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21 APRIL 2026

DAY 94



PROCEEDINGS HELD ON 21 APRIL 2026

CHAIRPERSON: Good morning, Mr Chaskalson.

ADV CHASKALSON SC: Good morning, Chair.

CHAIRPERSON: Good morning, Ms Van Den Heever.

ADV VAN DEN HEEVER: Good morning, Chairperson, Commissioners.

CHAIRPERSON: Good morning, Mr Mnisi.

MR MNISI: Good morning, Chairperson. Good morning to the Commissioners as well.

10 **CHAIRPERSON:** May I, as the Americans usually say, ask Counsel to approach, please, please? Yes, Mr Chaskalson.

ADV CHASKALSON SC: Morning, Mr Mnisi.

MR MNISI: Morning, SC.

ADV CHASKALSON SC: So yesterday we spent the better part of the day dealing with the TMPD-1 tender, and a familiar refrain of yours through that, or through the entire day, was that it was not possible for documents to be manipulated or the process to be manipulated because documents were kept under lock and key throughout the
20 process, if you recall.

MR MNISI: Yes.

ADV CHASKALSON SC: Now, over this period, were you aware that there were problems with the control of documents relating to tenders in respect of the TMPD?

MR MNISI: There were no problems in terms of documents

being safeguarded.

ADV CHASKALSON SC: Well, let me, I think that answer is wrong. Let me take you to page 429 of File 2. These are the minutes of the BAC, not in relation to TMPD-1, but in relation to TMPD-3.

MR MNISI: Sorry, SC, I think I lost you. 429 of the second bundle?

ADV CHASKALSON SC: The second bundle, indeed.

MR MNISI: My annexures?

10 **ADV CHASKALSON SC:** Sorry, your annexures, yes.

MR MNISI: Okay.

ADV CHASKALSON SC: So it is File 2, page 429, it is your annexures.

MR MNISI: Yes.

ADV CHASKALSON SC: Now, this is a minute of a Bid Adjudication Committee that you chaired in relation to TMPD-3.

MR MNISI: Yes.

20 **ADV CHASKALSON SC:** On 23 October 2025. And that committee noted that there were six documents lost during the relocation of documents to another storage. Therefore, measures and controls to safeguard documents should be implemented. You see that?

MR MNISI: Yes, these are one of the reasons why this tender had to be cancelled. Irregularities were noted. I see

that.

ADV CHASKALSON SC: We will get back to this tender later. This was not one of the reasons why the tender was cancelled, not one of the stated reasons why the tenders were cancelled. What the committee stated was that measures and controls to safeguard documents should be implemented. You see that?

MR MNISI: Yes, I see that, Counsel. Permission to explain. In relation to the process and the presentation
10 from the BEC, these irregularities were picked up in this instance. Hence, they needed to be, I think, enhanced in the near future when they are handling this tender.

ADV CHASKALSON SC: So, the BEC had been unable to control its documents over the period of TMPD-3.

MR MNISI: As evident in the Probity report and the presentation, those were one of the flaws that were picked up.

ADV CHASKALSON SC: Again, we will come back to see whether that is evident from the Probity report. I do not
20 want to deal with TMPD now. I want to deal with the proposition that everything was kept under lock and key so we can be confident that there was no tampering with the process. What I want to put to you is that if over the same period documents got lost in relation to TMPD-3, there is no guarantee that over the same period documents could not

have been replaced in respect of TMPD-1. What is your answer to that?

MR MNISI: My answer is that I do not agree with you.

ADV CHASKALSON SC: Why is that?

MR MNISI: First of all, documents are kept under lock and key. The ability of any committee to pick up any mishap from transferring a set of documents to another is an internal control that has been put in place specifically for that.

10 In terms of transfer of documents, they happen in three ways. Tenders are received. They are stored under lock and key at demand management section. From that point in time, evaluation commences. Some documents are handed over to the Bid Evaluation Committee, still stored under lock and key. Once the Probity process starts, similar transfer happens.

 An individual signs off for it. They are responsible for who can access that particular storage facility. And when they are transferred back again, a similar exercise is
20 done. So in this instance that you are referring to, the BEC came to BAC, presented Probity report. Over and above that, they indicated that during the transfer back, either from Probity back to BEC, they noted that there were six documents that were outstanding. So I disagree with the notion, SC, that documents are never under lock and key.

ADV CHASKALSON SC: I did not say that documents were never under lock and key. My proposition was that if six documents could be lost during a relocation process in respect of TMPD-3, there is no reason to believe that documents could not have been replaced in some part of the process of TMPD-1.

MR MNISI: I respectfully disagree with that again, SC. Reason being, you are referring to documents lost at this stage. So linking documents lost and replacing of
10 documents is a completely different thing from my perspective.

ADV CHASKALSON SC: Why is it different? If documents can be lost, why can documents not be slipped into the files?

MR MNISI: They are under lock and safe. The individuals will sign off for them as part of the segregation of duties. They accept and they make a vow to ensure that they will safeguard these documents and they will ensure that there is nothing that occurs in the form of tampering. So we rely
20 on the delegated powers that we send to various officials as well.

ADV CHASKALSON SC: Yes, but in this case, despite that vow and despite the protocol of lock and key, six documents disappeared.

MR MNISI: Indeed, and this was a positive thing that we

were able to pick this up because it showed that the internal control processes were in place and they were working adequately. We were then able to hold the process accountable. Between Probity and BEC upon transfer, we were able to hold an individual accountable for documents that had been lost.

ADV CHASKALSON SC: And who was held accountable here?

MR MNISI: I do not recall.

10 **ADV CHASKALSON SC:** Was anybody held accountable?

MR MNISI: So at this stage, we make recommendations and we send them through to the accounting officer. At this point in time, I do not recall.

ADV CHASKALSON SC: The recommendation is not that anyone should be held accountable. The recommendation is that measures and controls to safeguard documents should be implemented.

MR MNISI: That is true. We have BEC, and as a BEC, we have to make recommendations that will enhance the
20 procurement processes, SC.

ADV CHASKALSON SC: And what that recommendation presupposes is that the proper measures and controls to safeguard documents had not been implemented in the time leading up to 23 October 2025.

MR MNISI: Yes, SC, I agree with that, but I would like to

make an explanation that documents were lost or could not be found between Probity and BEC after the process was done.

ADV CHASKALSON SC: Sorry, after?

MR MNISI: Yes, it was between the transfer process where the Probity report was available.

ADV CHASKALSON SC: So it was after Probity had made its report? All of the documents were given to Probity, but they disappeared between Probity and BEC on the way back
10 from Probity. Is that what you are saying?

MR MNISI: That is the report I received.

ADV CHASKALSON SC: Well, let us look at the Probity report because one of the things that Probity says is if you go to page 419, at paragraph 54.9:

20 “No score sheets were received for BEC member Mr Tshukudu Malatji. We could not confirm whether he scored from previous meetings. The absence of scoring from one member undermines the integrity of the evaluation process and compromises fairness and consistency in the adjudication of bids.”

So what they are suggesting there is that Mr Malatji, who purported to be present on the day, had no score sheet in the documents. Was that one of the documents that was

lost?

MR MNISI: Okay. With your permission, Chair, this is true. Yes, I agree with you. The score sheets were not there as part of the BEC that Probity was conducting oversight on. However, I need to clarify the statement of documents that were lost. When they say documents, they are not referring to individual components of documents. It was actual tender documents of bidders.

So in this instance, for argument's sake, because
10 from the top of my head I am aware of 57 bidders from
TMPD-1, what was brought back was 51 bidders without six
documents. So the resolution in the BAC, SC, does not
refer to individual documentation. It refers to actual tender
documents for bidders.

And BAC raised that as an additional measure, as
an additional instance, which was not picked up or
identified in the Probity report. We had to isolate that as an
additional mechanism or as additional shortfall that was
identified.

20 **ADV CHASKALSON SC**: So you are now saying that entire
bid documents disappeared?

MR MNISI: That is what I have been saying from the
beginning. I probably think there might have been a
misunderstanding. The six documents were six bidders'
documents that could not be tracked back between

handover from Probity to BEC or vice versa.

ADV CHASKALSON SC: And are the scoresheets supposed to be kept under lock and key?

MR MNISI: Scoresheets are within the same room under lock and key. They should be.

ADV CHASKALSON SC: So if a scoresheet can disappear under lock and key, why can something else not disappear under lock and key?

MR MNISI: You see, this is where now members of BEC
10 must be accountable for safeguarding certain documents. And these are the major shortcomings that were picked up at this point in time.

ADV CHASKALSON SC: You see, I agree with you. There were major shortcomings. My problem is that when we talk about TMPD-1, you want us to approach the issue as though there were no shortcomings at all in relation to the document control process under the BEC.

MR MNISI: SC, with your permission, I could equally refer
20 you back to the Probity report of TMPD-1, and the Probity report of TMPD-1 did not identify any shortcomings of that nature. That then, of course, gives me assurance that for TMPD-1, there were no shortcomings, documents were validated to be under lock and key, and there were no instances of irregularity that were picked up.

