruction given, you have to comply. And it is four of us against her or against Julius Mkhwanazi. You know, you have to understand the complexity. And the only way you are going to be assisted
20 is to bring somebody else who is not involved in this matter to deal with it. Thank you, Chair.

ADV BALOYI SC: I think the issue, the Chair earlier on raised it as someone at your level of seniority that you are executing instructions like this. And hence my question earlier to you, what is reasonable about the instruction?

Because you say I comply with reasonable instructions.

Now, if an instruction is unreasonable and you still comply with it, it makes us ask questions about you and why you would do that which you did. So, that is the context or the prism within which you should look at this, that you are employed, you are a section-56 employee, as I understand. The decision to employ you is not the City Manager's decision, as I understand these things. You can correct me if I am wrong.

10 The decision to fire you is not the City Manager's decision. Ultimately, she can lay a complaint against you and you get disciplined, but it is not her decision. And then you are making these decisions, you become party to decisions that do not make sense, because it does not make sense that you ordered the upliftment. And you ordered it because it is in your letter, it is in your handwriting, in the same way that you keep saying, well, Chief Mapiyeye wrote the letter, and therefore it is him. It applies to you too.

20 You wrote the letter uplifting the suspension. It is not good enough, is the point at least that I am making, for someone of your seniority, it is not good enough to say I acted on instruction. It is not. You are supposed to bring to bear your professional guidance on matters like this. Nowhere does it record you disagreed with the City Manager. Nowhere.

Nowhere does it say, you do not give us an email, you do not give us a memorandum, you do not give us a WhatsApp message that says I disagreed and I told her that I disagree with this, but I implemented because she instructed me and said she will deal with me if I do not. What we have is her saying she acted on your advice. That is what is on record.

With you, we do have a footprint of your letter uplifting the suspension. So it is you who uplifted the
10 suspension, and you must take accountability. In the same way that you say, Chief Mapiyeye should take accountability for his letter, even if he says I was pressured. He must take accountability because he wrote that letter and signed it off, stopping the disciplinary process. Same applies to you.

Take accountability for, yes, I uplifted the suspension. Yes, I was wrong to follow that instruction because it was an unreasonable instruction. Not trying to justify it as we debated and then she then at the end of it
20 said I am instructing you. Say she instructed me, and I should not have followed that instruction. That is all we are asking you to do, is accept it is a wrong instruction to uplift the suspension where the City Manager overrides your position.

It was a wrong instruction for her to give you and

you should not have followed it. You did follow it, but do at least own up to it and say I should not have followed that instruction.

MS GXASHEKA: Chair, through you, I think it becomes very difficult when we have to concede on issues when you contemplate them differently. And while you put your statement here, I have been very consistent that instructions are given. I do advise, and I do debate on issues ultimately, if it is reasonable. And the reason I am
10 saying it is reasonable to me, you know, extending for six months, it is the right thing to do.

But where the problem is with that clause, it says three months, within three months, finish the disciplinary process. And if you do not finish it within three months, the employee must come back to work. In exceptional circumstances, you can extend it. When I signed the first one, I agreed to sign the extension. It was based that at least you can stay up to six months.

And there are circumstances where we say
20 employees come back because the process has advanced. And I have said yesterday I want the context, I will accede where I have to accede, but I really wanted the context to be given, Chairperson, in the sense that three months was concluded.

And HR did, in our space, have irregularities, Chair.

I am taking that Doctor Mashazi is wrong. If you want me to say I could have done things better, I will do so. But we also played a critical role on that process not being concluded. And I am not sure then when I was testifying here if all this would be integrated and before decisions are made, but I am appealing to the Commission that when utterances are made, can we at least also talk to the context of how the matters have been discussed?

You know, the process was frustrated. I get that.
10 And I am saying we could have done things better. And it is really a pity, I am going to repeat before I concede to this, that Doctor Mashazi would not know all these things. As we decide to wake up and protect Julius, what for? What for? And I would not want to get to a situation where my competencies are being challenged without me trying to put a context on my side, Chairperson. I would not want to.

Hence, I keep on saying whereas instructions are made, are discussed, a person is advised. But ultimately, if you are a decision maker, you can even override what I am
20 saying and write your own letter or I assist and write the letter. Xolani drafted the upliftment and I signed it and three months have passed. Xolani decided when the three months have passed to still think, do I discipline or I do not discipline? Those things must be taken into context ...[intervenes].

ADV BALOYI SC: Thank you.

MS GXASHEKA: I am appealing with you.

ADV BALOYI SC: Thank you, Ms Gxasheka.

ADV KHUMALO SC: Can I just ask one follow-up question? I mean, you know the prescripts that apply in the municipality. You have told us you spent many years in the City of Joburg. You are now in the City of Ekurhuleni. Is it lawful and appropriate for a City Manager to involve herself in issues of suspension and discipline of an employee at a
10 level where Julius Mkhwanazi was in May and June 2023? Is it appropriate and lawful for her to be involved?

MS GXASHEKA: Chair, according to the delegations, as much as remember, ultimately delegations are hers. Accountability, she is the ultimate authority here. There is sub-delegations into these matters, but it does not mean because there is sub-delegations, she cannot still assume her delegations.

I have said earlier on in my statement, this matter is the Chief of Police and Xolani Nciza who brought her into
20 it. If in the beginning they would not have said, okay, this one has got proximity to the accounting officer, let us go and consult her. That is where this whole thing started. And then she started following it up, following it up, following it up.

Remember, if you read their statement between

Heine and Xolani, while Xolani has not yet disciplined, he is still contemplating, they might go to jail, they might not go to jail, let me not discipline. And he sensitised them that the time is moving. And by the 23rd, when he sensitised them, the 24th is the last day of the 90 days. You know, what do they do then, if you read their statement ...[intervenes].

ADV KHUMALO SC: [Indistinct] ...[intervenes].

MS GXASHEKA: I want to finish, I really want to change
10 ...[intervenes].

ADV KHUMALO SC: I already got my answer
...[intervenes].

MS GXASHEKA: I am going to come to it ...[intervenes].

ADV KHUMALO SC: My ...[indistinct] is it appropriate?
Yes, it is appropriate. No, it is not appropriate. I do not
want to hear about what Kemi did or what Nciza did. I just
ask a simple question. Is it appropriate for a municipal
manager to involve themselves at that level with the
suspensions of employees at that level? If it is appropriate,
20 you can say, yes, it is. If it is not appropriate, you can say,
no, it is not. And that is what I am asking you to do.

Assume we have read these laws, assume we have
read the records, assume we have heard your statement,
assume we have heard what you said yesterday. All I want
for now is, is it appropriate? Yes, or it is not appropriate.

MS GXASHEKA: Ideally, Chair, a City Manager should have said when they said we want to discipline Mkhwanazi and say, it is your role, deal with it, do not involve me. Therefore, it does not look good. It is not appropriate because those are lower level. And the contradiction, remember, when we are discussing recruitment Chief complaining, she says to Chief, below this level, do not be involved because you are dealing with a higher level. It is the same as her.

10 **ADV KHUMALO SC**: Exactly ...[intervenes].

MS GXASHEKA: But all I am saying, Chair, I know, even my legal team, I am sure they are going to reprimand me. All I am trying, I am not trying to over explain myself as if I am hiding something, but I am trying to refute the statements and the allegations Doctor Mashazi is doing against all of us, that she should not have involved herself from the beginning.

ADV KHUMALO SC: You see, now you have answered me. You did not have to take that long route. Thank you.

20 **CHAIRPERSON**: Let us adjourn and come back at 20 to. May we see counsel outside, please?

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Mr Chaskalson?

ADV CHASKALSON SC: The next topic that I want to

move to is the promotion of Brigadier Mkhwanazi, and it is an issue that we traversed briefly yesterday with Ms Gxasheka with reference to documents that are attached to the Mashazi bundle, and the promotion documents are, they start at page 59 of, well, actually 58 of the annexure bundle, sorry, to Doctor Mashazi. I had merged two witnesses. It is late in the day, and in the week, I apologise. So, it is page 58 of the Mashazi bundle and through to pages, and then the next document is 59 to 62.

10 And 58 is the ...[intervenes].

FEMALE SPEAKER: [Indistinct].

ADV CHASKALSON SC: Certainly, sorry.

CHAIRPERSON: May the attorneys please assist Ms Gxasheka?

CHAIRPERSON: Mr Chaskalson, you will please take us through what you want to ...[intervenes].

ADV CHASKALSON SC: [Indistinct].

CHAIRPERSON: Ja, ja.

20 ADV CHASKALSON SC: [Indistinct]. Thank you. It is a document dated 24 October 2023, and I will come back to the date a little later. It is an interview summary and recommendation for a panel for the appointment of Deputy Chief of Police Operations and Specialised Services. The date is 24 October 2023. So, that is after the restructuring of disciplinary matters, and it is after the instruction in

relation to the forensic report.

And in that context, Brigadier Mkhwanazi applies for promotion, and can you take us through this document? Because it is not clear to me. I see you were on the panel. I see Chief Mapiyeye was on the panel. There is a Ms Zanele Katembo who also appears to have been on the panel. Who is she?

MS GXASHEKA: [Indistinct].

CHAIRPERSON: Your mic, please.

10 **MS GXASHEKA:** Zanele Katembo was an HOD for ...[indistinct], but it is Sports Recreation, Arts and Culture. That was her role, I think, at that time. Thank you, Chair.

ADV CHASKALSON SC: And Advocate Behari was also on the panel, although it seems that he was not present at the interview. Is that correct?

MS GXASHEKA: That is correct.

ADV CHASKALSON SC: And there was someone from HR Secretariat, but she did not play a role in the interviews. The upshot of the interview was that a recommendation was
20 made that Brigadier Mkhwanazi should be promoted to the post of Deputy Chief of Police Specialised Services. Is that correct?

MS GXASHEKA: That is correct.

ADV CHASKALSON SC: Now, I simply want to ask you, in a context where charges of the nature that had been laid

against Brigadier Mkhwanazi were still out there, had not been resolved, why did you see fit to recommend him for promotion to a more senior position?

MS GXASHEKA: As I said, by that time, Chair, it was clear that the process of the DC is not going to continue. And obviously, the employee has been exonerated, given a letter that the process is not continuing and ...[intervenes].

ADV CHASKALSON SC: Sorry, can I interrupt there? The employee was never exonerated. No one ever said you
10 have been found not guilty of any of these charges. At best, what happened was that the process of proceeding with the charges was frustrated through a series of, at best, gross inefficiencies, at worst, deliberate sabotage. There was no exoneration.

MS GXASHEKA: Let me rephrase. Remember, this is an employee who is sitting with a letter that says we are no longer continuing with the investigation process and whatever and whatever ...[intervenes].

ADV CHASKALSON SC: Sorry, can I take you up? Sorry,
20 can I come in there as well? Because that letter says we are no longer continuing with the investigation process. But in fact, the investigation process had been finished by then. There was a whole, the investigation was over. What was now needing to happen was a disciplinary hearing. There was no need for further investigation, just for a hearing to

take place.

MS GXASHEKA: Yes, he was also told to go back to your substantive post, continue with your work. So firstly, for the employee to apply the position, the understanding is that this DC is not continuing. And at that time, there was no disciplinary hearing that is continuing. As I say, based on my initial testimony, my earlier testimony, and the legal opinion, if it was done by then, I cannot recall. So we could not prejudice the employee in this particular time. Hence,
10 he applied as well, like everybody else.

ADV CHASKALSON SC: Sorry, which legal opinion said that you could not proceed in, I think it was October 2023?

MS GXASHEKA: As I say, if I recall events, there was a legal opinion, I think we discussed it, that said there are no fraud issues against him. Maybe it is the way I am putting it. So at this point in time, the mere fact that we are continuing, there was no disciplinary process that is continuing, Chair. Thank you.

ADV CHASKALSON SC: You see, whether or not there
20 was a disciplinary process pending is a separate question from whether this applicant is a fit and proper person for this promotion. And I struggle with the notion that someone against whom allegations of that nature have been levelled and have reached the point of proceeding to a hearing only for a charge not to be served is fit and proper to be a

deputy head of police. What is your response to that?

MS GXASHEKA: I hear the inference on your side. On my side, in terms of the procedure, there was no DC that was happening, and therefore there would be no reason to say we are not shortlisting you because you are not meeting, I mean, there is a pending DC, because clearly there was no pending DC.

ADV KHUMALO SC: There was a directive by IPID that he should be charged and that directive is binding on the City
10 of Ekurhuleni.

MS GXASHEKA: I did not see it that time.

ADV KHUMALO SC: But you say the opinion exonerated him. That opinion is the opinion that said IPID must be disregarded. Which other opinion are you referring to?

MS GXASHEKA: That is what I am talking about.

ADV KHUMALO SC: Yes, so that is why I am saying there was a directive by IPID, and that opinion was responding to the directive. So you cannot say there was nothing pending. There was a pending directive by IPID. The fact
20 that Ekurhuleni did not comply with it does not mean there was no pending directive by IPID that Mkhwanazi should be disciplined.

MS GXASHEKA: I hear you, Chair. Thank you.

ADV BALOYI SC: Yes, Mr Chaskalson's question still stands that the disciplinary process is not complete. It is

not shut down, not by the letter from Chief Mapiyeye because, as Mr Chaskalson says, he speaks of an investigation. You then recommend the candidate, and the question is how, in your judgement, is it appropriate for you in particular to recommend such a candidate for a promotion to Deputy Chief of Police on such serious charges?

MS GXASHEKA: Chair, thank you. I am still saying that at that point in time, halted or suspended the DC, it would have been a prejudice not to give him an opportunity to
10 compete with other candidates.

ADV BALOYI SC: The issue is not why did you interview him, because competing with other candidates is at interview stage. I mean, even the worst of – we have got a list, so I need to explain what I am going to say next. We know from your vetting results, the vetting results, that some people were found to be rapists, but they are in the employ of the City. So even that person who is found to be a rapist, when they apply, you would have looked at, do they meet the requirements for shortlisting, right? And then
20 you would shortlist them, and that is a fair for them to come in and justify to the panel why they are suitable for appointment.

So we are past that. You have shortlisted. You, head of HR, are aware that there are these unresolved charges, serious charges against this individual. How do

you make the judgement that it is appropriate to recommend him for appointment?

MS GXASHEKA: My judgement, Chair, was based on procedurally, I thought it is fair to give, if there is a halt or stop at DC, you give a candidate an opportunity like everybody else. If indeed at some point you are found guilty, you will always be dismissed.

ADV BALOYI SC: No, he was never going to be found guilty because the City Manager has given you an
10 instruction. Remember that earlier conversation?

MS GXASHEKA: Yes.

ADV BALOYI SC: So you say the City Manager gave an instruction, and that is why that explains your inactivity about further disciplinary steps. So that has ended. But he has never been exonerated of these serious charges. He has never been. Here is the HOD of human resources. Basically, what do you call it? The one who gives direction, supposedly, on matters of discipline and how people should behave and what is tolerable behaviour. You recommend
20 his promotion. That is a problem. Do you accept that?