Upon evaluation on TMPD-3, however, the same

exercise is repeated. There must be a test to ensure that documents were still under lock and key and they were safeguarded. For this instance, that test failed, which was then, as a result, one of the key factors that led to disqualification.

ADV CHASKALSON SC: Well, how would Probity ever pick up if there had been a tampering of the process, not in respect of documents disappearing, but in respect of documents being changed before they went to Probity?

10 **MR MNISI:** There is no suggestion that documents were tampered.

ADV CHASKALSON SC: Well, that is not my question. How would Probity pick up if that had taken place?

MR MNISI: So as far as I am concerned, Probity utilises a number of systems when they do their work. Within that, they evaluate documents as well. Within that, they could probably have systems to see whether there has been an amendment or a tamper of a document that was there.

20 **ADV CHASKALSON SC:** Now, you see, if one looks at what Sergeant Nkosi was doing and wanted, we have seen in TMPD-1, he wanted the award of the tender. So he did not want to leave traces behind that would lead to the cancellation of the tender. Do you accept that?

MR MNISI: No, I cannot accept that.

ADV CHASKALSON SC: He wanted the award of the

tender to Ngaphesheya and Elshadai.

MR MNISI: I cannot accept the component of saying he did not want to leave traces.

ADV CHASKALSON SC: Well, if you wanted the award of the tender to two bidders and you left traces of tampering, like the removal of documents, you would expose yourself to the risk that the tender got cancelled and then there would not be an award. Do you accept that?

MR MNISI: I accept that. But in this instance, to the
10 assurance exercise, there was no tampering of documents that was identified.

ADV CHASKALSON SC: No, Mr Mnisi, you cannot say there was no tampering. You have already conceded that document control measures by this BEC were faulty over the period.

ADV VAN DEN HEEVER: Mr Chairperson, I am going to object to the proposal put by my learned friend. If it is my learned friend's case that there was indeed tampering, then he should deal with it in that regard. He is currently
20 speculating and putting speculations to the witness, and that is not my understanding of what the Commission's work is.

The Commission's work is not to speculate when you put proposals to witnesses. You can only put a suggestion or put a version or put a proposal to a witness if

it is based on an actual fact or inference that is drawn from facts. Here cannot be an issue of inferences being drawn from facts because that happens right at the end. When the Commission sits and takes all the evidence, it is the only time they can draw an inference from the facts.

So I would with respect say my learned friend needs to either rephrase his question or withdraw it or deal with it. If it is his case that there was tampering, then put to the witness there was tampering, we have got evidence
10 there was tampering, but not in the manner that is currently going on. May it please you.

CHAIRPERSON: Thank you. Thank you, Ms Van Den Heever. I will let Mr Chaskalson respond, but I must say right away I do not have a problem with the question because with cross-examination sometimes you do not want to be direct. You want to lay a background before you come to the point that you really want to make, but I will let Mr Chaskalson respond.

ADV CHASKALSON SC: Chair, I am simply testing the
20 proposition that the witness, the refrain of the witness from yesterday that none of this could happen because everything was under lock and key. There could be no tampering because everything was under lock and key.

CHAIRPERSON: I actually counted from when he testified last week up to yesterday. He said this no less than four

times. Yes, yes, please continue, Mr Chaskalson.

ADV CHASKALSON SC: So my simple proposition to you, Mr Mnisi, is that you cannot offer this commission any assurance that everything was kept under lock and key and thus we can assume the document control was perfect.

MR MNISI: I can assure you we need to look at these particular tenders in isolation of each other. It is not the same members, first of all, that sit in TMPD-1 versus TMPD-2. So it is incorrect to make an inference from
10 shortcomings that were identified as a result of internal controls that we have had put in place and align those shortcomings to TMPD-1 where the test of time was passed.

The test of document arrangements, safeguarding and safekeeping was conducted at TMPD-1. It passed the test of time. The Probity report has been attached. TMPD-3, a separate set of individuals conducting the same work, when assurance exercise is being conducted, the test of safeguarding is failed.

So I would respectfully disagree with you when you
20 link shortcomings of TMPD-3 to shortcomings of TMPD-1, particularly when you are testing the notion of documents being safeguarded under lock and key. That test was passed and we have got sufficient evidence to prove that.

ADV CHASKALSON SC: Well, I will leave it here. I have put the proposition. I will leave the Commissioners to reach

whatever conclusions they want to reach. I want now to go to TMPD-3 because there is a fundamental difference between TMPD-3 and TMPD-1 in relation to Sergeant Nkosi. The fundamental difference is that in TMPD-1 Sergeant Nkosi wanted the award of the tender to Ngaphesheya and Elshadai. In TMPD-3 he wanted the cancellation of the award. Let us look at the chronology.

The easiest place to see the chronology of TMPD-3 is the Probity report on TMPD which is GM20. It is at page 10 403 where it starts and it deals with the chronology from page 416. So I just want to get clarity first on the chronology and if you have difficulties with any of the stages in the chronology that I am going to put to you, indicate them. Paragraph 46:

“The bid was advertised on the 12th of December 2024 with a closing date of 21 February.”

You confirmed that was correct.

MR MNISI: What page are you on?

20 **ADV CHASKALSON SC**: 416.

MR MNISI: 12th of December, 21st of February, yes.

ADV CHASKALSON SC: The bid expiry date at the foot of the page 47.3 was 21 May.

MR MNISI: I agree.

ADV CHASKALSON SC: We go down to 418. We see that

the BEC met on numerous days starting on the 24th of March and ending on the 7th of May. Can you confirm that is correct?

MR MNISI: I confirm that as per page 417.

ADV CHASKALSON SC: Ending on the 7th of May is incorrect because there was a meeting of 28 May where the recommendation was made. 54.5, signed minutes for 28 May where the committee was recommending tender. Can you see that?

10 **MR MNISI**: I see that on page 418.

ADV CHASKALSON SC: Now if we go all the way down to 426, we see that Probity has identified certain potential problems and it recommends in paragraph 71 that the BEC considers our observations with the intention of curing them before submitting the report to BAC and BAC satisfies itself that the observed defects have been sufficiently cured when the BEC report is tabled. So the position of Probity was that nothing that it had identified was irreparable.

MR MNISI: I disagree with you, SC.

20 **ADV CHASKALSON SC**: What would the purpose of indicating that there should be a process to cure these deficiencies, to attempt to cure these deficiencies, if the Probity people had already identified them as being irreparable?

MR MNISI: Perfect. Firstly, 406 gives a detailed summary

of the findings that were identified by a Probity report. In terms of those findings, the recommendation is cure matters that are curable. There are instances where matters cannot be cured.

For argument's sake, BEC score sheets, I am on page 406, Commissioners. It states BEC score sheets are dated 29 May. However, there are no minutes to support the assumption that there was a BEC meeting on the 29th of May. This is not curable. The only way to cure a finding of
10 this nature is to recreate minutes and then attach them, which was not a plausible mechanism of regularising a tender with shortcomings. I am just raising this as one of the obvious matters which are incurable. The second one I want to bring up ...[intervenes].

ADV CHASKALSON SC: Can I take you up there? What if it turns out, as it seems to be, that there were, in fact, minutes that minutes were just incorrectly dated 28 May because minutes of 28 May reflect the recommendation? Unless there was an out-and-out fraud in this case and a
20 very clumsy fraud, it is not possible for the recommendation to have been made before the scoring process had taken place.

MR MNISI: SC, in normal instances, Probity Reporting Team as well as the BEC meet before the reports are finalised. Findings are put towards them. When findings

are put towards them, the BEC has got the opportunity to provide the relevant supporting evidence if they are disputing a particular finding from Probity.

I will give you an example. We had a discussion on TMPD-1, on the Probity report, where the Probity Team came on board and clearly indicated there are two instances where we are disqualifying this bidder, bidder from ...[indistinct] Security Services, as a result of the audited financial statements not being there and as a result of the
10 five-tonne truck not being there.

Probity Team provided the relevant evidence to – no, apologies. The BEC team provided the necessary evidence to the Probity Team, convinced them accordingly, and amended confirmation letter was provided. In this instance, the BEC could not prove beyond reasonable doubt to Probity that the minutes were there, which gives us surety as BAC that these findings are accepted, both 1 and 2, with the minutes for the one scoring member which were not there. They failed to justify to the Probity Team on the
20 availability of those documentation.

ADV CHASKALSON SC: So you are saying that it was then established that the BEC had made a recommendation on the 28th before the scoring took place on the 29th. Is that what you are saying?

MR MNISI: No, Chair. What I am saying is there is a

missing element in terms of our protocols, and our protocols are there must be minutes that clearly detail what happened in the previous meeting as part of the compliance process. Within the process that was there, there was a major deficiency in terms of minutes not being available, which are key part and parcel of the process in order to ensure that a tender is legitimate.

That was not there in this case, and respectfully, that is what I am saying. And it could not be proved.
10 Apologies, SC. It could not be proved to the Probity Team when the internal arrangements and debates were occurring between the BEC and the BAC. When they came to the BEC and the Probity Team, when the teams came to BAC, they confirmed it. The minutes were not there.

ADV CHASKALSON SC: Well, that does not appear in the BAC report, but let us take the implications of what you are saying. What you are saying is that there were no minutes of 29 May.

MR MNISI: SC, I am not saying that the Probity report is
20 saying that.

ADV CHASKALSON SC: Okay. What you are saying is that the BAC accepted that there was no evidence of minutes of 29 May.

MR MNISI: I am accepting that, Chair.

ADV CHASKALSON SC: The BAC also accepted that 29

May was when the scoring took place. The score sheets are dated 29 May.

MR MNISI: We accepted that.

ADV CHASKALSON SC: The BAC also accepted that in a document purporting to be minutes of 28 May, a recommendation was made for this tender.

MR MNISI: Please repeat that.

ADV CHASKALSON SC: On a document purporting to be minutes of 28 May, a recommendation was made for this
10 tender because that was the problem picked up by Probity.

MR MNISI: Yes, we accepted that.

ADV CHASKALSON SC: So what the BAC accepted was that on 28 May, a recommendation was made. You accept that?

MR MNISI: I think I accept that.

ADV CHASKALSON SC: Yes or no?

MR MNISI: I see the Probity report indicates that. From a BAC perspective, I just want to add, you mentioned earlier on that in the BAC report we did not mention that. So what
20 we do, we do not regurgitate our findings as is. We add matters that were not there. So we would not have seen that isolated in the BEC report, SC, with all due respect.

Taking into account the presentation that was brought to us, point number five indicates that the minutes of the meeting held on 28 May lists four members with Mr

Enos Ramonoana 's name appearing twice. We accepted that with the ...[indistinct] that came with that.

ADV CHASKALSON SC: Can I ask you to confine yourself to answering my questions? My question was that the BAC accepted, do you confirm that the BAC accepted that a document purporting to be minutes of 28 May 2025 recorded a recommendation for the tender?

MR MNISI: SC, I accept that.

ADV CHASKALSON SC: And the BAC also accepted that
10 the scoring or the score sheets were dated 29 May?

MR MNISI: Accepted.

ADV CHASKALSON SC: Now how can you recommend a tender on the 28th of May if you only score on the 29th of May?

ADV CHASKALSON SC: Those are exactly the irregularities that were picked up. This is an anomaly. It cannot be like that.

ADV CHASKALSON SC: Now if you accept that anomaly, will you not also have to accept that what happened on the
20 28th of May was a deliberate fraud because no scoring had taken place?

MR MNISI: Chairperson, at a BAC our restrictions and functions are restricted. In terms of these functions being restricted, we need to ensure that procurement processes have been followed and the necessary oversight from a BAC

perspective.

Once those cancellations have been made, first we would have expected that either to be made by the Probity ...[indistinct] or when the accounting officer is assessing that to make further recommendations.

From a BAC perspective, our functions are clear. We cannot overstep those functions. We cannot make recommendations that are outside our powers. And I want to just give a quick example to support that. There are
10 instances where departments would come to BAC asking for budget adjustments. We clearly say to them, that is outside our mandate. We cannot make a resolution of that nature. Go to the accounting officer.

Similarly with that, we have to confine ourselves to the roles and responsibilities that have been assigned to the BAC. And those will ensure that you assess the BAC, the procurement processes followed to the T. In this instance, Probity says cure these findings. We had to go back and assess each of these.

20 And if these were curable, what BAC would have done, SC, is refer the matter back to the BEC and say, BEC, these are the seven issues that you need to cure. These are curable. It will not have an adverse effect on the regularity of the process.

In this instance, there were matters and findings

that were uncurable without committing fraud. And that fraud will be backdating minutes and re-computing score sheets that were not there. Hence, this tender was uncurable.

ADV CHASKALSON SC: Mr Mnisi, if the recommendation was made on 28 May and the scoring was done on 29 May, you have a series of members of the BEC who are participating in a fraud. Is that not right?

MR MNISI: I cannot comment on that.

10 **ADV CHASKALSON SC:** No, you can comment on it. If they made their recommendation on the 28th and only did the scoring on the 29th, the scoring was a complete sham, was it not?

MR MNISI: I would be making an assumption because I would not have known what would have happened in that instance. I cannot answer that question, SC. If an individual is committing fraud, it is a very difficult question for me to answer without having any corroborative evidence for me to rely on.

20 **ADV CHASKALSON SC:** Well, in this case, you are saying that you assumed that the recommendation, or you accepted that the recommendation was made in a meeting on the 28th and the scoring took place on score sheets dated the 29th. You have accepted that?

MR MNISI: The BEC accepted that.

ADV CHASKALSON SC: No. The BAC, including yourself, you chaired that meeting.

MR MNISI: Yes.

ADV CHASKALSON SC: Yes, you accepted that.

ADV CHASKALSON SC: From a mere collective decision, we accepted that.

ADV CHASKALSON SC: Yes. So you accepted that scoring took place on the 29th, although the recommendation had already been made the previous day.

10 **Now, how can you make a recommendation ...[intervenes].**

CHAIRPERSON: Do not nod, Mr Mnisi, please.

MR MNISI: Sorry, Commissioner.

CHAIRPERSON: I understand the nod to be a yes.

MR MNISI: Apologies. It is just I am trying to concentrate, Commissioner. Apologies.

CHAIRPERSON: No, no, no. No need to apologise. Thank you.

20 **ADV CHASKALSON SC:** So, you accepted that a recommendation was made on the 28th, and then the next day the people who had made the recommendation purported to score the bids in respect of a tender where they had already made a recommendation.

MR MNISI: We accept that, and it is an anomaly.

ADV CHASKALSON SC: Now, let us assume that those facts are correct, because you have accepted them, are we

not looking at a fraud?

MR MNISI: The facts are correct, because we have seen this having been validated by the third party. There is no way that a report can be produced on the 28th, but the minutes are scored on the next day. It is a major anomaly from our perspective.

For me, there needs to be an investigation, firstly, on that, which will now give me guidance that, indeed, fraud was committed. I do not have sufficient evidence to make
10 that conclusion. The only conclusion I can make is that there is an irregularity here. It is a major cause of concern.

ADV CHASKALSON SC: Did you instruct any investigation?

MR MNISI: No. Outside the BAC, I could not. I did not.

ADV CHASKALSON SC: Sorry, Mr Mnisi, I find that very difficult to accept. Are you suggesting to me that when the BAC sees *prima facie* evidence of fraud and makes a decision on the basis of facts that *prima facie* indicate fraud, you cannot instruct any investigation?

20 **MR MNISI**: At this point in time, there is no *prima facie* evidence, except for a finding. The finding that is raised is that as the Probity Team would pick this up, if there was *prima facie* evidence, the Probity Team would have raised it and made those attachments accordingly, which would have then empowered me or us, as BAC, to act on that

accordingly.

ADV CHASKALSON SC: You see ...[intervenes].

ADV BALOYI SC: I do not understand that answer. You are in the BAC. You have the Probity report.

MR MNISI: Yes.

ADV BALOYI SC: It tells you these facts that are being put to you. That is what the Probity report tells you, right?

MR MNISI: Yes.

ADV BALOYI SC: That the scoring happened a day after
10 the recommendation was made. That is what they tell you.

MR MNISI: Yes.

ADV BALOYI SC: I do not understand why you have a difficulty with conceding or accepting that with those facts, if that is what happened, what the Probity has established is a fact, which you accepted at the BAC as what has happened, that that constitutes a fraud. That must be investigated, not only because you are chairperson of the BAC, but also as CFO, you are responsible for the integrity of your procurement processes. Why are you struggling to
20 accept that it constitutes a fraud if it happened the way that Probity has recorded it to have happened and that the BAC accepted to have happened?

MR MNISI: Commissioner, I am not struggling. Yes, the answer is yes. In the context of us sitting at BAC, in the context of us sitting at BAC, we received finding number

one on 406. It says the BAC score sheets are dated and signed on the 29th of May. However, there are no minutes to support the assumption that there was a BEC meeting on the 29th of May, except that it raises alarms for us.

ADV BALOYI SC: Yes.

MR MNISI: And those alarms lead to a cancellation confined to the roles and responsibilities of BAC. When we are discussing this matter now, of course I need to further have *prima facie* evidence to escalate the matter further, 10 but I am agreeing with you that when we are having more discussions and deliberating further on this matter, it does seem like it is constituting fraud.

ADV BALOYI SC: Yes.

MR MNISI: I am just at a stage where I do not have *prima facie* evidence as a result of this finding to conclusive ...[intervenes].

ADV BALOYI SC: You do have *prima facie* evidence. You have got Probity assurance, right?

MR MNISI: Yes.

20 **ADV BALOYI SC:** Which is part of your system, of your evaluation system, or even adjudication system. You have them. They have done the work. They have looked at the documents. They report that there is this irregularity, and they report it as a fact, irregularity. That is *prima facie* evidence that requires an investigation, one.

And two, that qualifies you to say, it looks like fraud was committed here. We may need to investigate it further, but surely you have to easily be able to say, yes, it does look like, it does suggest fraud. I am battling with why are you struggling to accept the proposition that is being made to you, because it seems to be a reasonable proposition being made to you, that it suggests fraud.