MS GXASHEKA: I said, Chair, that it is an oversight. We could have done better. I advise on the other side that procedurally. In fact, it is just that the reason I do not want even to talk to it because it was not recorded. I said, after the short listing, because no employee at EMPD met the

requirements, it was only these two.

I then said, let us not proceed. Let us re-advertise. And because we already did not extend the contract of Mr Mzolo, the Chief pushed that we do interviews. And I think when you go for interviews, you might anticipate a particular outcome if you want to, but interviews will always surprise you. And then once it is recorded and we made this recommendation, it is difficult to go back. If we could have restarted the process, maybe we would not be here, 10 but I am taking full accountability that I should have stopped the process when I said let us stop the process.

ADV BALOYI SC: We are at a point where you did not stop the process.

MS GXASHEKA: Yes.

ADV BALOYI SC: You interview. You know the problem about this candidate. You recommend. You do a positive act. You say he is suitable for the position. That is what this conversation is about.

MS GXASHEKA: Yes.

20 **ADV BALOYI SC:** So it is not oversight at all. It does not fall in the category of oversight. It would be oversight if you did not know that there were these accusations against him or you were mistaken about something, right? Here you know this is unresolved. There is serious allegations against him. And we do have evidence here where EMPD

conducted an investigation, and you would have seen that. You know that, as Commissioner Khumalo says, you know that IPID has directed that he should be disciplined.

You have testified that, well, it was frustrated/there were instructions. Now we come to you personally. We come to you personally. Why do you recommend such a defective candidate whose defects are known to you are recorded in a charge sheet? How do you, head of HR, say, oh, he can be promoted, he is suitable for the position?

10 **MS GXASHEKA**: The process was halt and the employee competed with other candidates. And we shortlisted, we interviewed, and he did well on that interview. I agree that in terms of the character, we could have done better and I am taking full accountability that we could have done better. But the process, it is not even a process that is made only by myself. It is a process that is made by the panel. As much as I have advised, and I am taking full responsibility, I am not going to say I am instructed in this one. If there were instructions that were not given to me, the only thing
20 that we did was to score. And the person who scored him higher and therefore was recommended.

ADV BALOYI SC: So, is it fair to say that you saw nothing wrong? The short answer, at that time, now with hindsight, maybe you say, well, ja, I should not have done that. Maybe that is what you are saying. I do not know if that is

what you are saying. But I am asking, in the moment when you recommend that he is suitable for promotion, you did not see any problem with that? You considered it ...[intervenes].

MS GXASHEKA: It was a red flag. It was a red flag. And as I say, I think what was left is how you debated. Remember, at the time, as much as I can recall, there was not even a criminal record against him, but there were pending allegations against him. And unfortunately, we did
10 not get to test them to the end.

ADV BALOYI SC: No, you may not have tested them as a panel. And the conversation, really, we have had the same conversation with Chief Mapiyeye and raised our concerns about his own conduct with this interview. Rather, with recommending Commissioner Mkhwanazi. It is exactly the same concern with you.

And this is not a panel concern. It is a concern about you, individually. You as a person, who knows the problems that have been raised about this candidate, who
20 knows that there is either an aborted disciplinary process or a suspended disciplinary process, whatever language you choose for it. He has never been exonerated, and you have to accept that.

I think you have accepted that, that he was never exonerated of these serious charges. You sit there and you

determine he is fit and proper, notwithstanding he is fit and proper to be promoted to the position. That is a difficulty I have with you. About either it is a sign of poor judgement on your part, at least from where I am sitting, or it is something more serious that you were prepared, because it is Mkhwanazi, you were prepared to overlook the problems, the red flags, to use your language about him. You overlooked them because it is Mkhwanazi, or you simply failed in your job to properly assess a candidate.

10 **MS GXASHEKA**: Chair, I think the inferences sometimes are biased because it is based on a particular situation at a given point. My judgement would have been based on that the allegations have not been fully tested. And until you are found guilty, you are innocent. I think where Ekurhuleni failed, I am still going to agree, is how poorly we managed the matter of Mr Mkhwanazi.

If it was well managed, again, we would not be here. If the DC continued timelessly and charges were served, maybe even he could have been exonerated and we
20 would not be here still, or we would be here for a different narrative. My ...[intervenes].

ADV BALOYI SC: Are you not being unfair to the other people, considering that you explain your inaction to pursue this disciplinary process on the basis that you were given an instruction. And when it suits you, you say it is the fault

of the other people. It cannot be both. You were given an instruction, you have told us, and you have tried to explain it by saying the atmosphere in the room was clear that the City Manager does not want this disciplinary hearing to proceed and your position was informed by that.

So you explained your inaction in this aborted disciplinary process by saying there was an instruction from the City Manager. And then when it comes to the others, you say, had they done things on time, it would have
10 happened. But if we go with your version, this DC was never going to happen because there was an instruction.

MS GXASHEKA: Thank you, Chair. Chair, if you follow events, if we acted within the three months, we might have a different narrative. The Chief of Police submits a request for a tribunal to take place in March, around the 23rd of March. HR ER division says I am applying my mind. IPID says we can get these people arrested, so I do not want to spend money on attorneys.

Come now while we are waiting, the 24th of May is
20 there. This matter is taken again by HR and EMPD, HR ER division, to the accounting officer and the accounting officer says all of you put this thing to rest. Now, what I am saying, Chair, is the charges remained not fully tested. It remained allegations because they were not fully tested, in the sense that go to the DC and have the outcome.

And I thought the principle of law, but if I am wrong, I am learning today, you are innocent until you are found guilty. I think I was fearful of the fact that, now that we continued, if we do not appoint him, he might take us on. Ekurhuleni, Chair, you hide documents, they find them. I am telling you if Mr Mkhwanazi found this document, let us say we withdraw that, we did not see he is going to perform in this interview, we say let us withhold and not fill the position and he get hold of this document. I do not know if
10 we went to court or how it was going to be.

I might have not understand the principles of law, but I have learned a lot from this Commission. And I think the person will continuously improve themselves and improve myself wherever I am going. I have learned a lot. My judgement, Chair, I am saying the red flag is there. But when I am thinking of the rule that says you are innocent until you are proven guilty, I could have done and consolidated those two statements or notions and come with a better judgement.

20 **ADV BALOYI SC**: I want to suggest to you that it is not available to you or open to you to rely on that principle of innocent until proven guilty if you contributed to the disciplinary hearing not happening. It is not open to you. You cannot have it both ways. You cannot agree with the frustration of a disciplinary process and then later on rely

on that it did not happen and say, well, I could not hold it against him. It is a correct principle of law that you are quoting, but it is not available to you.

MS GXASHEKA: Chair, if you can clarify when you say I contributed to the disciplinary hearing not taking place so that I can be able to answer in terms of my role?

ADV BALOYI SC: On your version, you followed Doctor Mashazi's unreasonable instruction not to discipline Commissioner Mkhwanazi. You followed that instruction,
10 and it is unreasonable because the charges are serious. A charge sheet has been prepared. Things are at a point for – there may have been delays, but you are aware there is a charge sheet. It was at a point of being issued. It did not get issued.

You have seen the content of it. You know that IPID has directed that there should be a disciplinary, and you know that if you have seen the opinion that you are seeking to rely on, which we say does not say what you wanted it to say. If you have seen that opinion, because it
20 does say what IPID has said. So if you read that opinion, you know that IPID has directed disciplinary proceedings. So you know all of that.

Notwithstanding, you follow an instruction from the City Manager that says do not discipline. You follow an unreasonable instruction. So when I say you contributed, I

am saying your inaction or your readiness to follow an unreasonable, maybe even unlawful instruction from the City Manager, you contributed to the DC not running. And so you cannot say, well, now when it is time for interviews, I thought the DC, there was no DC against him, when you had a hand in it not happening.

MS GXASHEKA: Chair, I get your context, Commissioner, that when I got to find out about this matter in August 2023, the way I think the report is being written, I mean read, the
10 one of the forensic report and I do not want – I am not sure if we must go there. I will still stand by my conviction that in my report, if it is read in its entirety, I will never agree that I fully, fully complied with the instruction.

If the instruction says you stop this DC, you do not continue on anything, and I get the notion and the premise that says, no, you guys were looking at labour costs. But I am still appealing to the Commission that maybe the report is read once more. And as I say, my intention in the reports and some of the allegations in that report should be read
20 the way I intended to have this matter dealt with.

I get the situation where we speak about the comma and the full stop, but I am still saying when you read Allegation 4 where it says disciplinary matter relating to Julius Mkhwanazi was not properly managed by the City, it has a comma. After that comma, it goes and say, then it

also resulted, which it resulted to unnecessary legal cost. I am taking that.

While I am taking the brunt that we should not have been here, but I still appeal to the Commission that the notion, you will make your determination, but the notion that says we are trying to protect Mkhwanazi, I do not think it was necessarily the case. We could have done things better. And you are right when you say the instruction could have been done and not observed and done
10 differently.

And I thought my approach to perpetually seek information about this matter and my intuition that says you cannot let this matter rest and the latest way I have never, well, everybody stopped. My last acting on this matter, it was in October 2025. Nonetheless, decisions are made by those who are listening and how they hear matters. I hear you, Commissioner, that I contributed for not having the matter to sit. It only sat when Doctor Mashazi was gone. I take that.

20 Nonetheless, again, I am going to say during the time I was dealing with the matter, my notion on the events is we have, Ekurhuleni have not tested the allegations. Therefore, it is difficult to say the employee is not going to compete and we could have still done better. I am taking that, but I am still appealing that hopefully, when you look

at this matter in its entirety, we will see how the outcomes come out.

And also, one can say that this is a process where continuous improvement are going to be taken seriously and we can do better next time. It is just difficult, Chair, to agree that you just fully contributed, you had an intention not to discipline. It might look that way, but I want to say it was never my intention. Thank you.

ADV KHUMALO SC: And it is not a case of just Julius
10 Mkhwanazi being protected. It is a case of him also being advanced because he was promoted. And with that promotion, there was you motivating that his salary be increased by R200 000. So it was not just being protected at the position where he was. It was a case of you knowing that there were serious allegations because the forensic people who conducted the forensic investigation, they say one of the documents given to them is the charge sheet, which means by August you knew what the charges were against Julius Mkhwanazi.

20 In October, when you support his promotion, you are aware that IPID independently has found that he is guilty of fraud and corruption and must be charged internally. And knowing those things, you still say this person is suitable for promotion to Deputy Chief of Police and an even better salary, some 200 plus over and above

what he earned before. Now that is serious.

MS GXASHEKA: Let me make a correction. I am not sure when I got to know about the IPID reports and the legal opinion. I said earlier when I did not have the dates. But one thing that came to my attention in August, it was obviously the charges and the stopping of the DC, and I said already I am taking brunt of that. We could have made better judgement. Despite the instructions that were made, we could still have made better judgement.

10 On the promotion, I am still going to say that when the charges are not proven, it becomes difficult if you already shortlisted and recommended the person for promotion. On the issue of the salary review, when an employee is a permanent employee, he has got certain benefits, employer contribution. So when you count the breakdown, it becomes different. And when you now put them on a total cost, when you FTC, you are putting a total cost.

20 And number two, what we normally consider is the issue of the risk embedded, that now you are on a five-year contract. Deputy Chief of Police Mkhwanazi was not the only person who has requested his salary to be looked at when he becomes a divisional head, convert from permanent to be divisional head.

 The majority of divisional heads, if I am not

mistaken, they do make that submission and it does get considered. I am sure 99% of them. And one thing we have picked up as an anomaly in the City is that the gap between the senior executive manager and the manager and the divisional head, the salary. In fact, in other instances, the senior executive manager will earn more than a divisional head. It is an anomaly that we are dealing with right now.

So his salary review, it goes with the promotion that we could have done better. But again, you could not
10 criticise him in terms of the salary review. As I say that, even Revo Spies got a salary review. Xolani Nciza has got a salary review. I got a salary review. And so many people. And I say main issue, it must be noted, is because of the overlap in the salaries between that lower level and the divisional head.

What I remain with, allegations, I got to know about them in August. October, we did interview, but they were not concluded. And we are learning from that, that we should not have even shortlisted. We should not even have
20 interviewed. I did say let us re-advertise. But because Chief did not want to extend Mzolo – if you check the events, the way I was trying to assist, I am saying in November, I think we interviewed. We shortlisted in September. We interviewed in October. I cannot remember now the dates.

In November, I am saying, Chief, let us extend because there is so many processes to be followed. Even the forensic process, Chair, I would not have known it would take that long. So I have this thing that if maybe we did extend the contract of Mr Mzolo, maybe again we will not be here, Chair.

ADV KHUMALO SC: Can I stop you there? Because I think the question was limited. Now you are dealing with issues you have already dealt with. My last point on this
10 issue is that you will recall that there was that meeting of 18 August 2023 and arising from that meeting was that document that you prepared, which now conferred upon you the power to institute disciplinary proceedings because it was no longer Nciza.

The City Manager had said you are not managing your department properly, these cases are not managed correctly. The power was now yours to say I have looked at this charge sheet, these charges are serious. I know they were withdrawn before, but I think these charges should be
20 pursued. It was within your powers to start that process, and you did not do so. Am I correct?

MS GXASHEKA: Chair, I am going to repeat what I said. Despite that instructions were made, and it is a pity that we are not understanding each other, and I am taking that. I have never not continued pursuing this matter, despite how

it sounds like I pursued it. And I am not going to go again and read that allegation that I read with a comma that surely I was talking to Mkhwanazi. While talking to Mkhwanazi, I also talked to the legal costs. Chair, I still want to convince the Commission that I have never stopped, the latest until 20 ...[intervenes].

ADV KHUMALO SC: Let me ask you a simple question. What stopped you in September 2023? You were looking at the charge sheet. You heard it. What stopped you from
10 serving it on Julius Mkhwanazi and saying, Julius, these charges are serious, you must answer them? What stopped you?

MS GXASHEKA: I have answered that, Chair, where I have said that based on the instruction that was given, it stopped.

ADV KHUMALO SC: You followed the instruction.

MS GXASHEKA: And after that I have said, Chair, when we changed the delegations, I knew that this cannot end here. Now I am fully responsible for it. Hence, I instituted
20 an investigation, a forensic investigation. I am really trying to be as slow as possible. And they said yesterday it was 220 kilometres ...[intervenes].

ADV KHUMALO SC: Ms Gxasheka, can I stop you there? There is no need to be slow. You have now actually, in giving the answer, accepted that in terms of the delegation

after August, you could charge Julius Mkhwanazi. You did not need a forensic investigation for that. You had the charge sheet in front of you. There was an investigation report. You did not need a forensic investigation that takes a year to conclude.

You could say these charges are serious, Julius Mkhwanazi. They were withdrawn because Mapiyeye said he was pressured. I now have the power in terms of this delegation. I am saving you this charge sheet. I want you
10 to answer to these charges because this is an HR matter that falls within my jurisdiction.

MS GXASHEKA: The engagement of August, Chair, I have said that instructions were given. The appetite was very clear. Despite that, there was an instruction in the appetite that we will stop this process. I still went and said let us look at what actually happened on this matter. While that was happening, recommendations were made. The recommendations that were made are putting us to be here now.