MR MNISI: I agree with that.

ADV BALOYI SC: Okay.

10 **MR MNISI**: My answer is yes.

ADV CHASKALSON SC: All right. Thank you. Thanks, Mr Chaskalson.

MR MNISI: Commissioner, if I could just explain?

ADV BALOYI SC: Yes, you may.

MR MNISI: At the point of BAC conducting our work, this led to cancellation. So we took that into account, and we acted accordingly. Within our BAC, there are a variety of subject matter experts, included in there is a legal expert as well who sits as part of our BAC.

20 So I think in hindsight, the BAC should have made a recommendation of that nature. The basis of us cancelling that, Commissioner, was confined to the roles and responsibilities of BAC, confined to procurement-related processes.

ADV BALOYI SC: Thank you.

ADV CHASKALSON SC: If we go to your BAC cancellation report, I have already indicated to you that it was noted that during the discussion of this matter, if we go to 429:

10 “During the discussion of this matter by the bid adjudication meeting held on 23 October, the committee noted the following, that there were six documents lost during the relocation of documents to another storage. Therefore, measures and controls to safeguard documents should be implemented.”

So you were happy to indicate what should happen going forward in relation to document control, where there was, on your version, no evidence of fraud.

MR MNISI: SC, documents that were missing are six documents. With your permission, I want to just expand further on that because I want to deal with if there is a confusion, that the six documents relate to score sheets, they relate to minutes ...[intervenes].

20 **ADV CHASKALSON SC:** No, we have clarified. They are bid documents. There are six bid documents that were lost, you say.

MR MNISI: Yes.

ADV CHASKALSON SC: And that means that your control systems are not working, and so you want the control

systems to be improved and implemented. That is what your committee is saying there. Is that not correct?

MR MNISI: The answer is yes. That is what they are saying. Me expanding with your permission, SC, is that further to that, that these are additional findings that were not noted in the Probity report. So we escalate the additional three matters that are discussed and are picked up. So we raise them in isolation.

Within additional findings that we are raising at the
10 BAC, we propose additional measures to safeguard the procurement process, in particular reference to this bid. We have to, when we are looking at the minutes of each bidders, look at them in line of the unique nature of their programme and what was happening on that particular bid.

I would not want us to interrelate that to all other bids within the City because the process is, this is not what happened in all other instances. So in this instance, the test of safeguarding documents was failed. So this finding was not raised.

20 From Probity, you can see that under the findings that were there. BAC picks this up. We then make a mitigation measure as well, which says you need to enhance and safeguard documents in the next process.

ADV CHASKALSON SC: So when it comes to losing bid documents, there are mitigation measures that you are

happy to put in place or to decree?

MR MNISI: SC, incorrect. We put mitigating measures everywhere. These mitigating measures are ones that were not identified. I am trying to isolate the two, that we identified this as BAC. It was not part of the Probity exercise that was there. Hence, we felt it was a duty for us, because we are picking this up, to put additional measures on board. Over and above what we have already seen from Probity reports, which have also made certain
10 recommendations in summary. Amongst those recommendations that they have made, cure the process, et cetera.

ADV CHASKALSON SC: But you did not see fit to put in place mechanisms to investigate what appeared to be an out-and-out fraud in relation to this process, where a series of BEC members, on the facts that you accepted, made a recommendation the day before they purported to score the bidders.

MR MNISI: SC, at that point in time, we confined ourselves
20 to procurement-related matters. In hindsight, I am agreeing that as a BAC, we should have considered that and it is a matter that should have been raised. But at the point of adjudication, we performed our functions accordingly. We took into account the recommendations that were made by the Probity Team.

We put systems to try and cure all the findings. There were findings that were incurable, which then led to the cancellation. But in hindsight, I agree with you. Possible further steps should have been taken.

ADV CHASKALSON SC: Can we look at what the BAC actually resolved on page 429? So there is a record of what the BAC discussed:

10 “During the discussion of this matter by the bid adjudication meeting held on 23 October, the committee noted the following:

- There were six documents lost during the relocation of documents to another storage. Therefore, measures and controls to safeguard documents should be implemented.”

We dealt with that. Second bullet point:

20 “The material irregularities identified by Probity were due to the pricing schedule, which was issued as an addendum. In regard to the interpretations of the addendum, it stipulated that the pricing schedule must be completed in full, with no blank spaces.”

Third bullet point:

“The BEC interpretation is that the pricing schedule need not to have blank spaces. According to Probity report, which its recommendations have changed the initial BEC recommendation, states that blank spaces must be completed with numerical figures. This resulted in potential selective evaluation of bidders and the potential unjustified disqualified bidders.

10

That the material irregularity due to the interpretations of the specifications, particularly the pricing schedule, remains an issue that could not be cured. Therefore, the committee agreed to the following recommendations.”

So we see nothing in that narrative of what was discussed as to whether the meeting was held on the 28th and the scoring was done on the 29th. That is just not mentioned.

20 **MR MNISI**: SC, the answer is yes. Permission to expand further. As I was reiterating during my explanation earlier on, matters that are raised in isolation within the BAC report are additional matters that the BAC wants to emphasise on one or that the BAC did not take note of within the Probity report.

So we do not ignore the findings that are already there in the Probity report, but also we do not rehash or regurgitate those findings word for word because they have already been accepted. We only raise matters that were not there in the first place so that it can add to the irregularities that are identified. And then we attach that Probity report in full as an annexure with all other documents for the accounting officer's consideration.

ADV CHASKALSON SC: We then see the actual
10 resolution. And will you confirm that this is the resolution that the BAC adopted? It says resolved. It starts at 429, it goes through to 430. Is that the resolution that your committee adopted?

MR MNISI: I accept that.

ADV CHASKALSON SC: Do you see any references to the meeting of the 28th and the scoring on the 29th in that resolution, anything that could possibly include, even by reference, that problem?

MR MNISI: In standard practice, SC, we do not include
20 that. This is a summary of the discussions and the resolution of cancelling. The discussions have already been held. The Probity report has been considered. Additional matters on 429 have been identified. The resolution is now compliant with the Municipal Finance Management Act and the City's supply chain management

policy on why we can cancel this tender. And it was a basis of point number D, where there was evidence of material irregularities, and those material irregularities had already been discussed.

They have already been noted, not only in the Probity assurance report, but further issues in the statement and discussion notes of the BEC. So by standard practice, we do not regurgitate all those matters again. We have got a number of other cancellations that I could bring
10 to the Commission. You can see the standard practice of our cancellation resolution at BAC.

ADV CHASKALSON SC: But you did actually indicate your reasons for cancelling here. Let us look at the resolution. It says:

“[1] TMPD 3/2024/25, tender for the appointment of a service provider to provide security services at various sites belonging to the City of Tshwane, including substations and reservoirs for a
20 three-year period, be cancelled due to material irregularity as indicated below.”

And then we see what is indicated below:

“During the evaluations of the tender, the Committee identified the following misalignment and material irregularities.”

So what is the difference between a misalignment and a material irregularity?

MR MNISI: They are both material irregularities in this context. There was no coherence. So there was a misalignment.

ADV CHASKALSON SC: When you refer to a misalignment, what do you mean?

MR MNISI: It is an irregularity. There is no consensus.

ADV CHASKALSON SC: No consensus?

10 **MR MNISI**: There is no agreement. This matter could not be resolved.

ADV CHASKALSON SC: Well, let us look at what you – so you are saying misalignment and material irregularities are the same thing?

MR MNISI: In the context of our discussion here, that is what I am saying, SC.

ADV BALOYI SC: When you say consensus, whose consensus? Consensus between what? The Probity and the BEC?

20 **MR MNISI**: Yes, yes.

ADV BALOYI SC: Is that what your procurement policy, your supply chain management policy requires? I mean, I thought the BEC evaluates.

MR MNISI: Yes.

ADV CHASKALSON SC: And then Probity looks at what

was done and submits a report. It is not required to reach consensus with the BEC because it is not part of the Bid Evaluation Committee. And then it submits a report, and then the matter comes to the BAC. So when you say there was no consensus between Probity and BEC, on what basis? And you would have to point us to the policy, not just your opinion. On what basis do you say there has to be a consensus between the two?

MR MNISI: Commissioner, maybe it is our discussion and
10 how it is coming across in the commission. The point I am trying to raise is that when a Probity report has been prepared, finalised, signed off, before they table to the BAC, that report is discussed with the BEC. They put the findings. Probity Team comes, we put these 12 findings to you as a BEC.

Do you have evidence to conclusively disagree with this, or do you accept these findings? In this instance, the findings were accepted, and that is what we are raising. And maybe the wording was not correct, but that is what we
20 are indicating. That the findings stand. The findings were not cured. This tender is irregular. It must be cancelled.

ADV BALOYI SC: Is your use of the word consensus, saying there was no consensus, a misnomer perhaps? Because I am really questioning the principle of it. The principle that you are suggesting, in fact, you say so in so

many words, that your procurement process requires that there must be consensus between Probity and BEC, and absent that, at least since I followed you, absent consensus that could be a basis, or in fact is a basis, to cancel a tender. I have a problem with that as a matter of, maybe I may say even as a matter of law, but as a matter of supply chain management principles and policy.

MR MNISI: Commissioner, the process does not require that. Maybe it is a word I use. The SC was asking me
10 about alignment, about material regularities, and trying to explain that maybe that is not a suitable word, but that is not required in terms of the City's supply chain management policy, and that is not what I meant.

ADV CHASKALSON SC: Your resolution says that your decision to cancel was due to material irregularity, as indicated below, and there are three bullet points which provide the indication. The first says that:

20 “During the meeting between the BEC and Probity Teams on 26 August, it became apparent that there were multiple interpretations of the specifications, particularly the pricing schedule which was issued as an addendum. In regard to the interpretations of the addendum, it stipulated that the pricing schedule must

be completed in full brackets, no blank spaces. The BEC interpretation is the pricing schedule need not to have blank spaces. According to Probity Team, the blank spaces must be completed with numerical figures.”

So there is a dispute as to what the requirements are between BEC and Probity. Probity says you have got to fill in a zero when your pricing on a certain matter is zero.
10 BEC says provided you do not leave blank spaces, for instance by just drawing a line through the space where you have nothing to price, that is compliant. There is that difference between the two. You see that?

MR MNISI: I see that.

ADV CHASKALSON SC: And is that what was being referred to there?

MR MNISI: As additional findings that were not clearly articulated in the Probity report, these were additional measures that were isolating at the BAC.

20 **ADV CHASKALSON SC**: That is not what the resolution says at all. What the resolution says does not refer to the Probity report. It refers as forming the primary basis. It says the tender be cancelled due to material irregularity as indicated below, and then this is the first one. It does not say be cancelled due to material irregularity as set out in

the Probity report and in addition as indicated below.

MR MNISI: So I am trying to clarify that there was no need to say that it was already accepted. The Probity report was not disputed. The Probity report was already accepted by the BEC included. In actual fact, the report when it came to BAC, it came with an acceptance of the findings and an acknowledgement by BEC of the shortcomings that were there.

When it comes to BAC, it does not come with a
10 recommendation, SC. The BEC report already comes to BAC having acknowledged the shortcomings that were presented to them by Probity. BAC, through the discussions, notes that there are additional issues that we have captured on page 429 and at the top of 430 that need to be emphasised on.

Add those. It already came to BAC as a cancellation. So BAC did not change the decision of BEC. It came to BAC, agreed that it must be cancelled because those matters cannot be cured.

20 **ADV CHASKALSON SC**: That is not what your resolution says at all. Let us look at what your resolution says. We dealt with the first material irregularity or alleged material irregularity identified in the resolution. Can I just look at this? Why was this an irreparable problem? One of the interpretations was going to be right. The other one was

going to be wrong. Why could the BAC not take a decision on which the right one was and then act accordingly?

MR MNISI: We did take a decision, the right one was that of Probity.

ADV CHASKALSON SC: Okay, and so then you can cure. You can disqualify the people who should have been disqualified according to Probity and you can mark the rest.

MR MNISI: However, there are two findings that were raised that are incurable. It would be a fruitless exercise
10 referring a team back to go and cure matters in isolation where other matters cannot be cured. So even if BAC took a decision to refer this back, cure these irregularities, it would have come back and been cancelled in any case as a result of finding number one and two. It would have been a time waster.

ADV CHASKALSON SC: Well, I am confining myself to what the resolution actually says as opposed to what you would like us to believe the resolution meant. The first reason for cancelling is a difference in interpretation
20 between BEC and BAC, BEC and Probity. You have confirmed that BEC accepted that Probity was right. Can you confirm that?

MR MNISI: I can confirm that.

ADV CHASKALSON SC: Now, just looking at this in isolation, not looking at anything else, if Probity was right,

this was a curable problem looking at it in isolation. You are nodding your head. Can I get confirmation that this is correct?

MR MNISI: No, I am listening. I think it is a bad habit that I have when I listen and nod my head.

ADV CHASKALSON SC: So if Probity was right and if BEC agreed that Probity was right, this was a curable problem. You could disqualify the people who Probity said should have been disqualified and you could have marked the rest.

10 **MR MNISI**: The answer is yes. Can I please explain further?

ADV CHASKALSON SC: I am taking them each in isolation. You can explain at the end ...[intervenes].

MR MNISI: SC, please allow me to do that. I need to state this point. It is extremely important for me. So, SC, when you are doing supply chain management processes, you cannot look at matters in isolation of each other.

20 So I just want to give that overview that, indeed, you are correct. This is a matter that could have been cured. However, procurement process is the entire picture. It is not certain aspects. That is why we have administrative, mandatory and evaluation-related criteria.

But if an individual is compliant in one aspect, we cannot just look at that aspect in isolation of the entire picture. So this instance, with all due respect, we had to

look at the entire picture, and the entire picture included the uncurable matters as raised by Probity Team.

ADV CHASKALSON SC: We will get to the entire picture at the end. For now, I want to focus on each of the individual reasons given by the BAC in its resolution. We have dealt with the first one. You have accepted the first one was curable. Let us look at the second one:

10 “The specifications stipulate that some areas do not require armed guards, whereas the mandatory requirements dictate that bidders who do not submit firearm licences as part of their bid would be disqualified. Therefore, it is disadvantaging those who do not have firearm licences.”

So that was your second reason. Now, this is something that presumably should have been picked up in the Bid Specification Committee a year previously. What is your comment on that?

20 **MR MNISI**: My comment on that, SC, is that I cannot say it could have been picked up at that point because that BAC committee is made up of a multitude of individual specialists as well, including TMPD. So I am not aware of the reason behind them not including that at that point in time.

However, I just want to add that whilst we are looking at these matters individually, I agree with you. However, these are not the only reasons that led to this cancellation.

ADV CHASKALSON SC: You are going to have the opportunity to explain that at the end, but I now want to confine myself to what the resolution says as opposed to what you might have wanted it to say. So the second one, it says:

10 “The mandatory requirements dictate that bidders who do not submit firearm licences as part of their bid would be disqualified, so it is disadvantaging those who do not have firearm licences.”

Is this an irregularity?

MR MNISI: It was identified as an irregularity at this point.

ADV CHASKALSON SC: It seems to me it is more of a misalignment than an irregularity, that maybe with hindsight you would have drawn the specifications differently because
20 with hindsight you did not want firearm licences to be a disqualification factor, but I do not see any irregularity here.

Where is the irregularity?

MR MNISI: If any evaluation process is outside the confines of the bid specification process, it is an irregularity.

ADV CHASKALSON SC: This is not outside the bid specification process. The bid specifications themselves stipulate the requirement for the firearm licence.

MR MNISI: However, if you look at the rest of that sentence:

“Whereas the mandatory requirements dictate that all bidders who do not submit firearms as part of their bid would be disqualified.”

10 So that contradicts what the first part of the statement says. Hence it was highlighted that in the – I will stop there, SC.

ADV CHASKALSON SC: The tender document, that comes out of the Bid Specification Committee, does it not?

MR MNISI: It does.

ADV CHASKALSON SC: So that document approved by the bid specification document had a mandatory requirement that firearm licences were required?

MR MNISI: Yes, that contradicted. So the specifications, the entire document had two points that were contradicted
20 to one another. The first is that specifications stipulate that some areas do not need armed guards, and it must be clear. However, in the mandatory requirement, the same document now dictates that bidders who do not submit firearm licences must be disqualified.

The problem was that there would be bidders who

say I will refer you to clause 3.5, imaginary, of this specification and this document. It says here, not all areas require firearms. So why are you now disqualifying us as a result of the second mandatory requirement?

ADV CHASKALSON SC: But that is a mandatory requirement that the bidders are alerted to in the bid document. It says mandatory requirement, firearm licence.

MR MNISI: Yes. It is part and parcel of that, within the specifications, the requirement of firearms within this
10 mandatory was also a requirement. That first, you do not need to have all, and then secondly there is another requirement that says you must have, all firearms must be there. So this was contradictory.

ADV CHASKALSON SC: And is that not something that should have been, that was capable of being clarified at those meetings where you, I forget what they are called, where you call all of the bidders in to get an explanation?

MR MNISI: I am not...

ADV CHASKALSON SC: The briefing, the tender briefing.

20 **MR MNISI**: I am not certain.

ADV CHASKALSON SC: If you are a bidder and you are confused, do I need a firearm licence, do I not need a firearm licence, is it not incumbent on you to raise that at the briefing meeting, the compulsory briefing meeting that you must attend?

MR MNISI: In some instances, yes, some bidders raise that. However, in some instances after the fact, when a bidder has not been awarded and has been disqualified for this reason, it might be an issue for the City.

ADV CHASKALSON SC: Why would it be an issue for the City? The bid specification document has a section where it says mandatory requirements. And in those mandatory requirements, it says firearm licence is required. If you are a bidder and you look at the document, you look at what the
10 mandatory requirements are. Even if the mandatory requirements do not make sense, you know that if you do not meet those requirements, you are going to be disqualified. Is that not correct?