20 I might not have expected the way the Commission expected the standard of an HOD HR would have happened, but on my competency and how I know myself, I did the best of my ability. It could still be done better. I do not think anybody is perfect in any world. Hence I have said we are all taking the blame that we could have done better here.

All I am saying, Chair, while everybody else stopped, that must be noted, I never stopped. How the report is read, I am still appealing, let us read it in its entirety before you make a final discussion on this matter. Thank you so much.

ADV KHUMALO SC: Thank you.

ADV CHASKALSON SC: Ms Gxasheka, I want to raise a slightly different take on this issue. When I look at that promotion panel and their recommendations, and particularly the fact that both you and Chief Mapiyeye
10 recommended the promotion, it seems to me that part of what was tainting that process was fear. It seems to me that there were two possible fears that members of that panel confronted.

The one was the fear of Brigadier Mkhwanazi, and you have spoken about that in your statement. You mentioned that when the issue was first raised with you in February, the Chief said to you very quickly when you were wanting to discuss the evidence and all he could talk about was how dangerous Brigadier Mkhwanazi is, and you got
20 scared, and you wanted a threat and risk assessment and he did not give you the threat and risk assessment.

So it seems to me that if you were scared in February, you would have been scared in October. Is that a fair proposition to put to you?

MS GXASHEKA: I am not sure if I hear you properly. You

are saying if I was not scared in February, I would not be scared in August.

ADV CHASKALSON SC: No, no. If you were scared in February when you were first told about Brigadier Mkhwanazi, there is no reason to believe that you would have stopped being scared by the time you were on the panel, not in August, in October. Were you still afraid of this man in October?

MS GXASHEKA: Not really, Chair. If you remember how
10 the process ran, in the shortlisting the candidate does not even know that he is going to be shortlisted, and he never contacted me and said shortlist me, if you do not, I am going to have issues. On this one, I am not even going to blame certain circumstances beyond that. My judgement would have been poor. I have never had a discussion with Mkhwanazi on this particular process. The only person I had a discussion with ...[intervenues].

CHAIRPERSON: Ms Gxasheka, can you please try to be brief, at least with some of your answers? As I understand
20 the question, is it October? Were you still afraid of Brigadier Mkhwanazi?

MS GXASHEKA: Okay. Chair, the risk assessment was never done. So I did not know if I am safe or I am not safe. As much as I do not recall when we are shortlisting there, I thought of that. Maybe let me put it that. But the most

important thing to be known, to date, there has never been a risk assessment done to my life. I am still waiting for that. Maybe one day I will find it, and we are hoping that we will live longer, but I do not remember considering that part.

Probably, subconsciously, I could have thought of if we do not shortlist him, what is going to happen. But at the shortlisting level, one thing I remember was to say let us re-advertise. And in November, again, I said, why do we not
10 extend Mr Mzolo's contract? Subconsciously, it can happen, Chair, and you make decisions because subconsciously your mind is thinking of something else. Thank you.

ADV CHASKALSON SC: I will not push that further, but the last issue that I have to put to you is that this afternoon, this morning, Makosi Makamba saw your testimony and she has given us an affidavit this afternoon that I have to put to you. So can I get you copies, and can I get copies for the Commission?

20 **MS MAGULA:** I am sorry ...[intervenes].

CHAIRPERSON: Has it been ...[intervenes].

MS MAGULA: No, it has not, and I was about to raise an objection to the document that the evidence leader is about to show to the witness.

CHAIRPERSON: You have not had sight of it?

MS MAGULA: I have never had sight of it. It is for the first time that I hear about this document as he is busy leading now.

CHAIRPERSON: How many pages is it, Mr Chaskalson?

ADV CHASKALSON SC: It is four pages. F

CHAIRPERSON: our pages. And you say it is the last issue you are going to raise?

ADV CHASKALSON SC: It is the last issue I am going to raise. It is a very simple proposition. It relates to the
10 tender, and Ms Makamba, whose name was on the bid document as the contact point, said that the witness removed her from any role in the tender and took charge of the tender herself, essentially. I mean, it is that proposition.

CHAIRPERSON: Thank you. If it is only four pages, what, 10 minutes would be enough, Ms Magula?

MS MAGULA: Yes, 10 minutes would be fine, Chairperson.

CHAIRPERSON: Yes. Let us adjourn for 10 minutes.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: Ms Magula, we may proceed on this now.

MS MAGULA: Mr Chairperson, I have an objection for this document to be used. As for now, I would like to highlight some few aspects why do I have an objection in using this document. This document that was just given to us now,

and we are told that it is in the form of an affidavit, it is not a proper affidavit. The reason why I say so, Your Worship, Mr Chairperson, it is fine, the reason why I say so, it is because we do not know the author of this document.

CHAIRPERSON: What do you mean by that?

MS MAGULA: The reason what I mean by that is that, Mr Chairperson, it does not, at page 5, at the end of this document, page 5 is the last document, is the last page, there is nowhere where the deponent of this statement has
10 taken an oath, or an affirmation to prove that these contents, or he is the author of the document. That is point number one.

CHAIRPERSON: Would you have any problem if it was a statement that is not necessarily an affidavit?

MS MAGULA: Even if ...[intervenes].

CHAIRPERSON: We have used such statements in this Commission, especially right at the beginning. We used to have statements that were not affidavits, so what difficulty would you have?

20 **MS MAGULA:** My difficulty is also that ...[incomplete].

CHAIRPERSON: Before the also, would you have any difficulty with a statement that is not an affidavit?

MS MAGULA: It is a typed document. It is not handwritten and ...[intervenes].

CHAIRPERSON: I honestly do not understand your point.

What is the point about the difference between a typed and a handwritten document?

MS MAGULA: If it was a proper affidavit or statement, it was supposed, whether it was typed or written, it would not make any difference, but at least it should have had ...[intervenes].

CHAIRPERSON: Let me ask my question again. If it was a statement that is not an affidavit and that does not purport to be an affidavit, would you have any difficulty with it being
10 used in this Commission? If you would, what would the basis of the problem be?

MS MAGULA: Yes, I would, because it was supposed to have long form part of evidence, or as ...[intervenes].

CHAIRPERSON: That is a different point altogether. That is a different point altogether you know, the issue of how much time have you had to peruse the document and possibly even consult with your client on it. That is a different point altogether. The point now, as I understand you, is that there is an issue or problem with this document
20 because of its nature. Do I understand you correctly?

MS MAGULA: Yes.

CHAIRPERSON: Yes. Now, the issue that you raised in support of your point is that there is something, if I understand you correctly, with the attestation. And then to try to cut across that, I am saying to you, in this

Commission, we have used statements that are not affidavits, and that was especially so at the beginning and we never had any problems with that.

So I want to understand you, and I ask you the direct question. What problem do you have with a statement that is not an affidavit? What is your problem with that, especially in the context of what I am telling you, which is that we have used statements in this Commission that are not affidavits. So what would your problem be with
10 a statement that is not an affidavit?

MS MAGULA: When I read through this document, I realized that there are annexures that are being spoken to in this, and they are not attached. That is also my problem with this statement.

CHAIRPERSON: Please take me to the relevant paragraphs. I read the document very quickly outside just now, but I do not remember any reference to annexures in it. But even if you are correct, what always happens between legal practitioners is for legal practitioners to say
20 that you refer to such and such an annexure, can you please share that, and then you decide whether you are able to proceed or not after you have been furnished with the annexure. But it cannot be, or at least I do not think so, it cannot be a basis for saying I object to this affidavit because I have not been furnished with the annexure

referred to.

Of course, it is something that I say all the time, and people who watch proceedings before this Commission, I have repeatedly said that it is the last thing that I would want to see, that is to prejudice any one of the participants before this Commission. So if an issue is with annexures, the annexure must be shared with you. You must get sufficient opportunity to peruse the annexure and also to consult with your client on it. That I will definitely give you
10 time for. So, but now, please take me to the paragraph that refers to annexures.

MS MAGULA: Just a minute, Mr Chairman. If I may, Mr Chairperson.

CHAIRPERSON: Yes, Ms Magula.

MS MAGULA: If I read through paragraph 9.5, it is 9.5 and 9.6, the deponent of this document is talking about a letter and the contents of that letter are not attached to this document. Then if I speak of an annexure, I was speaking about the said letter that maybe it was supposed to be
20 attached to this document.

CHAIRPERSON: No, not that it is an annexure, it is a document that you feel should have been shared with you.

MS MAGULA: Yes.

CHAIRPERSON: So you misspoke when you said it refers to an annexure.

MS MAGULA: I concede.

CHAIRPERSON: Yes. Mr Chaskalson?

ADV CHASKALSON SC: Chair, I have not consulted with Ms Makamba.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: This arrived unsolicited this afternoon.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: But if one looks at paragraph 10,
10 she says:

“I left the services of the Municipality in November 2023 due to irreconcilable differences with Mrs Gxasheka's management style and interest.”

So she has not, she is no longer, have not been employed at the Council for over two years. An instruction issued from her superior to her would be, if it still exists, it will be in the email archives of the Council. If Mrs Gxasheka can still access her email, I do not know if she
20 can, it will be there. We will try and obtain it from the Council, but we have no way of obtaining it through any other means. All I propose to do is to ask Mrs Gxasheka to respond to what the witness to this statement says in paragraphs 9.1 to 9.9, just to understand whether there is a dispute or not.

CHAIRPERSON: Thank you, Mr Chaskalson. Ms Magula, I direct that Mr Chaskalson should put the questions that he is minded to put to Mrs Gxasheka. All endeavours must please be made to source the letter, is it one letter or letters referred to, and to furnish ...[intervenes].

ADV CHASKALSON SC: We will, Chair.

CHAIRPERSON: Yes, thank you. Thank you.

ADV CHASKALSON SC: Mrs Gxasheka, if you go to paragraph 9 on page 3 of this document, there Ms Makamba
10 makes a number of specific allegations. The first one is that she raised the challenges that existed with regards to the training tender coming to an end during the departmental senior management team meetings and then she says:

“I had several engagements with Ms Gxasheka during the period leading up to December 2022 for her to approve the bid specifications in order for the HR department to commence the
20 process of issuing the tender.”

Is there anything there that you would dispute?

MS GXASHEKA: Apologies, Chair. I cannot recall these events. It could have happened, it could not have happened in terms of the timeframes. But where I might want to agree is where I said, look beyond the unit

standards, add degree, honours degree and so forth and that I can, I think from what she is saying, we could be also talking about the same thing where I said there must be additions to the tender document. Thank you, Chair.

ADV CHASKALSON SC: Then in paragraph 9.3, she says:

“My unit submitted the bid specifications to Ms Gxasheka already in 2022. She took more than three months to approve the process.”

10 Do you have a response to that?

MS GXASHEKA: I think it is similar to 9.2 where I am saying if possible, if we are discussing the issue that they must add additional formal qualifications, she might be talking about that. One thing I would not understand, why must that take three months or take six months, but I did engage and I have said it earlier that they must increase the bid specification. Thank you, Chair.

ADV CHASKALSON SC: Then she says:

20 “The item was eventually submitted to the bid specification committee on or about 26 May 2023. I represented the department at the BSC as the project manager and responsible for the training function of the Municipality.”

Is that correct?

MS GXASHEKA: Chair, I think it is similar to what I said earlier on that I was not involved in the BSC, the bid specification committee, same as the bid evaluation committee and the bid adjudication committee. Thank you, Chair.

ADV CHASKALSON SC: And then she says:

10 “Soon thereafter, Ms Gxasheka wrote me an instruction appointing Mr Joseph Maropa and Ms Lebogang Motai, who were not in my unit. She also appointed Ms Zamamiya Dibuo Nwendamunsu and Ms Nthabiseng Kunyamane to run with the tender.”

Is that correct?

MS GXASHEKA: I am not 100% sure, Chair, what does she mean to run with the tender, because if it means after it was awarded, maybe she will be saying something else. I cannot recall there what would have happened. But my testimony earlier on, I did say that I got people involved in
20 the allocation of the scope and to ensure equitable share. So I am not 100% sure she is talking about that or what exactly she is talking about. I am not 100% sure. It is difficult to answer on that one, Chair.

ADV CHASKALSON SC: In 9.6, she says in the same letter of instruction ...[intervenes].

CHAIRPERSON: Just before that, just before that. But what role would she have played had you not introduced, if she is correct, had you not introduced the people that she mentions here? What role would she have continued to play in the process?

MS GXASHEKA: It will be more to ensure that the allocation is done fairly, more than anything. And as I said, I was not happy with how the allocation was done and I left it to the Commission that I think City of Ekurhuleni will
10 assist better to provide how all these service providers were paid.

CHAIRPERSON: Did you remove her from that process?

MS GXASHEKA: I cannot recall ...[intervenes].

CHAIRPERSON: And replace her with other people?

MS GXASHEKA: I cannot recall, Chair, if when she left the City, because all I know at some point she left the City. What I said, the, what is, the support department must do, they must manage all the tenders for the City, for HR.

CHAIRPERSON: She cannot be referring to a period when
20 she had left the City. When she says she was no longer to be involved, she must be referring to a period when she was with the Municipality. So did you cause her no longer to participate in the process and replace her with other people? So please do not make reference to her possibly having left the Municipality.

MS GXASHEKA: Chair, what I know, I have said the management of tenders must be done by the division and support. And the reason I made that decision, support remains independent because they are not the ones that will do the tender and they are also not the ones that are going to instruct the service providers. So I did say earlier on that I made different improvement in the system and highly possible she is correct when I say I included support services.

10 But my understanding, Zama and Thabiseng, they are also in that division of Makhosi, so, on adding Lebo and Joseph, I think she would be correct. I said we need an independent person because of a lot of things that were happening at the divisional head level where you would run with the tender, you are a referee and a player. You run with the tender, you adjudicate, after adjudicating with the BAC, you still go and appoint who should do what when.

20 So the responsibility of support services was to guide against that, also ensure that equitable share is happening and the quarterly reports are submitted to finance. Thank you, Chair.

ADV CHASKALSON SC: You see, I do not think she can be referring to a process after award of the tender because she says she left the services of the Municipality in November 2023 and we know that the tender was only

awarded in November 2023. So these processes that she is describing must relate to a period sometime between May 2023 when the Bid Specification Committee got the specifications and when she thereafter represented the department at the BSC.

And November 2023 when two things happened, she left and the tender was awarded. So I think that what she is talking to in 9.5 would appear to be matters relating to the processing of the tender after it left the Bid
10 Specification Committee.

CHAIRPERSON: Look at 9.4 and 9.5, there is the submission to the Bid Specification Committee and then she says soon thereafter you effectively replaced her with the people that she mentions. So this is at a stage, as Mr Chaskalson says, leading up to the award.

MS GXASHEKA: Thank you, Chair. Chair, it is difficult to really speak to all these issues, especially without proper evidence, firstly. I mean, I am not, I did not know that the tender was awarded in November 2023, I could have missed
20 that, and now it is being raised. It is really become difficult. I think if there were documents in front of me, I would respond better on this matter. I am really grappling. I am really grappling with this one.

ADV CHASKALSON SC: Can I, in relation to November, can I refer you again to the document that we touched on

earlier, which is at pages 128 and 129 of supplementary bundle 2, where it is a list of bids that were awarded in November 2023, and this bid and the award to Buena Vista is noted at paragraph, sorry, at page 130, second last item:

“Appointment of a panel of accredited skills development providers to implement various qualifications and skills programmes, November 2023, Buena Vista Learning Academy.”

10 What she does say in 96 and 97 is in this letter to which she refers, she says that you categorically removed her involvement in the training tender, albeit same being in her unit and the handling of the training tender was thus moved, she says:

“From my functional ambit and located in the office of the head of department, Ms Linda Gxasheka. She had absolute control over all HR processes that ensued.”

20 Would that be correct?

MS GXASHEKA: It is not correct, Chair. I am going to reiterate, I was not involved in the BAC, in the BSC, and the BEC. That cannot be. In fact, she is bluntly lying here. I have said earlier on, I have not seen an HOD who go and present his or her tender at BSC, at BEC, and BAC. I am

refusing this. I am refusing this. I think this, we are just being implicated here unnecessarily. It does not make sense what she is saying to me.

And if the tender was only awarded in November, and she left, how would then been taken away from her, because between, until November, it would have gone to BSC, it should then go to BEC, after BEC go to BAC. It only comes back now to me to start having a control in terms of the shared, equitable share after November. So I
10 am refusing, Chair, what she is saying here. I think we are just being played with here. Thank you, Chair.

ADV CHASKALSON SC: Well, can I ask you this question. In paragraph 9.5, there are four people who she says you designated to run with the tender. Do you recognize those four people?

MS GXASHEKA: I do.

ADV CHASKALSON SC: And are they in the office of the head of department, or in the training department, in the office that was run by Ms Makamba?

20 **MS GXASHEKA:** They are under, two of them are under training department, and then two of them are in the service department, I mean, service division. So they are also in another division, that is the division that deals with budget, finance, contract management, and even when you are tendering, they will vet the document. They support you

from you starting the tender to its completion. It is the, hence, it is called support services. So they will always be involved, not specifically for the tender for training, that is the wife of Matlala, but they will be involved in all these other tenders.

ADV CHASKALSON SC: And would the department not have some representation in the BEC and the BAC, even if it is not you?

MS GXASHEKA: They would.

10 **ADV CHASKALSON SC:** So when she says that the training tender was moved from her functional ambit and located in the office of the head of department, it is quite possible that that would be the case, if the people from the department who were designated to the BEC and the BAC were people who reported to you and not to her.

MS GXASHEKA: Chair, in other processes that, other tender processes in HR, those two people she has mentioned from support are always there. One thing she has said that is correct, she is a project manager. But on
20 top of that, there is other people that you work with to assist you to conclude this process. And they have always been in any tender process, you will find the support people in that space. Those two people she mentioned there are, they were very good in handling of how the tenders are done.

When I arrived at Ekurhuleni in any tender process that I was involved on before I became an HOD, Joseph Moropa will sign off the spec, will assist you with the budget. She makes it sound as if they are single-handedly now dealing with the tender, and she is not. What she would probably have done on her side is to try and sideline them. But she remained a project manager, and those guys were there to support her as far as to my knowledge. Thank you, Chair.

10 **ADV CHASKALSON SC**: Well, that is certainly not her version. She says in your letter to her, you categorically removed her involvement in the training tender.

MS GXASHEKA: I cannot recall that letter, Chair. It is very difficult to deal with it.

CHAIRPERSON: When you say you cannot recall, does that mean you could possibly have written it?

MS GXASHEKA: I do not know, Chair. I do not know. All I know that I can align with is that Joseph Moropa was support services, no longer working at Ekurhuleni. And
20 there is no tender, ever since I arrived at Ekurhuleni, there was no tender he was not involved on. But the removal part, I will not know. I cannot talk to it. I can only comment maybe when I see it, if it indeed happened. There could be something that says, do not sideline, work with them. But I do not know, Chair. I sincerely do not know this one.

Thank you.

ADV KHUMALO SC: Can I ask, did you appoint any of these people to the, you know in a bid process, there is the admin stage where all they are doing is to check whether you have the correct documents like tax documents, registration documents and then it moves to the proper evaluation where you apply, whatever you apply, then it moves to the adjudication. Did you appoint any of these people to any of those processes in the tender process?

10 **MS GXASHEKA:** Chair, what normally happens in the tender process, there is a project manager. Then the project manager will work with a team where, as I say, that they run with the bid specification. They also run to support the evaluation. But all that work is done under finance. And Joseph has always been the person who is running with these processes. So appointing, I am not 100% sure, but it is always been people who are assisting with tender processes.

ADV CHASKALSON SC: And then in paragraph 9.8 and
20 9.9 she says:

“It is factually incorrect for Ms Gxasheka to attempt to dissociate herself from processes that involved the training tender and its award. Ms Gxasheka was the process owner and

thus accountable for the tender.”

What is your response to that?

MS GXASHEKA: Chair, I am going to repeat what I said. I do not see it in the bid specification. I have said my role was to say add formal education, mostly degree, masters and so forth. That was my comment. BSC, I have never went there. Bid evaluation, I was not there, hence I said maybe get attendance registers. If possible, also get minutes of what transpired in those processes, Chair. I
10 doubt you will not see my name. You will not see my name. I doubt that. I was not involved.

Clearly this is somebody who just wants to leave everything to me instead of allowing that the key stakeholders who ran with the tender must account. I do not agree with what she is saying. I was not fully involved and I did not award the tender. It would be irregular for me to award the tender.

ADV CHASKALSON SC: Just to clarify what she is saying and what she is not saying, I do not think she is ever
20 suggesting that you sat on the BEC or the BAC. But what she is saying is that the people in the department who sat on the BEC and the BAC reported to you, not to her. What is your response to that?

MS GXASHEKA: I have already responded, Chair. There is five divisions at that time, if I can recall, in HR. It was

the support services, it was head division, strategic HR, and talent management, and it was HRBP, and it was LAER and others, and those people are coming from those divisions. If you see the structure of HR, the only people that are reporting to me is the divisional heads and the PA and the coordinator. So it is not proper what she is saying, that those people were reporting to me. It is not true reflection of what is happening in the City of Ekurhuleni.

ADV CHASKALSON SC: Thank you very much. I do not
10 have any further questions.

ADV BALOYI SC: Mr Chaskalson, you moved too quickly for me and left the promotion topic to deal with this statement. I do not have the document that you shared with us, the promotion, the interview panel.

ADV CHASKALSON SC: The interview panel. It is pages 58 onwards of the Mashazi bundle.

ADV BALOYI SC: We do not have it.

ADV CHASKALSON SC: You do not have it.

ADV BALOYI SC: No.

20 **ADV CHASKALSON SC:** Can we display it?

CHAIRPERSON: Yes, please.

ADV BALOYI SC: Oh, thank you. Ms Gxasheka, you have in front of you there that summary that we discussed earlier. And the panel, you went through who comprised the panel, and there is three people eventually, because you

confirmed that Mr Behari did not partake. So instead of four, you now had three people. Now, can you just explain what it means that the HOD SRAC does not indicate whether she approves or disagrees, and what is the consequence of that?

MS GXASHEKA: Chair, you, again, it is part of continuous improvement. You will realize in majority of documents that we will have sometimes a person will not tick. Sometimes you will find out it ticks, does not even put a signature. But
10 sometimes when we audit, we follow those things up. But one thing I can tell you, it did not mean that she was not recommending the candidate.

ADV BALOYI SC: Does it mean she recommended the candidate?

MS GXASHEKA: Yes.

ADV BALOYI SC: Why do you say that from this document?

MS GXASHEKA: Because we elaborate. Remember, before we decide that the first choice is Mr Mkhwanazi, for
20 instance, if we said the first choice is Mr Mkhwanazi, the second choice is Mr Du Plessis, it would have been a collective decision of the panel.

ADV BALOYI SC: And where do we see that in this document? I mean, there is a reason you have got this document as a record of what happened. Now, it does not

tell us on this record what her position was on either candidate.

MS GXASHEKA: Chair, I think because she signed and said there first choice, probably she agreed. Yes, it was an oversight on her not to approve and not to put the telephone number, but she signed there, and it means she agreed with the appointment of the candidate. I do not recall ...[intervenes].

ADV BALOYI SC: If she did not agree with it, would she
10 not have signed? If she had ticked not approved, are you saying with that explanation that therefore she would not have signed this?

MS GXASHEKA: I get what you are saying, that she should have put approved or not approved.

ADV BALOYI SC: Ja, no, no, she did not put that.

MS GXASHEKA: Yes.

ADV BALOYI SC: You say her signature signifies that she approved and I am saying the inverse, if you are correct, then the inverse would be true, which is if she had
20 disapproved, she would not have signed. Is that what you are saying?

MS GXASHEKA: Chair, remembering the events, we all agreed on the recommendation of Ms Julius Mkhwanazi, according to that document. If why she did not tick and not put her date, it is one of those sometimes errors that people

will make. And in the inferences on balance of probabilities, I am talking on the probability, Chair, that Julius' name is there and if you check the scoring, Chair, Isaac Mapiyeye scored Mr Mkhwanazi 21, Ms Zanele Katembo scored Mkhwanazi 20, I scored Mkhwanazi 21.

ADV BALOYI SC: Okay.

MS GXASHEKA: So you can see there, and then Du Plessis, Zanele scored Du Plessis 17.

ADV BALOYI SC: Yes.

10 **MS GXASHEKA:** So on balance of probabilities, she would have agreed here.

ADV BALOYI SC: I think that does answer me, your reference to the scoring. Now, a different question relating to this promotion. Brigadier Mkhwanazi was being promoted to, obviously, a senior position with different responsibilities. You are nodding.

MS GXASHEKA: Yes, it will be.

ADV BALOYI SC: Okay. And do you not, when I say you, I mean the City, does it not conduct competency assessments
20 for now he is moving to a completely different position, is that not part of what you do?

MS GXASHEKA: For the Divisional Heads, and the Deputy Chief of Police is also at a Divisional Head, Chair, and we do conduct psychometric assessments, and they were also conducted for Julius Mkhwanazi.

ADV BALOYI SC: Okay. The evidence that we have is none was conducted.

MS GXASHEKA: Chair, I did see that. I think in the Chief's statement, or one of the statements, they did say that.

ADV BALOYI SC: Yes.

MS GXASHEKA: And ...[intervenes].

ADV BALOYI SC: And you do not address it in your statement, because it is quite a serious thing to say, 10 because effectively it says the appointment was an, the promotion was an irregularity. That is the effect of it, that it was an incomplete process. In fact, let me remind you what Chief Mapiyeye said in his evidence. He said the, you conducted, the panel conducted this interview. You scored the candidates. There was the next step, which is a competency assessment, which you have just confirmed would happen. And according to him, once the results are out, then the panel finally makes its determination, depending on the results, because the competency result 20 may well say is unsuitable for the position. And that whole step of a competency assessment and further process did not happen. And yet, you wrote and recommended his appointment to the City Manager.

MS GXASHEKA: Chair, there is so many articulations that the Chief made in his statement and if I did not address this

part, it must have been on different versions that we keep on changing. I should have addressed it. Chief, he even say he is the only appointing officer. I could not understand what he says that, because with different documents that the City has, that is not true. In this instance as well, Chair, once we have made this recommendation, the issue of psychometric assessments, it becomes, it is quite a clinical process, Commissioner Baloyi.

I think you will know from the psychological point of view that it is quite a sensitive process. When you go there for assessments, the psychometrists there, they tell you, the candidates itself, do not ask HR, do not ask anyone, come back to us. Successful or not successful, once the appointment has been made, you speak to us. That is the first issue.

And the second issue, as much as I will share documents, I think it is one of the documents I was very sceptical to share, because I do not share this document even at Council, in the Council meetings. It is between myself and the psychometrist in the City. I think we have got three psychometrists, but I share with one psychometrist, because she has to do a talent management and plotting process. So she is the only person who gets this process, this document. I do not know any HOD who can attest and say they have ever, ever seen this document.

Nobody sees those documents.

And majority of time, it is meant for, to identify the gaps and see how you can sort them, and for HOD's, even for remuneration purposes. So I do not want to agree when Chief says he expected to see this document.

ADV BALOYI SC: No, he did not, I did not say he said he expect it. I said he says that Commissioner Mkhwanazi was supposed to undergo an assessment, a competency assessment. That did not happen. In fact, what he says in
10 his statement, let me read it for you. He says, the HOD, so what he says:

“At the conclusion of the interviews, both candidates, as is the norm for appointments at that level, were to undertake competency assessments, at the conclusion of which the panel would reconvene and make a final evaluation based on the interview scores and the competency
20 assessment results, and thereafter recommend the successful candidate for appointment. The HOD HR never reconvened ...”

This is paragraph 67.

“Never reconvened the panel for the

purpose stated above.”

And, of course, he does say:

“I have never seen the competency assessment result of either candidate and do not know if either undertook such assessment. I can confirm that the interview panel thus never completed its task and never did it recommend the appointment of any of
10 the two candidates to the post.”

So first, let me correct myself where I said to you he never said that he did not see the competency assessment results. He does say that. But the more important part is he says you never reconvened, one, and then, two, he says you, the panel would have taken into account the interview scores and the competency assessments, and then on the basis of both, a recommendation would then be made whether to appoint the person to the position or not, and that never happened in
20 this case.

MS GXASHEKA: Thank you. We are looking at this document. If you see in this document, there is no first and second choice. There is only one choice, Chair. And if the intention was to recommend that both candidates would normally, sometimes we recommend even four to go for

assessments, depending for whatever reason, if they scored the same. In this instance, one person is recommended, Julius Mkhwanazi. There is no second choice. And number two, I am still reiterating ...[intervenes].

ADV BALOYI SC: No, in the document, there is no recommendation. Let us represent it properly. All that the document contains is the scores of the candidates. It does not say any one of them, unless I am not seeing it, where it says first choice ...[intervenes].

10 **MS GXASHEKA:** Chair, the document we ...[intervenes].

ADV BALOYI SC: ... first choice. You say your first choice is Mr Mkhwanazi. Yes, that is what you say.

MS GXASHEKA: Chair, if you read the document from top, it says interview summary and recommendation.

ADV BALOYI SC: Yes.

MS GXASHEKA: Then just before first choice, Chair, it says recommended candidates or applicant's name, right. Then below that, that table then, it is, the reason it is there is to ensure that whoever you recommend, let us say they
20 scored the same, you then put them there. Then from the psychometric assessment, you can make a decision that on these two candidates who scored the same, who do you take.

ADV BALOYI SC: Yes.

MS GXASHEKA: In this instance ...[intervenes].

ADV BALOYI SC: And who makes the decision about finally taking into account the psychometric, you have just said you would take into account psychometric results, right, the competency assessment results, and then you would say we appoint. Who makes that decision?