MR MNISI: That is correct. However, I would like to add, please, SC. The reason why I am adding is that if the document on its own is contradictory, if a bidder is unsuccessful, and these were amongst the reasons that were outlaid as part of their disqualification, unhappy bidders are unfortunately highly litigious.

20 We have seen in the past that this exact same tender was taken to court, irregularities were identified. It was, I think, cancelled from that point. From a High Court perspective, I am not sure of the details, but I am aware of a situation of this nature.

So in this instance, we had to make sure that all

issues of concerns and all gaps have been covered accordingly. So this was a major contradictory, which could have opened up the City to litigations. It is a highly litigated tender. We have seen in the past the interest that goes along with this.

Hence, the contradictory could have been an issue that is problematic, particularly for bidders who are not awarded and were disqualified for this reason. They would want to take the City on.

10 **ADV BALOYI SC**: Mr Mnisi, which document was contradictory?

MR MNISI: The tender document itself, sorry.

ADV BALOYI SC: You say the document is contradictory. Which document is contradictory?

MR MNISI: It was the actual tender document.

ADV BALOYI SC: The invitation to tender?

MR MNISI: The invitation to tender, the specifications within the evaluation criteria, the actual tender document.

ADV BALOYI SC: So the specification that says some
20 areas do not require armed guards, you are saying that was in the published tender?

MR MNISI: Yes.

ADV BALOYI SC: Yes, but why is it contradictory that you have got that which says some areas do not require that, and yet the client says we require everybody to have a

firearm as a mandatory requirement, even though some sections or some sites they have determined would not require firearms? Why is that a contradiction?

MR MNISI: The contradiction came in the form within those discussions that you now need to be clear. Which of those sites would not require firearms? This is taken into account that you might need 100 firearms. Some companies might have 50 firearms. If that distinction is not there, it could be an area of concern.

10 So the distinction in terms of the mandatory requirement, there needed to be a split in terms of the areas which would require firearms and the areas which would not require firearms. Then it would be easy for the Bid Evaluation Committee to look at a bidder's submission and say you have submitted a document with 100 firearm licences. You, however, have submitted a bid with 50 firearm licences. Yes, you have got firearm licences, but it is not sufficient. That distinction needed to be there.

ADV BALOYI SC: No, I am still at the contradiction. If the
20 advertised tender informs bidders what is required, yes, it has a line somewhere which says not all areas will require armed guards, but the bid document, that same document is very clear to all bidders, everybody who bids, that everyone who submits a bid must submit firearm licences. What is the problem?

I do not understand the problem that you are raising about that, because bidders, as a rule of fairness, fair procurement, bidders must be informed what is required of them. That bid document does inform them that you must submit firearm licences. I do not see why you have a problem with the fact that elsewhere that document has said something to the effect that some areas will not require armed guards. I do not understand that, and that becomes another reason to cancel this tender.

10 **MR MNISI**: Well, Commissioner, I think these were discussions that were held at BAC. I did not take these decisions on my own. Presentations were made. It was assessed. It was accepted that this could be a contradiction that would affect the evaluation of this bid.

ADV BALOYI SC: A committee necessarily by definition means you are not the only one there. You are with other people. You happen to be the chairperson of this committee. You are the witness in the box right now, and you must justify as part of that committee. You must
20 explain in a way that we understand.

The issue is your committee that you chaired provided a reason, another reason for cancelling this tender. And I guess maybe to put it positively, I do not see and I do not agree that that was a valid reason to offer as one of the reasons to cancel the tender because the bid

document has informed bidders what is required of them, and that is a basis on which we evaluate the bid as a BAC.

So I guess what I am saying, what I am putting to you is I do not accept the reason that you are offering why that bid was cancelled, at least this one reason. I do not know if you have any comment.

MR MNISI: Yes, please, Commissioner. At this point in time, I was convinced that this is a valid reason, that the contradiction would lead to potential litigation and open the
10 City up to litigation. I was further convinced that it would be an additional matter to accept and to highlight as part and parcel of the myriad of other irregularities that were identified at this point in time.

ADV BALOYI SC: Thank you.

ADV CHASKALSON SC: Let me take it further. This is for ad hoc security services, is it not? You are going to appoint a panel and then you can call on them to perform security services as and when needed at various properties of the City.

20 **MR MNISI**: As far as I am concerned, this is for watchman services.

ADV CHASKALSON SC: It is an ad hoc security service.

MR MNISI: SC, my answer is as far as I am concerned, this is watchman services. TMPD chooses whether they would like to use this for ad hoc security services or

advertise another tender for ad hoc security services. But the content of this tender was for watchman services and replacing the existing tender that was there. Not specifically for ad hoc. It was to guard all City sites. All City sites.

ADV CHASKALSON SC: So what happens then to the ad hoc needs that are no longer going to be capable of being addressed under the 2016/17 tender because that tender will have run its course?

- 10 **MR MNISI:** Ideally speaking, if those ad hoc areas – okay, firstly, SC, risk assessments are done by TMPD and the relevant user department, which identifies the need to add an additional site for security-related services. So at this point in time, risk assessments have been concluded.

All sites that are deemed important have been included on this. If there were ad hoc sites from the previous tender, I would presume that within this tender, that assessment, if it is still valid, will be included on this now.

- 20 So that you stop a process of saying, we will now add this later on, they should have been included on this. This will be to guard all City sites. And if in the near future, if this tender was successful, another site which was not included as part of this bid is identified, TMPD and the relevant user department have discretion to conduct their

own risk assessments and decide whether it is a valid point to have another ad hoc service on that point. But for this tender, all key and essential sites would have been taken into account.

ADV CHASKALSON SC: Even so, why is it an irregularity to say some of our sites are going to need an arm guard, some are not? We want a security company to be able to service all of our sites, depending on where we place them?

MR MNISI: SC, my answer is that at the time when the
10 report was being considered, this was a valid contradiction from mine and the BAC's perspective and this was a valid flaw that needed to be highlighted as part and parcel of the myriad of other matters that had already been raised.

ADV CHASKALSON SC: I want to put it to you that this is not a material irregularity at all. Certainly not one that in its own right would justify cancellation of a tender. What is your response to that?

MR MNISI: I respectfully disagree with you, SC, on the basis that when we looked at this, it was a valid
20 contradiction. The presentations, I might not recall verbatim what the outcomes of the discussions were and what the main reason was that led us to isolating this as an additional issue, but it was of high concern and that contradiction was raised at that point in time as a key issue that must be highlighted, which might not have received the

necessary highlights from the Probity Team.

And this, just to add, was an additional matter. There were more than 12 other findings that had already been raised by the Probity Team. Amongst those, there were essential matters that could not have been cured. So this is now raising every single issue that is there. This is another issue we have to raise this thing accordingly.

Why I am saying that, in some instances we were also taken to court for cancelling tenders. So we need to
10 ensure that we have covered all angles and all loopholes that have been identified. So you throw in every single additional issue that you think is a reason that is valid to justify this cancellation.

ADV CHASKALSON SC: You keep on speaking about additional reasons, but if one looks at the resolution, which is the decision of the committee, these are the only reasons given.

MR MNISI: SC, I did respond to that matter, that the Probity report has already, BAC has already discussed all
20 findings that were there. As standard, we do not regurgitate and repeat all those findings again onto this report. The BAC report is just a summary of the discussions that were raised.

The attachments, which include the detailed BAC report as well as the actual Probity report, are part and

parcel of the entire pack. So this does not mean they are disregarded. So I am explaining it in that way, that these are additional matters. It might not be clear in terms of the writing that is there, but the context and sequence of events were raising additional matters that were not raised in the Probity report.

ADV CHASKALSON SC: You talked about being taken to court on other cases in relation to cancellations. You must then know that when you get taken to court for an
10 administrative act of cancelling a tender, your decision stands or falls by the reasons that are given for it. And if we look at these reasons, the only reasons that are given for it are these three bullet points.

MR MNISI: SC, these are not the only reasons. These are additional reasons. SC, I am just trying to point a point ...[intervenes].

ADV CHASKALSON SC: Sorry, Mr Mnisi, look at the document. This records the decision of the committee. Where do you see any other reasons reflected in the
20 document that records the decision of the committee?

MR MNISI: SC, I respectfully disagree on the conclusion. I am trying to explain how BAC operates and how we ...[intervenes].

ADV CHASKALSON SC: Do not disagree, just answer my question. Where in the document do you see any reference

to reasons other than the three bullet points?

MR MNISI: With all due respect, SC, I will refer you to the Probity report, which ...[intervenes].

ADV CHASKALSON SC: It is not in the document. Refer me to the decision of the committee. Where in the decision of the committee do you see a reference to any other reasons?

MR MNISI: SC, my answer to that is the reasons to that are not there. I cannot refer you to a page. With respect,
10 may I ...[intervenes].

ADV CHASKALSON SC: Thank you, that is all I needed. We have had the speeches already. That is all I needed. So nowhere in the document that records the decision of the committee is there a reference to any other reason other than these three.

MR MNISI: SC, my answer to that is yes. May I please have permission to expand?