MS GXASHEKA: Chair, the decision is made through this process. This process is concluded, right. Then you say you take the candidates for psychometric assessments. And the reason for that is I am saying if there is two that
10 scored the same, you can recommend and say this is your first choice, this is your second choice. And then from the results of the psychometric assessment, then you are able to look at ...[indistinct]. But we never reconvene. It is the decision that is made based on this. Appointment is based on this.

ADV BALOYI SC: So maybe let me ask more directly. If General Mkhwanazi, Commissioner Mkhwanazi scored zero, I do not know what are the scores of psychometric testing. I think we know from another forum, discussion in other
20 forum, not City of Ekurhuleni, that there is a negative and a positive outcome and frequently referred to as pass or fail. Now, if the psychometric assessment of Commissioner Mkhwanazi, which you say is known only by you, not the other members of the panel, if it comes back and it is negative, which means it is not supportive of his elevation

to this new position, what happens in that case?

MS GXASHEKA: We hardly get to a situation. I think our, the metrics we use in terms of assessment, it is got basic, advanced, superior, and competent. When you score basic, majority, there are, I have spoken to this matter even at the mayoral level. You do get candidates even at an HOD level who score basic. But what we do, we check your strength and we check your weaknesses. And then the reason I transfer this document to the psychometrist lady, she is the
10 one who will then develop your individual development plan so that it is aligned. So we do appoint people out of all those four categories. It is not that ...[intervenes].

ADV BALOYI SC: Even when they have scored basic?

MS GXASHEKA: Yes, it is just that when they score basic, that is where you must force that the ...[indistinct] the development plan of that individual must be aligned now with this. If you score competent, you then do your own development plan, you do not ...[intervenes].

ADV BALOYI SC: So whether Commissioner Mkhwanazi
20 scored basic, which you say is the lowest, or not, only you would know.

MS GXASHEKA: Only me and the psychometrist will know.

ADV BALOYI SC: No, I am saying for purposes of recommending a promotion.

MS GXASHEKA: Ja, it – yes, yes.

ADV BALOYI SC: So we would have to rely on you having been satisfied ...[intervenes].

MS GXASHEKA: Yes.

ADV BALOYI SC: That he should be promoted, whatever the outcome of that score is.

MS GXASHEKA: Yes.

ADV BALOYI SC: Okay, that is fine. So you deny that he never went for an assessment?

ADV BALOYI SC: Chair, as I say, it is a sensitive
10 document. I can just show you the first page and the second page. That is all I can show you. There should ...[intervenes].

ADV BALOYI SC: And that is the result of his assessment?

MS GXASHEKA: Yes, and the psychometric house, I do not know if they still have it or they can even release it, but it is really not true, hence, I am saying no HOD, I give this to, hence, I did not even put it in the pack.

ADV BALOYI SC: Okay, and that is part of the documents
20 before us?

MS GXASHEKA: No.

ADV BALOYI SC: I think it has to be, because serious allegations have been made. We do have a system of redacting the information ...[intervenes].

MS GXASHEKA: Okay.

ADV BALOYI SC: But I am going to ask the evidence leaders to get a copy of that document so that we have it in our records.

MS GXASHEKA: Chair, on that, because, as I say, we do not share this document even with Council, what I normally do, I will share with you the certain pages, not the ones that, for instance, describe the employee's certain assessments, but page 1 and page 2 I will share. Also the page, I hope I will not get into trouble on this, and then also
10 the page on the competency.

ADV BALOYI SC: Ms Gxasheka, let me try and be helpful to cut it short. You will have to provide the full document, because allegations have been made that he never underwent the test. Your defence or your answer is it was done, and here we have a record of it. It has to be provided. I think there can be discussion with the evidence leaders about how to handle it, to deal with your sensitivities about it. But you have referred to it in the evidence here, so it has to be part of that record.

20 **MS GXASHEKA:** Chair, it is fine. I will discuss it with the evidence leader that it can be inspected and then beyond the inspection, if it is really required, then I think going to the psychometric house, it will assist, but their details are also here. Thank you.

ADV BALOYI SC: All right, I am happy to leave that there.

I do have other unrelated questions. The earlier discussion about extending suspension periods, can you just remind me, Mr Nciza, he was suspended for how long?

MS GXASHEKA: I cannot remember, Chair.

ADV BALOYI SC: Did you ever have to extend his suspension?

MS GXASHEKA: Yes.

ADV BALOYI SC: You did?

MS GXASHEKA: Yes.

10 **ADV BALOYI SC**: Okay, and what was the reason that you extended his suspension?

MS GXASHEKA: We were looking at the allegations of the labour relations ...[intervenes].

ADV BALOYI SC: His qualifications?

MS GXASHEKA: No, it was the labour relations costs, related costs, labour cost, basically.

ADV BALOYI SC: Yes.

MS GXASHEKA: Yes.

20 **ADV BALOYI SC**: And why could he not be at work? And maybe let me first explain that the reason I am clarifying this for the record is because you did not extend the suspension of Mkhwanazi, Commissioner Mkhwanazi, even as Chief Mapiyeye responded and said he will interfere with witnesses. You have told us how fearful you became when you were told about him and you did not extend his

suspension. And yet another employee, you suspended, I mean you extended his suspension, and the three-month, six-month debate that you were having earlier on, that you were starting, does not seem to have been a relevant factor. So maybe just explain what, on the face of it, appears to be an inconsistency and feeds into the suggestion by witnesses that, in fact, you were terrorizing and harassing witnesses who wanted to act against Mkhwanazi, and then this is one of the references that you, 10 for no reason, no valid reason, extended the suspension of Mr Nciza when it was unnecessary to do that.

MS GXASHEKA: Chair, Commissioner, can I respond? There is a witness who says I was terrorizing them?

ADV BALOYI SC: You were part of Dr Mashazi's scheme to harass witnesses and pressure, I mean, to harass Nciza, Mapiyeye, and Spies. But in this case, we are talking about Nciza ...[intervenues].

MS GXASHEKA: I would like to see that, Chair, because I want to refute that.

20 **ADV BALOYI SC:** Yes, you can refute it. I am putting to you what the complaint is. The complaint is you, Mr Nciza makes a number of instances where he says that is evidence of you harassing him, sending EMPD vehicles to his family to deliver documents when it was unnecessary. And when he asks why do they come in four vehicles, they

say it is Ms Gxasheka's instruction that when we come and serve at you, we must bring all the might. We must come in four cars. He says that. And then when you sent him your termination letter or something, there were drug enforcement people that came to deliver documents at his house, all of it unnecessary but meant to intimidate and harass him. That is the sum of his evidence.

MS GXASHEKA: Thank you, Chair.

ADV BALOYI SC: So ja, so I must, my conversation for
10 now is confined to the extension of his suspension in circumstances where someone else facing far serious charges who is very close to the City Manager that you say you got scared when they spoke about, you did not extend his suspension.

MS GXASHEKA: Chair, I am not sure now if I must complain formally. Initially when we briefed yesterday and there was an agreement here that certain allegations, implications will not be dealt with, when I wanted to deal with the issues of Mr Xolani Nciza, I was cut short here, and
20 I did say that it did look bad outside, but I still complied when it was said cut short. That implication, if I am not mistaken, is a separate implication. And from evidence leader and from the Commission yesterday, there was an agreement that we will not deal with that. And it was concerning, Commissioner, that it was not dealt with

because I really wanted to deal with it.

ADV BALOYI SC: Okay ...[intervenes].

MS GXASHEKA: Because you are reminding me now ...[intervenes].

ADV BALOYI SC: Let me correct ...[intervenes].

MS GXASHEKA: Of the implications out there.

ADV BALOYI SC: No, let me correct you. Let me correct you. You have no agreement with the Commissioners about what you will be led on and not. The only thing yesterday
10 that we were told you would not be led on was to do with the tender. You do not have an agreement with us as a panel.

Having said that, allegations were made against you. I would expect you to be happy that I am putting this to you to answer, because if I do not put it to you to answer, it remains the last word on this. So I am quite surprised that you would complain when you are being given an opportunity to respond to what a witness has said about you.

20 I absolutely do not understand it. I am happy to leave it at the accusation if you do not want to respond to it. I will leave it at what Mr Nciza said. You can choose which one you want. I can leave it.

MS GXASHEKA: Chair, as I said, I was fully prepared to deal with this matter yesterday and I was told I do not need

to focus on it. In terms of that implication, I think he quoted fourty something cars or 86 cars that were talking to his house. And when I give an instruction to be served or request to EMPD to serve, I give to one person and majority of the time it was Deon. I say, Deon, go and assist to serve and come back. In my statement, I said ...[intervenes].

CHAIRPERSON: Can you please use the surname?

MS GXASHEKA: Deon Sigh. In my statement, I said, I asked Mr Nciza way before that when you are serving,
10 because I will pick it up when they serve HOD's, when they serve juniors, I would not necessarily know how they serve it, and I asked, why are you using police to serve employees, why do you not use your ER officers, and he then said, ideally, they are supposed to use sheriffs, but it becomes expensive to use sheriffs, that is why he is using EMPD and the reason being that they can trace employees down.

There are employees who run away, who do not want to be served. And therefore, I will never take and say
20 the whole crew must go to somebody's house. There he is bluntly lying. If it happened, it was not by my request. At EMPD, I request majority of the time, the maximum number, sorry, of the time of the people will arrive in my office is two, maximum. Most of the time it is one. If they see the address is far, or they cannot find a person, it would be

two.

Let us say you did an intention, and then the person gives you run around, they would want to go to, it is not true that I have sent so many cars at Xolani's house. He is just exaggerating. If it happened, I would not know. Maybe he is not exaggerating, okay. On the issue of ...[intervenes].

ADV BALOYI SC: Extension.

MS GXASHEKA: Of the extension ...[intervenes].

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

MS GXASHEKA: Chair ...[indistinct] [intervenes].

ADV BALOYI SC: ... to check whether you remember what my question was. My question was about the extension.

MS GXASHEKA: Extension was discussed for two days.

ADV BALOYI SC: I am talking about the extension of Nciza. Remember the extension we have discussed is the suspension of Commissioner Mkhwanazi, right. I am not talking about that. I am talking about the extension of Mr Nciza's suspension, because when you were discussing
20 Commissioner Mkhwanazi today, the extension of his suspension, you said, well, three months, six months, the City manager had an option to, we could have done, it is the end of three months, he must go back to work, or we could extend for six months. You do not seem to have made the same consideration when it came to Mr Nciza. You

extended, and that is why I am asking, why did you treat him differently?

MS GXASHEKA: Thank you, Chair. In my response, even yesterday, I have been very consistent in my testimony, before you even, you did not have to probe me. I said yesterday, in some instances, we do extend. In some instances, we do not extend and the reason ...[intervenes].

ADV BALOYI SC: The question is why? No, do not answer generally. Remember ...[intervenes].

10 **MS GXASHEKA**: I am going to come to Mr Nciza.

ADV BALOYI SC: Ja, I am asking a very specific question. I think, take it we know that your prescripts, because we have heard that evidence, that you can extend beyond three months. We understand that. And take it that we understand that you may call an employee back before the end of the period of suspension because you have completed your investigations. Take that as a given.

I am asking you specifically about Nciza to try and understand, to make me understand what appears to be
20 different treatment of employees, the one accused of very serious misconduct, his boss says he may interfere with witnesses if he comes back to work, but he is allowed to come back to work. Mr Nciza, on the other hand, he is not allowed to come back to work. He is extended for another three months.

Can you just explain? And I was just giving you the context in which my request for an explanation is made. It is this. The accusation or complaint is this was part of the campaign of harassment, of people who are seen to be chasing after Mkhwanazi. That is the context in which I would like to understand why him you seem to have treated differently.

MS GXASHEKA: Chair, I have said earlier on here, if maybe in the beginning the matter of Mkhwanazi was never
10 taken to Dr Mashazi, maybe we will not be here. I did say that. The matter of Mr Nciza was fully managed by myself, hence, even other matters in other departments are managed by the department. We do not necessarily have this challenge. If there was no interference on instructions that are given differently from Mkhwanazi in comparison to anybody else, maybe we will not be here. So normally, departments, they decide through our guidance to extend or not to extend, depending on their circumstances. So in this particular manner, I was fully involved and therefore, I
20 made that determination. I did not need to consult anybody. One mistake we are learning from this, probably me and Chief of Police, is when you are given delegations, fully deal with them.

ADV BALOYI SC: Okay.

MS GXASHEKA: Chair, it is highly possible, even if maybe

Chief of Police did not go to the City Manager, she might have still heard about it, and she would have still intervened, but at least one thing we must learn, when we are given full delegations, run with them until you are stopped.

ADV BALOYI SC: All right. Another question, why did you become involved in the Chief of Police decision to redeploy Commissioner Mkhwanazi when you lifted his suspension, his boss, who we understand is in charge of deployments
10 and promotions and movements in his unit, why did you become involved with that?

MS GXASHEKA: I have said in my testimony from yesterday and today, if you read, I think, the first or second sentence of that upliftment, I said it came to my attention, and I said, I meant that I was told by the accounting officer that once more, you are not managing, and therefore, why is this happening, whereas I have made a decision that Mr Mkhwanazi must not be, what is it, his suspension is uplifted, why you are not following this.

20 **ADV BALOYI SC:** Okay, so the City Manager instructed you to intervene here and make sure that Commissioner Mkhwanazi is returned to his substantive position. Is that how we should understand what you have just said now?

MS GXASHEKA: Yes, that is how it happened.

ADV BALOYI SC: Okay. And then my last question, I

think. You, yesterday, there are two things, in fact, to it, and I think they are unrelated. I am going to ask very quickly and hope to get a quick answer. You, yesterday, and in your statement, you say that, I do not have it in front of me, you say something to the effect, you must look at City of Ekurhuleni with a fine eye. You remember you say something like that in your statement? And then in your oral evidence, you said, what we have seen or heard is the tip of the iceberg.

10 Now, taking into account our terms of reference, you know what we are investigating, infiltration of criminal syndicates, cartels into law enforcement, what do you say we have not heard, which makes you say, so far, what we have heard is the tip of the iceberg?

MS GXASHEKA: Chair, I ...[intervenes].

ADV BALOYI SC: Because, and I ask you not to put you in a spot, but because we are that Commission that is tasked to investigate this, and you spoke in different terms. You said we should look at this carefully.

20 **MS GXASHEKA:** Chair, I have made examples, and firstly, I want it to be recorded. In the absence of the risk threat analysis not being taken serious, I do not want you to have escalating statistics here. It would be a very sad situation that by the time the Commission is concluded, and the statistics of how certain lives are managed out there have

increased.

But because I have put the issue in the Commission, I have said firstly, there is about 20 to 40 forensic that are not yet brought to the fore. When I said ...[intervenes].

ADV BALOYI SC: And they are relevant to our terms of reference?

MS GXASHEKA: Remember, Chair, I said, because others, I do not think they are relevant. I said before I was
10 suspended to the OCMOL and that they must look at having perhaps a mirror task team that would look with the issues of Ekurhuleni where they can give every HOD an opportunity to come and raise their challenges. In the absence of those 40 documents and forensic reports not being brought to the fore, it is concerning, and people were doing run around.

After doing run around, I was then ultimately suspended. When I keep on pushing that, bring these files, let us see them, and where possible, let us close them.
20 There is so many media engagement, information that is being shared out there, especially Jeff Wicks and I think News24, that this Commissioners should be aware of and because they have not been brought here, Chair, hence I said, from the OCMOL, and if they take it up, in fact, I was reprimanded when I said that. They said I am out of order.

If I remember, one councillor said, because I was mentioned in Madlanga, they had to protect me when the youth league wanted to go and protest against me. So I am being out of order to say there must be a task team.

Those were articulations, those minutes are available where I was reprimanded. And I was trying to assist Ekurhuleni to say, are we always going to have this Commission for the institutional reform to happen?

ADV BALOYI SC: Is the long and short of what you are
10 saying, that there are matters that have not yet served before the Commission with the witnesses that have come, which are relevant to the terms of reference that the Commission should look at? Is that the long and short of what you are saying?

MS GXASHEKA: From those that I have seen in the media space, Chair, I think those people that are implicated in those situations, Jeff Wicks brought this and made sure that EMPD or Ekurhuleni is involved. In the others that I mentioned as well, Jeff Wicks was running with it. And the
20 other ones that are not yet mentioned, Chair, I think Mr Philip Rakgoale should be called to come and talk to the Commission that these cases that he is having, what are they all about, if it needs to be, because I do not know they are talking to the terms of reference. I want that to be reiterated.

My ultimate proposal was to say, Ekurhuleni, clean yourself. Reforms, institutional and structural reforms can be done, Chair, can be imposed, but if they are not done by the institution itself, I promise you, it is going to be documents that are left and gather dust ...[indistinct]. All these departments that are implicated here, all these institutions, at some point they must do their own institutional reforms, systems reforms, structural reforms.

And maybe it is something that the Commission
10 might make as a decision that says, after 12 months or 6 months, bring back what you have done to change. You will impose, but I guarantee you, if it is not done by the institution itself, there is little that is going to come with your recommendations on the institutional reforms. That is what I was articulating to the OPMAL.

ADV BALOYI SC: Okay.

MS GXASHEKA: Thank you.

ADV BALOYI SC: All right, lastly from me, and it comes again from your evidence, you mentioned Mr Matlala having
20 met him twice or thrice. I think that is how you started, you said twice or thrice. And then you said one of the times was he had come to you about some, a woman who had been assaulted or something, to come and speak to you about that. And then there were two other instances, and it is the second part that I did not quite get, because I think

you said something about COVID tests or something, if I am not mistaken. You said something.

But I want the second part. So you had the one instance where he came to lay a complaint about a woman who had been assaulted. The other two times, what was it about?

MS GXASHEKA: The second part, Chair, it was also about an incident, two incidents of involving car accidents, where a certain senior person in Ekurhuleni was protected by
10 certain employees of Ekurhuleni where he said ...[intervenes].

ADV BALOYI SC: When you say senior person, an MMC?

MS GXASHEKA: No, an HOD.

ADV BALOYI SC: Okay.

MS GXASHEKA: Where that HOD was then protected by his team, and instead of being tested for drunken driving, he was not tested, but the other person who was on the other car, I think he was highly injured, was then tested. That was the first issue. And that issue ...[intervenes].

20 **ADV BALOYI SC**: Is that one of the things that Mr Matlala came to see you about?

MS GXASHEKA: Yes. Then the second issue, he then said that there is decisions that are made by certain individuals in terms of the success or succession plan of the City Manager, where certain names were discussed

somewhere and the person that we are proposing, but I was not part of that, proposing to be made a City Manager, also has a criminal case pending, but it was put under the carpet by this other senior person who also had an accident.

And my response to him was, I need proper evidence to this. And then he said, I am stalling things, he is going to report us to the Public Protector. If I am not mistaken, he even sent me his writing to the Public Protector. He also wanted the numbers of the
10 spokesperson. It was a lot of things. That is when I then said, I think you are starting to take me for granted, because I guided him and I said, go to the police. You know, go to the police and speak to the police.

HR, it is not a crime prevention or a crime investigation department. We deal with labour relations issues. Then he attacked me. Then that is when I told him where to get off.

ADV BALOYI SC: Okay. It is quite interesting that he would want to have, he has an interest in what the City is
20 planning to do about the City Manager. What was his relationship at that time when that conversation about the succession of the City Manager, did he have any relationship with the City, whether business or other form?

MS GXASHEKA: I cannot recall at that time. I cannot recall. As I say, I just dismissed him.

ADV BALOYI SC: Okay.

MS GXASHEKA: I cannot recall.

ADV BALOYI SC: All right. Thank you, Ms Gxasheka.

MS GXASHEKA: Thank you.

ADV KHUMALO SC: Why would he come to head of HR about these issues, what do they have to do with HR?

MS GXASHEKA: My suspicion at the time, now that I linked the thing, because if you remember, I said yesterday, I listened tentatively, you know, with full attention of what is
10 this person all about, my own assumption is that he was trying to protect Mr Mkhwanazi, you know, in the sense that you guys are dealing with Mr Mkhwanazi, but you are not dealing with other people in the City. You know, that is when I told him where to get off you know, and I said, go and do what you need to do.

ADV KHUMALO SC: And more or less, when was this?

MS GXASHEKA: I cannot recall ...[intervenes].

ADV KHUMALO SC: Not the exact month, but just is it 2023, is it 2022, is it ...[incomplete].

20 **MS GXASHEKA:** It was around December 2024, if I am not mistaken. Not December, sorry Chair, not December 2024. It could have been around August or September, October. It was before December, because if I listen there, oh God, I hope I am going to be protected. And I am listening there, I said, you know, this guy, I tell him where to get off after

that he gets arrested you know, because he even said to me that I have drones, I am going to put cameras in your house and I will know what you are doing.

And my response was, you can put them wherever you want, as long as you do not put them inside my house, before I left him. So it will not be December if he was arrested in December, because I said, ja, he was dealing with me and life dealt with me, but was not involved in his arrest. I never followed it up. Even in the three or few
10 occasions I met with him, it was just casual and then pressing on these issues that I said must refer to the police.

CHAIRPERSON: Mrs Gxasheka, in paragraph 131, or rather from paragraph 131 onwards, you deal with the vetting question, that is the vetting of members of the EMPD. I do not see you directly dealing or categorically dealing with the issue that was raised by Chief Mapiyeye, I think Commissioner Spies as well, to the effect that, I think mainly Commissioner Spies actually, to the effect that a vetting process, that is the vetting of all the police officers
20 within the Municipality, a vetting process was conducted, and that Brigadier or Commissioner Mkhwanazi and all the police officers falling under his command refused to be subjected to that process. That is what the testimony of Commissioner Spies said. Are you aware of that?

MS GXASHEKA: The way we were looking at the matter,

my understanding they were going to vet everybody, but if I check on the emails, Mr Mkhwanazi says the data is obsolete, let us start afresh. But I would not, I did not zoom down to see that indeed, it is only his department that does not want to be vetted, but I think I saw that.

CHAIRPERSON: We actually, in testimony, Commissioner Spies showed us a schedule that actually set out even the results of the vetting process, some of the crimes referred to being crimes that were committed when the police
10 officers were already within the employ of the Municipality. So there is a report that vetting was actually done.

But, so says Commissioner Spies, Commissioner Mkhwanazi and everybody falling under his command refused to be subjected to that process. Now, the meeting that you referred to in paragraph 133 of your supplementary statement at page 42, did that meeting not deal with this subject?

MS GXASHEKA: Sorry, Commissioner, I think I need to see that.

20 **CHAIRPERSON:** All right, all right. Your supplementary statement, paragraph 133 at page 42.

MS GXASHEKA: Paragraph?

CHAIRPERSON: 133, page 42. You say you were invited to a meeting by Chief Mapiyeye. So, my question is, did that meeting not discuss the question I have just referred

to, the refusal by Commissioner Mkhwanazi and all police officers falling under his command to be subjected to the vetting process?

MS GXASHEKA: Chair, when I was in that meeting, in one of the meetings, especially this one, I did not stay long. I did not stay long. So if there was a refusal to have that, I could have missed it. But one thing we agreed was that the vetting must happen and is for the whole EMPD. I think that was my understanding.

10 If Mr Mkhwanazi did not want specifically for his department, division to be processed, it is highly possible, because I remember somebody also said he called Dr Mashazi, it is just that I am also tired now, I cannot remember everything, and complained.

 But when that happens, I was not even there, because if he called Dr Mashazi, I do not think ...[indistinct] would have allowed that. Maybe he would have still done it. So, I cannot ...[intervenes].

CHAIRPERSON: Just please explain what was the call
20 about? Please explain what was the call about?

MS GXASHEKA: I saw in one of the statements, Chair, where someone said, while this was being discussed, then Brigadier Mkhwanazi, ag, the Chief of, ag, the Deputy Chief of Police, called Dr Mashazi and then she said, and then he said after that it will not happen. But I cannot recall. I do

not think I was still in the meeting when that happened, and highly possible it did happen.

CHAIRPERSON: That is exactly when Commissioner Mkhwanazi was allegedly refusing to be subjected to the vetting process and he was basically appealing, allegedly, to Dr Mashazi not to be subjected to that process. In my recollection of the testimony, that was the purpose of the call.

MS GXASHEKA: Yes, Chair, as I say, I did see that, but I
10 do not think I was still in the meeting when that happened. I did see in the statements.

CHAIRPERSON: Can you tell me why, or let me ask this question first. Did you not consider the question of the vetting of the Ekurhuleni police to be a very important subject?

MS GXASHEKA: It was a very important subject, Chair, hence I said ...[intervenes].

CHAIRPERSON: Why did you, you say that, but I did not stay long, why would you not have stayed long for such an
20 important discussion?

MS GXASHEKA: I did provide a direction, Chair, and I even said, let us go and seek a legal opinion. So to me, the key issues I wanted to deal with and the understanding of the issues I have dealt with, I provided a direction and the legal opinion was sought. And as I said earlier on, even

where I guided them that the letter must be drafted, you must do expungement. So my contribution was done, Chair. I cannot recall where I had to go in that particular day, but I gave my full, the part of that meeting in advising and the way forward. And we did follow up on things that we agreed must be done.

CHAIRPERSON: My understanding of the testimony is that the most important issue that in all probability would have been at the top of the discussions was the very issue of the
10 refusal of Commissioner Mkhwanazi and his team to be subjected to the vetting process. So the simple point I want to make is that I do not understand that you apparently should not be aware of that, should have been on top of the list. That was the main thing because on my understanding, everybody else had agreed to the vetting, had been subjected to the vetting and results had been obtained, and I have referred you to what some of the results were.

MS GXASHEKA: Chair, I think ...[intervenes].

CHAIRPERSON: So I find it ...[intervenes].

20 **MS GXASHEKA:** Oh, sorry.

CHAIRPERSON: I find it a bit improbable that you should not be aware, as you suggest you are not, that there was such an issue.

MS GXASHEKA: Chair, I think I did speak to it yesterday that I saw debates happening. What I am saying, in the

meeting, I do not recall.

CHAIRPERSON: At which point did you see those debates?

MS GXASHEKA: It was on the emails.

CHAIRPERSON: Before this meeting?

MS GXASHEKA: I am not sure if it was before or after this meeting, Chair. I think it could have been after this meeting, whereby they were saying that the data is outdated, we must start afresh, and so forth. But in that
10 particular meeting, I could have missed it. I could have missed it. As I say, it could have happened after I left and I thought I would have put that in my statement. Apologies ...[intervenes].

CHAIRPERSON: Let me conclude by making two suggestions to you, two related suggestions. I think I have already made one. One, this vetting issue relating to the alleged refusal of Commissioner Mkhwanazi to be, and his team to be subjected to the vetting was in all probability top of the list in the discussion that was to take place. And
20 secondly, it is very strange, I suggest to you, that you should have left the meeting, or you should, as you say, not have stayed long at that meeting when it was to discuss such a serious issue.

MS GXASHEKA: Apologies, I did leave capable people. My team was capable. That is why even when Lefu followed

up on the legal opinion, I responded there and there and said, thank you for following it up, and we continued with it. Indeed, I should have stayed until the longest time. I would have picked it up if there is a resistance, but I felt that I left a capable team, and indeed, we did follow it up and make sure that we get the legal opinion.

I kept on following it up, and issues of Mkhwanazi, Chair, are managed by a senior person who seems to be protecting Mkhwanazi, and it is really a pity that
10 ...[intervenes].

CHAIRPERSON: Why was there a need for a legal opinion? I do not understand this. All other police officers have been subjected to the vetting process, and that vetting process has revealed, what, criminal, criminal, criminality, basically, and not only criminality that was there before the police officers were employed, but criminality that was committed when some of the police officers were already employed by the Municipality. That is very, very serious.

Now, Brigadier Mkhwanazi, or Commissioner
20 Mkhwanazi and his team cannot be an outlier, the sort of outlier in respect of which there could not have been similar findings. So the simple point, or the simple thing that should have been done was for you to direct Commissioner Mkhwanazi and his team to agree to being subjected to the vetting process. I do not understand what the legal opinion

was for.

MS GXASHEKA: Chair, we did direct in terms of what needs to be done, and we did say that this vetting process must happen.

CHAIRPERSON: At what point, at what point, because you keep referring to the legal opinion and having left a team that you had confidence in, and then you refer to the legal opinion afterwards. At what point did you direct?

MS GXASHEKA: In terms of the emails on that document I
10 shared today, I did explain, Chair, at what point I said they must conduct the process.

CHAIRPERSON: At what point would this have been in relation to Chief Mapiyeye's meeting, and the opinion? At what point would this direction have been, because I believe that the direction should have been immediate. If there are allegations that they have refused to subject themselves to the vetting process, the direction should have been immediate. And surely you would remember if you did that or you did not, so it cannot require you to find some
20 document or some email to respond to the question.

MS GXASHEKA: Chair, we all agreed that this must happen, and it was just a process to follow.

CHAIRPERSON: My question is, at what point? That is the question.

MS GXASHEKA: Immediately, Chair, immediately, hence,

after the legal opinion, if you saw, we quickly responded and say, let us embark on this.

LT-COL MANGENA: So are you saying you only directed after the legal opinion?

MS GXASHEKA: No, before that, I said, Chair, they must go and get the issue of the consent. They must draft an expungement. They must go and check the expungement policy, how it goes. They must also categorize them into those different categories, when did you receive a legal
10 opinion, I mean, sorry, criminal records, was it before you were employed and, or after were you employed, and what was the type of the criminal activity that you were involved on. So it ...[intervenes].

CHAIRPERSON: Thank you. I will ask the question for the third time. At what point in relation to Chief Mapiyeye's meeting did you give the direction that Commissioner Mkhwanazi and his team should subject themselves to the vetting process? I am asking you for the first time, for the third ...[intervenes].

20 **MS GXASHEKA**: Chair, in that meeting ...[intervenes].

CHAIRPERSON: For the third time.

MS GXASHEKA: Yes. Chair, in that meeting, it was very clear that everybody must be subjected to a criminal record, I mean, to the vetting process, and if I recall, they already indicated that ...[intervenes].