ADV CHASKALSON SC: You do not need permission from me. I would not be inclined to give it, but it is the
20 Commissioner's choice.

CHAIRPERSON: Mr Mnisi, I will allow you to explain, but you make a habit of giving explanations for all the responses or answers that you give, even to questions that do not require explanations. With regard to this one, much, much earlier you mentioned that there are additional

reasons, meaning reasons that are additional to the reasons that are actually reflected here.

Now, Mr Chaskalson is asking you a simple question as to whether there are reasons that are additional to the reasons that we see here. Ja, I just find the need for an explanation in this context not understandable, but I have said I will allow you to explain. Do you want Mr Chaskalson to repeat the question, or can you go ahead and give the explanation you want to give?

10 **MR MNISI**: Can I please go ahead, Chair?

CHAIRPERSON: Yes, but please, please, Mr Mnisi, bear in mind what I have said at the beginning of this comment, which is that try to avoid giving explanations, even where they are not necessary. And quite a number of times, explanations have not been necessary at all. Do not understand this to be a gag on you and on the testimony you want to give, but we have limited time, so please do not explain what does not need to be explained. But go ahead with this explanation.

20 **MR MNISI**: Chairperson, first, let me profusely apologise to you. I in no way or fashion intend on wasting the Commission's time at all, and I want to emphatically apologise on that. The reason for explaining is when the conclusion from the Senior Counsel disregards the explanation that I had given. So, for the record, I would

have just requested that permission to clarify that. Yes, he is disagreeing with that. I cannot fault him on that, but I need to explain the business of the day.

CHAIRPERSON: Please, please, please go ahead and explain.

MR MNISI: Thank you, Chair. And in this instance, I agree with the Senior Counsel that on the resolution, it is not there. I have agreed. My explanation further was that may we please, Senior Counsel, consider that with the Probity
10 report and the explanation that I have given. For the record, so it is clear that, yes, this is how we are resolving, however, that is how BAC operates and that is how we do the business of Council. And I thought it is very clear, it is very wise for me to also bring that for the Commission to understand ...[intervenes].

CHAIRPERSON: Do you mean, when you say this is how you conduct the business of the BAC, do you mean when the BAC makes resolutions, it does not include in those resolutions some of the reasons that informed the
20 resolution? So it states some, but deliberately leaves out some, or others rather. Is that what you mean when you say this is how you conduct the business of the BAC?

MR MNISI: Chairperson, yes. There is additional matters that were not raised in the Probity, but the Probity report is an attachment. So you do not disregard, we just do not

repeat them.

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: Let us look at your third additional reason:

“The specifications were silent on the PSiRA pricing guidelines that should be considered.”

So what does this mean?

MR MNISI: So what this means is that PSiRA is regulated
10 and they give pricing. So the document in its own was not clear whether that would be taken into account. Again, this was one of the additional reasons that were just brought on board, and that is what it meant.

ADV CHASKALSON SC: Why is that a material irregularity?

MR MNISI: Because this is a regulated area from a pricing perspective. So we need to be clear that we are not going to follow those potential pricing that are regulated by PSiRA.

20 **ADV CHASKALSON SC:** Sorry, you are not going to follow potential pricing that is regulated by PSiRA?

MR MNISI: The specifications were silent on the PSiRA pricing guidelines that should be considered. The document in itself and the specifications did not have a clear indication on what happens on the regulations of PSiRA and

the prices that are there.

ADV CHASKALSON SC: So what? I mean, why is that irregular? You are going to assess these bidders on price and BEE after you have excluded people who do not qualify. So you will see what the best price is and you will award to the best price. Why do you have to refer to PSiRA guidelines?

MR MNISI: It was an additional issue that was raised over and above the myriad of issues that were there. Hence at
10 that point in time it was deemed valid that when the new specifications are presented, and the reason why we bring them on board is that when the new specifications are being compiled, because this tender is being cancelled now, they need to ensure that all potential loopholes would have been covered, including these. So at that point in time this was an additional reason that was identified.

ADV CHASKALSON SC: I can understand half of that. If you are thinking ahead and you are thinking to how you want to rewrite specifications in a new bid that will come
20 out after this one is cancelled, I can understand you may want to refer to PSiRA guidelines. So that I can understand. What I cannot understand is why you regard the failure to refer to PSiRA guidelines as an irregularity that justifies cancellation of this bid.

MR MNISI: Thanks, SC. During these discussions these

were additional issues that were identified and there was a consensus and agreement amongst members of BAC, chaired by myself, that this should be highlighted as an additional matter that must be improved upon and would lead to the material irregularities and cancellation.

ADV CHASKALSON SC: I am sorry, but why is it? I mean, we have heard that answer several times now, but you have not addressed my question, which is why is it a material irregularity? What is irregular about it?

10 **MR MNISI**: It is a loophole in the specifications.

ADV CHASKALSON SC: What is the loophole in the specifications that renders this irregular?

MR MNISI: PSiRA has got strict guidelines on how much you need to pay per guard. If the document of the City is saying regardless of the strict guidelines that we have, we will accept our own prices on this matter. That was silent on the City's specification document and all this is saying is that what should have been clearly indicated, because these are specialists of PSiRA, they are aware of how the
20 industry operates, to avoid a situation where we award a bidder.

Then comes award date, he then tells us PSiRA says, you need to pay me this amount of money, these are the regulations. So it was a form of binding bidders to whatever price that they will bring on board to the City.

Because in most instances, I would suspect that the reason the City did not have or go with P*Si*RA rates is that they wanted to get cheaper prices, wanted to get a competitive bid.

So that was there to safeguard the City in the instance of that as well. But we need to be clear that when it is time for anniversary, bidders do not take us on in terms of guidelines of P*Si*RA. So this would have binded[sic] them from the beginning that you are aware, your price is
10 absolute, do not tell us about P*Si*RA now.

ADV CHASKALSON SC: So now, if I understand you correctly, what you are saying is that the bid is going to have prices in them. P*Si*RA has guidelines that may be higher than the bid prices and you were worried that come renegotiation time, or come escalation time, people would want to escalate up to the P*Si*RA maximum. Is that what the concern was?

MR MNISI: That is the concern.

ADV CHASKALSON SC: Well, first of all, I want to put to
20 you that that is not an irregularity, a material irregularity in the bid. It is not an irregularity. At best, it is a specification that you should have drawn differently. You have changed your mind on the specifications. What is your response to that?

MR MNISI: As the legal experts, I will take your assertion

on this matter, and I will agree with that. But when we looked at it at BAC, it was a necessary additional matter to bring on board as a shortcoming which would lead to that.

ADV CHASKALSON SC: But you will accept it is not an irregularity that would have justified cancelling the tender as an irregularity?

MR MNISI: I cannot accept that, Chair, because ...[intervenes].

ADV CHASKALSON SC: Let me put the proposal to you
10 this way. Assume you award the tender, and there is a losing bidder who is dissatisfied with your decision and that losing bidder goes to court and says I want to have this tender reviewed and set aside because it is silent on PSiRA pricing guidelines. Would that losing bidder succeed?

MR MNISI: If the tender was silent, well, I do not know what would have happened in the proceedings, but there could be something that might be considered.

ADV CHASKALSON SC: Why would it go to the regularity
20 of the bid that there was nothing said about PSiRA pricing guidelines in relation to the specifications in this document? Why is that an issue of regularity?

MR MNISI: SC, with your permission, on this same document, can I request that we go to page 38? It might be able to answer this question that we are raising here. Page 38, GM4.

ADV CHASKALSON SC: Sorry, page 38?

MR MNISI: Page 38 of this bundle that we are looking at, my bundle with my annexures. Page 38 of this pack that we are currently on now. Thank you, Chair. So, on page 38, what I would like to bring to the attention of the Commission is resolution number 4.

Well, it was not resolved, but this was a request from the Department. The circumstances around this was that the Department was coming to BAC. You see this
10 tender had closed. They were coming to BAC saying we want to extend this bid because the previous tender had not closed. Recommendation number 4 states that:

“They also want an approval to be granted for any envisaged price escalation subject to verifiable annual cost calculation in line with the Private Security Industry Regulation Authority, PSiRA, rates that may result from the period of appointment.”

20 So, we have seen instances of this nature when dealing with this tender. Raising that is an additional area of concern was to cover inconsistencies of this nature so that it is clear from the onset that when you apply within the City of Tshwane, you apply at your rate that you are given, you will not be giving any further motivations on PSiRA

escalations at any point in time.

ADV CHASKALSON SC: Well, that is clear from the tender document. If they do not give you a right to escalate in accordance with PSiRA in the document, then your bid is your bid. And in this case, there was no reference to PSiRA guidelines.

MR MNISI: Yes, so that was the flaw that was identified, SC, that we need to be clear, we need to be certain because even in the previous tender there was no guidance
10 provided in terms of what will happen on PSiRA rates.

ADV CHASKALSON SC: Yes, there was no guidance and so people asked for special dispensation to escalate by PSiRA and you said no.

MR MNISI: So, in some instances, they take us to court. When we say no, they take us to court. And I am aware as we speak now, there are litigations on this matter.