CHAIRPERSON: You are referring to a direction by you as I understand you. Now you are saying at that meeting, it was clear. I am asking you about your direction, when did you give your direction?

MS GXASHEKA: In that meeting, Chair.

CHAIRPERSON: At that meeting, you gave your direction.

MS GXASHEKA: Yes, then I said, Chair, in doing it, let us follow a certain process.

CHAIRPERSON: Yes.

10 **MS GXASHEKA**: That is what I said. So when I am saying, let us get a legal opinion, we all agree that it must be done, but there is a way of doing it. Then I said, let us get a legal opinion to see how best to do it, and hence we then, I said, let us have categories, well, when did you get it and so forth, because there could be issues of fraud.

Okay, I am lacking a better word of using, I will use fraud in terms of sometimes a person, when did you get this, was it before you were appointed or after you were appointed? Number two, what were the reasons for you to
20 get this criminal record? So I have directed in that meeting, Chair, before I leave that let us do this vetting.

CHAIRPERSON: Was it at the point of your direction that Commissioner Mkhwanazi called Dr Mashazi?

MS GXASHEKA: No, I was not there, Chair. I was not there. As I say, I am not sure when did you call Dr

Mashazi, but I agree, highly possible it did happen. In my side, I said, everybody must be vetted. All you must do, you must have a consent, and let us check who is due for expungement, and let us also get a consent. That was very clear on that.

CHAIRPERSON: That is something quite detailed, you know, and I find it strange that you do not deal with it in your statement, which is also quite detailed on the vetting issue, or do you? The issue of the direction, the issue of
10 the direction and whatever else you say accompanied it, you do not say I gave a direction that Commissioner Mkhwanazi and his team should subject themselves to the vetting process. So I am saying that is something quite important, something quite crucial. I find it very strange that you do not mention it in your statement.

MS GXASHEKA: It is a pity, Chair, that it is not mentioned. As I say, other evidence I thought will be provided orally, and I think I am trying by all means to show consistency in terms of what roles I would have played. It
20 is something that can be relooked at if there is a need to do that. But I was very clear in supporting that that vetting must happen, Chair.

CHAIRPERSON: I would just say, I mean, you have a whole lot starting from paragraph one of your affidavit right up to the last paragraph, and you have given testimony with

regard to all of those issues, except those that Mr Chaskalson said, perhaps, let us keep these for the reasons that he gave. You stated all of that in your affidavit, and you did not say I will not state any of these because I am going to testify on them. So I do not understand your response that you did not say this because you are going to give oral testimony on it. I just find it difficult to understand that.

MS GXASHEKA: Chair, it was not intentional.

10 **CHAIRPERSON**: You may comment if you want to, yes.

MS GXASHEKA: It was not intentional, Chair. As I say, as much as you try to have the statement, remember, my first statement, it was very rushed.

CHAIRPERSON: Yes, yes.

MS GXASHEKA: I think we did not sleep that night, and then we had an opportunity when we had Dr Mashazi's testimony to relook at.

CHAIRPERSON: Yes.

20 **MS GXASHEKA**: Otherwise, I tried my level best to show that I was supporting the process. I could have missed, you are right, an important part where I was saying I gave a direction.

CHAIRPERSON: All right.

MS GXASHEKA: But I thought through my evidence, Chair, it will indicate that she had an interest on this, even when I

said, oh, okay, we get the legal opinion, thank you, proceed, let us move.

CHAIRPERSON: Thank you. Thank you ...[intervenes].

MS GXASHEKA: Thank you, Chair.

ADV BALOYI SC: Can I just clarify something from this discussion with the Chair. This meeting that you are referring to, did you know at that time, at the time of that meeting, that General, ag, that Commissioner Mkhwanazi has refused that he and his people that report to him should
10 undergo vetting?

MS GXASHEKA: I did not sense that. I did not sense that, hence I am saying ...[intervenes].

ADV BALOYI SC: So you were not specifically addressing that issue of General, of Commissioner Mkhwanazi and his people refusing to go for vetting. You were not specifically addressing that.

MS GXASHEKA: I was addressing the issue of everybody that has been identified to have gone, who is supposed to go vetting, and I was saying people must go for vetting.

20 **ADV BALOYI SC**: Yes.

MS GXASHEKA: The specifics, I cannot recall, but ...[intervenes].

ADV BALOYI SC: So it was not about this issue that the Chair is raising, because there is two things. Everyone is instructed to undergo vetting, right. That is the instruction

from Chief Mapiyeye. In response to that, Commissioner Mkhwanazi refuses for him and his team to be vetted, and he has admitted that. He came here and testified that he did not trust how it was going to be done, that is why he did not do it.

So it is not clear to me from your discussion with the Chairperson whether you are saying that meeting that you say you left early, right, were you specifically, when you said everyone must undergo vetting, this is the
10 procedure, you must get consent forms, were you in that meeting to address specifically the issues that have been raised about Commissioner Mkhwanazi, or you were just speaking generally to everybody?

MS GXASHEKA: The way Chief explained it, he said that it is part of their clusteral meeting, police clusteral meeting that everybody must be vetted. And my response to that was I agree that everybody must be vetted. And if I recall, they could have done it before with, they were calling them peace officers or whatever, that were supposed to be
20 converted into some MPO positions. And those people were arrested for political reasons years ago. So what I was saying, it was not the first time we had to embark in such a process.

ADV BALOYI SC: When first did you hear that Commissioner Mkhwanazi has refused to be vetted, him and

his people?

MS GXASHEKA: In that email where he said everybody must undergo, they do not trust the data, and therefore everyone must restart the process.

ADV BALOYI SC: So you knew at that time?

MS GXASHEKA: I could sense that ...[intervenes].

ADV BALOYI SC: From that email, you knew that ...[intervenes].

MS GXASHEKA: Yes, I could sense that there is some
10 resistance. However, it is always ...[intervenes].

ADV BALOYI SC: No, but it does not say in that email exchange, that him and his people are not going to do this. He speaks very generally. He says, the data is old, let us redo it, right? Let us do it. So I am asking you more specifically, did you ever become aware that Commissioner Mkhwanazi has refused that he and his people, those who reported to him, should be vetted? Did you ever come to know that?

MS GXASHEKA: When he had engagements with me, it
20 was the data it is old, and certain people are being targeted, and I do not know who are those people. And remember that happens when now we go to OCMOL meetings, where this issue continuously being discussed. And I think subsequently, I am not sure if I testified to that, I even wrote to him and said, this vetting, Chief, must

happen. If it does not happen, we are going to be implicated, you know. So I did sense that ...[intervenes].

ADV BALOYI SC: So you did become aware that he is resisting to undergo vetting?

MS GXASHEKA: Yes, when we went to one of the OCMOL meetings, the way he handled himself, I could sense that he is not too passionate to have this thing done. And I do not know if he ...[intervenes].

ADV BALOYI SC: And was not that something, was that
10 not something that you should take action about to make sure ...[intervenes].

MS GXASHEKA: I did.

ADV BALOYI SC: To make sure it happens because ...[intervenes].

MS GXASHEKA: I guided him, Chair. I guided him and said, Chief, please ensure that this vetting takes place. Remember, I think by that time, Chief was not even there when we are getting pressure from OCMOL, that when is this vetting happening, because the allegation that was out
20 there is that now there is people who have criminal records here and ...[intervenes].

ADV BALOYI SC: Is there a reason that you did not, is there a reason that you did not start a process of disciplinary processes for those, for him and whoever else that was refusing to be vetted, when you became aware that

Mkhwanazi is not submitting to vetting, instead of the email that you later send and say, Chief, this is what the Councillor was, the Councillor was talking about, we better do this, otherwise they will come for us, HR and EMPD. There is that email.

MS GXASHEKA: Okay.

ADV BALOYI SC: So I acknowledge you send that email at some point, but I think the question is something else, which is, that is all you did. Why did you not, because it is
10 such a serious matter, at least to us outsiders, that you have people who are not vetted, some of whom have got criminal records. We have a long report that Commissioner Spies with numbers of people who have cases of rape against them, of assault, and, and, and, and. When you learned that Commissioner Mkhwanazi, in whatever way you learn, and however it was presented to you, when you learned that he is refusing or resisting to be vetted, and that his people be vetted, why do you not institute disciplinary process about it, because it is a simple matter.
20 The rule says you must be vetted. You have provided guidance that they should be vetted. When you realize it is not happening, why are you not instituting disciplinary proceedings?

MS GXASHEKA: Chair, it is, in our discussions, and I could have shared it in the emails, I said it is their

capability to have that process done for the whole City, it is done by them. And EMPD is the same people who says to me, today intervene, tomorrow do not intervene. And I keep on saying here in the Commission, my role is to advise them. They keep on writing to me and tell me, section 64(c) does not allow you to be involved in our space. All I keep on doing for EMPD is to advise them.

And we, I think it has been discussed here through other people's evidence that me and the Chief of Police we
10 are equals. All I can do is to advise. He has demonstrated, even Chief of Police himself, many times that stop interfering. What I have learned from ...[intervenes].

ADV BALOYI SC: But that is not always correct, though.

MS GXASHEKA: I was about to say ...[intervenes].

ADV BALOYI SC: You have lifted the suspension of Mkhwanazi, who is in EMPD. You have told Chief, you must return Commissioner Mkhwanazi to his substantive position. So you do get involved with HR matters. So it is not always true that you do not get involved with the EMPD human
20 resource issues.

MS GXASHEKA: Indeed, Chair, I do get involved, Commissioners, and even in this instance, I was fully involved in the sense that I did guide them throughout the process. You know, for them, they take my instructions or they take, it is up to them. Sometimes they do, sometimes

they do not. I agree with you and I think my testimony and evidence is very clear that I do get involved. But you get involved to a space that is not clear. Hence, I said earlier on that one of the communications from Dr Mashazi to Chief that says, Chief draft a policy into this confusion. You know, if maybe that policy gets to be realized, it will also assist the City to stop the confusion. And hopefully, by the time everything is sorted, we can also realize the HRBP model so that we have somebody who is fully involved in
10 that department. But I agree with you. I do assist them. I do try to make decisions, but ultimately, they decide what to do or not what to do.

ADV BALOYI SC: Thank you.

CHAIRPERSON: You want to say something?

ADV CHASKALSON SC: I am sorely tempted to take up this issue, but I think it is late in the day and we have gone very far. So I will not, but I do, sorry, I cannot resist this one. Can I? It seems to me that the chronology is very important. The meeting is on 2 April. The opinion is
20 distributed on 5 April. On 5 April, you send a message to Spies and to Mapiyeye saying, deal with these different categories. That is 5 April, 2024. What then happens is not the Chief, but Julius Mkhwanazi takes it upon himself to respond to your email and say, no, let us start the process afresh, and then nothing happens for a year.

What did you do in a year? And we are not talking just about people who refused to be vetted. We are also talking about 250 people who have been charged, who have either been convicted of serious offenses or awaiting trial on serious offenses. So there are 250 criminals inside the EMPD alongside another 210 who refuse to have their fingerprints taken and in respect of whom there must be a fairly strong presumption that if they did have their fingerprints taken, some bad things would emerge. What
10 did you do for a whole year?

MS GXASHEKA: In my email, I said to the Chief, if you saw, I did not necessarily respond to one person, I responded to all of them and said, continue with your process. While you are busy with your process, keep us abreast. And the same Chief will say, do not get involved in my space, I do advise. If they want to take my advice, they take it. If they do not want to take my advice, they do not take it. We agree that they have the capacity, the whole City, when they want vetting to be done, it is done by
20 EMPD. I am not sure how I would have assisted the Chief and say, Chief, why are you not doing this? And subsequently to Chief, when these matters were raised, I said to Mr Mkwanzazi, conclude this process.

ADV CHASKALSON SC: No, what you said to Mr Mkwanzazi was something different. If we go to page 2063,

a year previously, literally a whole year previously to the day, 6th April, 2024, he had written saying, we must start this process afresh. There is no communication between you for a whole year. And then on Sunday, April the 6th, 2025, at 10:22pm, you forward him your message from a year ago, a year ago, from Saturday, April the 6th, 2024, and you forwarded under a message saying this is the issue the Councillor is referring to.

We need to act on this, not because it is a disaster
10 if there are criminals running around in the uniform of the EMPD, but we need to act on this before they use it against HR and EMPD. You were not worried about criminals in the EMPD. You were worried about some Councillor pointing a finger at you and Mr Mkhwanazi for doing nothing about the fact that there are criminals in the EMPD.

MS GXASHEKA: Chair, I think I did say earlier on that the inference biasness, I will accept. And I think I understand that it is based on being on the other side and I am sitting on the other side. I am still sticking by my evidence. I did
20 write to them 6 April, I agree, 2024, and I said, keep me and accounting officer abreast. When this did not happen, and now it was raised in the OCMOL, to me, the mere fact that it is Sunday you know, it shows as well that one is not resting. He is looking at matters despite that it is a Sunday at 10:22pm, you know, and it shows you that when they say

what things that makes you not to sleep at night, this would be one of them. And if you look now, how things happened is things could have been done better, I agree. And one could have been forced, forced them to do it. When I force them to do, I account. When I do not force them to do anything, I still account.

And as I say, Commissioner, we are learning from this that a policy that integrates all these legislations and systems of delegations will assist. And it was wrong of
10 Mkhwanazi and the Chief of Police and not to ensure that this vetting happens. But I am hoping that that integrated policy will really assist.

ADV CHASKALSON SC: But the real question is what was keeping you up at night, was it the fact that there were 250 criminals running around in EMPD uniforms, or was it the fact that someone had discovered that there were 250 criminals in EMPD uniforms and was now taking the issue up and pointing fingers at HR and EMPD for letting it happen? What was keeping you up at night?

20 **MS GXASHEKA:** It is all of those. It was all of them. It was all of them.

ADV CHASKALSON SC: But then why did it take you a whole year before you started getting anxious about the fact that there were 250 criminals in EMPD uniforms?

MS GXASHEKA: Some discussions, Chair, they take place

in different platforms, and I think I did speak to that. It might look like because the email, the only written evidence now is this email, others might not appear, but we do have engagement on these things and we kept on discussing them. And ultimately, it is an EMPD issue, not necessarily it was my issue.

I am taking up that I should have known better and I should have owned this process and not leave it to them, especially because they were fighting among themselves.

10 **ADV CHASKALSON SC**: Thanks, I do not have any further questions.

CHAIRPERSON: We have reached the end of the testimony. Sorry.

ADV BALOYI SC: Mr Chaskalson, the request for an affidavit to do with those medical, that medical report, was anything done about it? Was it addressed to the legal representatives?

ADV CHASKALSON SC: No, but it will be.

ADV BALOYI SC: Okay, all right, thank you.

20 **CHAIRPERSON**: There being no application for re-examination, this is the end of the testimony, or is there such an application? Yes, Ms Magula?

MS MAGULA: Mr Chairman.

CHAIRPERSON: Yes.

MS MAGULA: At this moment, I think there are only two

aspects that I would like to re-examine on, or bring an application to re-examine on. It is on the matter of the topic of Revo Spies and ...[intervenes].

CHAIRPERSON: Which aspect of his testimony?

MS MAGULA: Just a minute, Mr Chair. The first one ...[incomplete].

CHAIRPERSON: Yes, yes.

MS MAGULA: The first one, Mr Chairperson, it is about the issue of, that when the, when Ms Linda Gxasheka
10 testified, she was giving a visionary of what had to happen, so I just request to re-examine her on the aspect that I want her to confirm actually that there was no existing prescript ...[intervenes].

CHAIRPERSON: No existing prescript?

MS MAGULA: Prescript, yes, no existing prescript to what was happening with the, especially with the issue of Mr Spies having had resigned and joined another Municipality, then there was no restriction and there was no prescript about the issue of the medical aid.

20 **CHAIRPERSON:** Yes, all right, we will allow that. And what was the other issue? I think you said two, ja.

MS MAGULA: And the other one is to clarify on his form again that indeed he wrote that when he was resigning, he said he is resigning because of he was, he resigned or he took an early retirement, and if he took an early retirement,

is there anything that was preventing him to join another ...[indistinct] to be re-employed.

LT-COL MANGENA: All right, please go ahead, thank you.

MS MAGULA: Do I have to repeat the ...[intervenes].

CHAIRPERSON: No, start with the re-examination.

RE-EXAMINATION BY MS MAGULA: Okay, thank you. Ms Gxasheka, would you clarify to me, especially about the issue of Revo Spies, as I have already testified, you did not have any policy or there was no prescript in Ekurhuleni, 10 which prevents the action that was taken by Revo Spies?

MS GXASHEKA: Thank you, Chair. In terms of the, I think the memo that was read here today and his exit form, the exit form talks to retirement, resignation, deceased, and abandonment, and it goes further. In his form, he ticked retirement, and then he added early with a pen, and he says 60 years. And then again, in his resignation letter, okay, I am not sure if this was shared with the Commission. In his resignation letter, if I may read it, is that he said:

20 “Early retirement or resignation from employment. Please accept this letter as a formal notification that I am resigning from my position as Deputy Chief of Police, Auxiliary and Support Services with Ekurhuleni Police Department, effective 28 February

2025. This decision comes after 42 years of dedicated service to the law enforcement profession, and 33 years to the City, during which I had privilege of contributing to the safety and well-being of our community. I am incredibly grateful for the opportunity and experiences I have gained through my career. I have reached the age of 60 ...” [intervenues]

10

CHAIRPERSON: Sorry, Mrs Gxasheka, I hope I remember what the question was. I think it was, is there a prescript?

MS MAGULA: Yes. Yes, Mr Chair.

CHAIRPERSON: Ja, the question is about the existence of a prescript, Mrs Gxasheka, not the motivation for taking early retirement.

MS GXASHEKA: There is a document that talks to, when you take early retirement, and then there will be, you will contribute, the employer will assist you to contribute towards your medical aid until upon death. There is a mayoral or council resolution to that effect.

20

MS MAGULA: So that document, does it state as to whether, if maybe you get employment somewhere else whilst you are on those benefits, the previous employer will stop its benefits that it has given to you, or awarded to you?

ADV CHASKALSON SC: Sorry, Chair, I do need to object here, because if we are talking about what a hypothetical document says in relation to Ekurhuleni policy and prescripts, we need to see the document. It is, or at the very least, we need to have some description of the document that will enable us to locate it.

CHAIRPERSON: Should we proceed on the, let us hear the witnesses answer, Mr Chaskalson, and then endeavours should be made to get the document. I think Mrs Gxasheka
10 would assist in sourcing the document. Your answer to the question?

MS GXASHEKA: Okay, thank you, Chair. Yes, Chair, there is a council resolution. I will try and get it through the right channels from Ekurhuleni and the documents speak, it talks specifically to retired employee, not to employees that have resigned and intend to join another Municipality. It just talks about retirement.

CHAIRPERSON: And early retirement is defined as retirement?

20 **MS GXASHEKA:** Yes, no, I do not have an issue with the early retirement, Chair.

CHAIRPERSON: All right, all right.

MS GXASHEKA: Where I said I had an issue ...[intervenes].

CHAIRPERSON: No, I am raising it ...[intervenes].

MS GXASHEKA: It is always to correct ...[intervenes].

CHAIRPERSON: I am raising it purely because you referred to resignation and taking up employment elsewhere. That is why I am just saying early retirement is retirement. Yes, please proceed.

MS MAGULA: Thank you, Mr Chair, nothing further. I think she has clarified it.

CHAIRPERSON: Thank you.

ADV KHUMALO SC: Sorry, Ms Gxasheka, one last thing, I
10 promise. Would you agree with me that if there was a
prescript or a policy within Ekurhuleni that said, if you are
receiving post-retirement medical aid subsidy from the
employer and you become employed by somebody else, the
subsidy stops, if there was such a policy, then all
Ekurhuleni has to do is to enforce its rights in terms of that
policy.

MS GXASHEKA: Chair, what I said earlier on, or yesterday
when I was testifying, was that that policy, it was meant for
early retirement or retirement and so forth. I think even the
20 memo that we read today, it mentioned those who qualify.
And I said my concern with Revo Spies is, I have changed
and said he intended to mislead here, because in his
resignation, he says I am reaching the age of 60 during
November 2024, I have decided to pursue early retirement
to dedicate it to my time, you know. And I think the debate

we had yesterday was, he can take early retirement today and decide tomorrow to go and work in another Municipality.

Then I said, it is something that as the City we need to look at because clearly there is a misconstrued or a misleading situation here. There are two people that I have heard of that have done that process thus far and to avoid it continuing beyond those two people, we have to revise the policy.

I think it was very clear in my testimony, and when I
10 said, because I have changed my wording, I said he has misled the Council. I further said the reason that made me to be concerned is that a person could be receiving a, what do you call this, a benefit that he should not be receiving, Ekurhuleni. If I can go, Chair, even the definition of an early retirement, this is a resignation. In early retirement, it is a planned departure upon often before a standard age requirements whereby an employer consent and allow access to pension fund benefits which is favourable to tax treatment. But on the resignation, my definition I managed
20 to have is that it is a ...[indistinct] decision to leave an office ...[intervenes].

CHAIRPERSON: Again, again, I am very sorry Mrs Gxasheka. The question is, if what Mr Revo Spied did was against whatever prescriptive there be, would it not be within the Municipality's power to exercise his rights against

him? That is the question. I think it is an easy yes or no question.

MS GXASHEKA: Once the policy has been corrected, I think what I said ...[intervenes].

CHAIRPERSON: No, now. Now as matters stand at present.

MS GXASHEKA: It can be done, Chair, in the sense that if there is a benefit that is happening at Tshwane, you cannot have a double benefit. I do not think it is fair. And we are
10 spending a lot of money in terms of those post-retirement employer contributions. So it is something that can be looked at. Thank you, Chair.

ADV BALOYI SC: Ms Gxasheka, I think in fairness to Commissioner Spies, who is not able to speak for himself because he has now testified, when you say he was misleading, I note that you withdrew your statement that he committed a fraud and corruption. You withdrew that. Now you use different terminology. You say he misled. What misleading are you saying he committed in this case?

20 **MS GXASHEKA:** I am saying, Chair, in your resignation letter and in your termination form, you say you take early retirement knowing very well that you are going to another Municipality, you know.

ADV BALOYI SC: Is there a rule, whether rule, law policy, and I tried to get this with you yesterday, that says on

taking early retirement, an employee or a former employee of Ekurhuleni is not allowed to take other employment after having taken early retirement?

MS GXASHEKA: Chair, what I have said is Mr Revo Spies, he left Ekurhuleni still getting 5,700 every month ...[intervenes].

ADV BALOYI SC: No, my question ...[intervenes].

MS GXASHEKA: And he went to Tshwane immediately after leaving Ekurhuleni.

10 **ADV BALOYI SC:** Now, Ms Gxasheka, you are repeating what you said yesterday. It does not make it any more cogent just because you say it many times. You know that. I am asking you a straightforward question. Is there a rule, a policy, a law, a collective agreement, whatever, when your Counsel speak of a prescript, is there anything that is written and that is binding that precludes him, not just him, any employee, even the other two that you are referring to, on taking early retirement from assuming employment after that? Is there anything? And I expect your answer to be a

20 no. I do. I expect the answer to be a no because if there was a prescript, you would have said that yesterday. You would have said it. You would have given me that straight answer now, a second ago, when I asked you the same question. So I am putting to you, and maybe let me reformulate what I am saying. It might be easier for you.

I am suggesting to you that there is nothing, as matters stand now, there is nothing that precludes any employee of the City of Ekurhuleni, and therefore Commissioner Spies, from taking early retirement because they have met the threshold, the age qualification, and then after that going and working elsewhere. I am suggesting to you there is no rule that says that cannot be done. Do you disagree with that?

MS GXASHEKA: Chair, in terms of the, I think the Pension
10 Funds Act, it is very clear that when you retire, what do you do, and I think I conceded to that, that you can retire at any time when you need to retire, even take early retirement.

ADV BALOYI SC: And go and work somewhere else.

MS GXASHEKA: What my issue is, is that there is a 5,700
...[intervenes].

ADV BALOYI SC: Okay, no, you are not going to answer.
I think you do not want to answer my question. I have put it differently and asked you, am I wrong when I say to you there is no rule, there is no policy of Ekurhuleni that
20 precluded him and other employees from taking early retirement and then finding employment elsewhere. I am saying to you there is no, nothing that prevents them from doing that. You can say to me, I am wrong, and point out where is that rule, where do we find it, because then the evidence leaders will go and look it up.

You are not answering that straightforward suggestion that I am putting to you. I am leaving it at you do not want to give a straight answer. And the reason, and I will suggest to you why you do not want to give a straight answer, it is because you are aggrieved personally.

You are aggrieved that Commissioner Spies is getting the benefit that the rules allow him, that your City of Ekurhuleni resolution allows him to get and then he is employed elsewhere, while enjoying the benefits of being
10 employed elsewhere. It is a grievance that you have and nothing more.

MS GXASHEKA: I do not think at my level I will say I am aggrieved, Commissioner. What I will say is a concern where I have seen that there is a risk, a serious risk where a person highly possible is receiving a benefit twice. You are sitting at Ekurhuleni, we give you 5,700, you might be getting it somewhere. And I said yesterday, my concern and with this situation, already in his own medical aid scheme, we are spending more than a million. There is
20 about four or five of them, where this is happening. And I said, I picked up this as misleading, I have changed my wording. And I said, it is something that the City, we must look at and correct it. I would not call it a grievance, but I would call it that at my level I should be concerned and taking to cognizance that the country has got a high

employment rate. Any cent that gets out of Ekurhuleni, it should be useful and gainfully utilized somewhere else and now ...[intervenes].

ADV BALOYI SC: So he misled the City of Ekurhuleni when he exercised the right to early retirement, because remember you say there is a resolution that allows him to do this, to retire early and to get the benefits. You are saying when he exercised that right, that that is the misleading you are talking about, because I am trying to
10 understand what you are saying he misled you about.

MS GXASHEKA: Yes, when you know you are resigning, you are going somewhere, because you know, let us say for instance, and again I have said initially that inferences, they tend to be biased because they are based on subjectively how you perceive and see the matter.

ADV BALOYI SC: So you are saying your inferences here are biased. You infer he was misleading. Is that what, this which you keep repeating about inferences being biased?

MS GXASHEKA: The notion. The notion on my side based
20 on the documents that firstly, if we allow every person to adjust the document themselves with a pen, I do not think will be correct.

ADV BALOYI SC: Okay.

MS GXASHEKA: So to me firstly, that is very wrong what he did here. Number two, you are saying in your, you are

going to sit at home. I guarantee you if, and you are right, I am saying it is my notion, and it is a concern that if it is not corrected, highly possible if there was not this issue, you would have just said I am resigning, I am going somewhere, you know. So it is a concern that I have based on my inferences that they need to be looked at, and before I left the City, I was in the process of revising that particular policy, because if it is not looked at, Chair, we are going to have people that are leaving after 55 and go somewhere
10 else and work, and we keep on bearing the cost unnecessarily ...[intervenes].

ADV BALOYI SC: [Indistinct]... [cross-talking] problem of the City. It is not Commissioner Spies' problem. It is a problem of the City that you have a policy that permits people to go to early retirement, get the benefit, and it does not say, your policy does not say, but you may not be employed elsewhere. So it is not his issue, it is your issue, and an issue that you as HOD should be addressing, not make it the employee's problem, and that is what I am
20 debating with you that it seems, it is in fact grossly unfair, grossly unfair, on employees who act in accordance with what your policies allow or do not preclude, and then you come here in front of the public, you accuse them of fraud, corruption, and then you water it down, it becomes they misled the Municipality. Fix your policy. You are Head of

HOD. Change your policy so that it says, if you take early retirement, you may not be employed as well anyway, otherwise we will take our benefit back. That is a City issue. It is not a Spies issue.

MS GXASHEKA: Chair, through you, I did say that it is an, I accept it is a risk that I have identified, and that needs to be corrected, because the risk that I have identified that employees now are starting to create this fraud, and I took it after ...[intervenes].

10 **ADV BALOYI SC:** It is not a fraud.

MS GXASHEKA: Oh, apologies.

ADV BALOYI SC: No, no. No, Ms Gxasheka, it is not.

MS GXASHEKA: Apologies with that word. I think what keeps on confusing me, Chair, is him correcting the form. I think that is why, you are not supposed to correct the form to suit what you want. And as I say, if we were to allow that, we all adjust the forms to suit us, it would be wrong. But, Chair, I am changing that the form, it is corrected when it should not have been. It was misleading. And the letter
20 as well, it was talking about early retirement ...[intervenes].

ADV BALOYI SC: Ms Gxasheka, my problem with you is saying he was misleading. It is a very serious statement. I do not know if you appreciate the consequence of what you are saying right now, that he misled his previous employer. I have asked you, point out where he misled, and we should

not allow you to say things that are not backed up by your documents.

You have told us Council resolution allows people to go on early retirement and to get these benefits, right. You have said that. Two, you have not pointed out a Council resolution or policy or rule that says they may not be employed after that. So you have got a gap. Accept that. You have got a gap, it seems, given your view about it.

10 There is a gap, and I am saying to you, you cannot say, and it is actually wrong and offensive to employees who use a benefit that is given to them by the City without restriction to say they commit a fraud, they commit corruption, they are misleading. That you use the word misleading does not make it any less serious.

 So I am quarrelling with you for that reason, that no employee who takes this benefit, which by law, your law being a resolution, they are entitled to, which does not say they cannot find employment anywhere else. They go and
20 get employment elsewhere. You cannot say that there was any misleading by them, and it is simply wrong for you to do that.

MS GXASHEKA: Chair, as I said we are learning. I will withdraw if I need to withdraw on this in the context of what I have shared with the Commission. Thank you.

ADV BALOYI SC: Thanks, Ms Gxasheka, I think it is a fair concession that you make. Thank you.

CHAIRPERSON: I think we have reached the stage at which we should adjourn until 9:30 on Monday. Let us adjourn.

INQUIRY ADJOURNS TO 2 MARCH 2026