ADV BALOYI SC: But, Mr Mnisi, that last reason, the requirement that specifications are silent on the PSiRA pricing guidelines, I think using it as a ground for
20 cancellation, in fact, would have entitled any bidder to take you to court, that that was not one of your requirements. That is not one of the prescribed tender stipulations and it cannot, therefore, be a valid reason to cancel. I think it is simply that.

That your BAC, you being inventive and thinking we

should have had this in the first place, we should have it in the future, does not have any consequence for this bid, for the validity or regularity of this bid. In fact, you are open to being challenged. I think the City is very lucky that no bidder took you to court on this ground, that there was no such requirement in the tender, therefore, you cannot cancel on this ground. I am putting that to you as a, I want to say, as a correct position of law. That is not a valid reason to have cancelled this tender.

10 **MR MNISI**: Okay.

ADV BALOYI SC: Thank you.

CHAIRPERSON: Again, you are nodding, Mr Mnisi. Are you agreeing with the proposition by Commissioner Baloyi?

MR MNISI: I am agreeing.

CHAIRPERSON: Thank you.

MR MNISI: She is a specialist in law. I cannot.

CHAIRPERSON: Thank you.

MR MNISI: I am agreeing.

CHAIRPERSON: Thank you.

20 **ADV CHASKALSON SC**: You see, Mr Mnisi, what I want to put to you is that if we look at these three bullet points, none of them justify a decision to cancel. You have accepted that in the first one it would have been possible to, well, not it would have been possible, the BAC accepted that Probity's interpretation was right and it was possible to

go back and apply Probity's interpretation.

You have accepted in the third one it was not a ground for cancellation, and there seems to be some debate in relation to the second one, but I want to put to you that the second one in its own right is not a basis for cancellation. So we have a situation where each of the three reasons stated by the BAC and the only three reasons stated by the BAC for cancellation are bad reasons. What is your response to that?

10 **MR MNISI**: I do not agree to that. These were not the only reasons that were stated by BAC to be considered ...[intervenes].

ADV CHASKALSON SC: Sorry, let me stop you there. Where did BAC state any reasons other than these? Where in the document do you see a stated reason other than these?

MR MNISI: Commissioner, I have to expand on this, but I ...[intervenes].

ADV CHASKALSON SC: Answer the question first. If the
20 answer to the question is nowhere in the document, say that, and then we can move on.

MR MNISI: The answer to that question is yes, these are the three reasons that are mentioned. In my expanding, it is not the only reasons.

ADV CHASKALSON SC: No, no. The question is where in

the document do you see any other reasons?

MR MNISI: These are the three reasons that have been allocated in the BAC report, SC.

CHAIRPERSON: So there are no other reasons in the document?

MR MNISI: Yes, Commissioner, that is what I am saying.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: That takes me to what was going on in relation to TMPD-3 outside the official channels. And
10 if we go back to our timeline, we see that the first meeting of the BEC was 24 March. We have been there before. That is recorded in the Probity report at paragraph 54.3. The day after the first meeting, if we go to page 158 of File 3.

MR MNISI: What page is that, SC?

ADV CHASKALSON SC: 158.

MR MNISI: Bundle 3?

ADV CHASKALSON SC: Yes, Bundle 3. You will see that on the 25th of March, Sergeant Nkosi sent you that
20 document that you describe as a draft report of the BEC on this tender.

MR MNISI: Yes.

ADV CHASKALSON SC: It was a big day the 25th of March. Sergeant Nkosi, you and the General were going to meet together. Sergeant Nkosi sent you this document. He

then later sent you the document with the mandate that Victor had from Nico. And he also sent you his list of seven bidders in priority for the land tender, all on the same day. Do you recall that?

MR MNISI: I can see that.

ADV CHASKALSON SC: Let us get back to this document. Is there any legitimate basis on which Sergeant Nkosi should have access to this document?

MR MNISI: This is a TMPD, no. Permission to expand?

10 **ADV CHASKALSON SC**: Go ahead.

MR MNISI: I will be very quick. The TMPD report for 03 draft admin report makes reference to the closing register items. So on this, when I evaluated this document, there was nothing sensitive that had been done. But my answer is yes, there was no need for him to get this. He could have just got the closing register, which would have been published. It was there on the website. That would have been the best document to get.

20 **ADV CHASKALSON SC**: Yes, but he did not get that document. He got this document, which was a draft prepared by someone inside the BEC process.

MR MNISI: I cannot confirm that. I do not know where he got this document.

ADV CHASKALSON SC: Well, it was a draft prepared by someone inside the BEC process was the proposition I was

putting to you. A draft administrative report on TMPD-3 could only emerge from someone inside the BEC process. Is that not correct?

MR MNISI: It is a proposition, SC, so I am not going to disagree with you. But I do not know where this could have come from ...[intervenes].

ADV CHASKALSON SC: Who else would be preparing draft administrative reports in relation to TMPD-3?

MR MNISI: SC, I do not know. I cannot give an answer to
10 that.

ADV CHASKALSON SC: The only body that could produce draft administrative reports in relation to TMPD-3 at this stage was the BEC, surely.

MR MNISI: Okay.

CHAIRPERSON: Does the okay mean I agree?

MR MNISI: Commissioner, I do not agree. My answer is I do not know, but I am accepting the proposition that the Senior Counsel is bringing on board. I just do not want to speculate.

20 **ADV KHUMALO SC**: Which other body could have produced this report other than the BEC? Which other body? It certainly could not have been the BAC.

MR MNISI: No, it is not the BAC.

ADV KHUMALO SC: So which other body other than the BEC?

MR MNISI: I do not have the full report. I cannot see the contents of it, so it is very difficult for me to give a conclusive answer behind someone at this stage.

ADV CHASKALSON SC: Can I ask you to look at page 175 where we get past the list?

MR MNISI: Yes.

ADV CHASKALSON SC: 2.1:

“Late bids received, if applicable. No late bids received.

10 3. Pre-compliance. The following 435 bidders were evaluated on pre-compliance.”

So some evaluation has already taken place. Who does the evaluation on pre-compliance?

MR MNISI: It is blank. This means no evaluation has taken place.

ADV CHASKALSON SC: It is blank at this stage, but it says the following 435 bidders were evaluated on pre-compliance.

20 **MR MNISI**: So it is a shell. That is what they would have needed to complete once evaluation commences. If it is blank, it means the process has not started.

ADV CHASKALSON SC: It is a shell for whom?

MR MNISI: Like I said, I do not know for whom, but I am accepting the proposition that it could be from BEC.

ADV CHASKALSON SC: The proposition was not that it could be.

CHAIRPERSON: Ordinarily, Mr Mnisi, who within Tshwane would use this blank? Ordinarily, ordinarily. And please do not be cagey. Ordinarily, who would use this blank?

MR MNISI: This blank would be used by members of BEC.

CHAIRPERSON: Thank you. Yes, Mr Chaskalson?

ADV CHASKALSON SC: Anybody else?

MR MNISI: It is incomplete. I do not know. I cannot say,
10 but it looks like it could be used by that, SC. Anybody else,
I do not know.

ADV CHASKALSON SC: Well, it is not entirely incomplete, because if we see the listing, it contains 435 bidders. And pre-compliance, item 3, refers to 435 bidders. So someone has taken a template and done some change to it in relation to this bidder. You see that?

MR MNISI: They have loaded the contents of the closing register.

ADV CHASKALSON SC: Yes, they have loaded the
20 contents of the closing register and they have put it onto a template, which I am assuming is a template used by the BEC.

MR MNISI: Yes.

ADV CHASKALSON SC: Right. So, let us get back to lock and key. Despite lock and key, a document, a template that

is used by the BEC has made its way to Sergeant Nkosi.
Should that be possible?

MR MNISI: It should not be possible. The answer is no.
But these are the reasons why this tender was cancelled.

ADV CHASKALSON SC: This is not the reason why this
tender was cancelled. Nowhere in any of the reports does it
say Sergeant Nkosi received a template from the BEC and
the process was compromised. I was saying that the test of
safety and ensuring that documents were safeguarded was
10 one of the reasons why this tender was cancelled. Not
specifically that Sergeant Nkosi, but the test for documents
being kept safely was one of the reasons that were
identified.

ADV CHASKALSON SC: That is the 25th of March. You
now know that a template used by the BEC in relation to
this tender has been sent to Sergeant Nkosi. That is going
to taint the process of this tender, is it not?

MR MNISI: No.

ADV CHASKALSON SC: So then it is not a reason why the
20 tender was cancelled.

MR MNISI: The documents that were lost was the reason.
We just agreed, SC, that this was not the reason that
Sergeant Nkosi received it. We agreed on that.

MR MNISI: Yes, it should have been, but it was not.

MR MNISI: Yes.

ADV CHASKALSON SC: But you knew from the 25th of March that this was happening and that this objectively viewed would taint the regularity of this tender.

MR MNISI: I had received this. From my evaluation of the document, it contained information of the closing register which was published. There was no additional sensitive information that was brought on board through evaluating, assessing this document that I had received.

ADV CHASKALSON SC: But you knew that the obvious
10 inference to draw from the fact that Sergeant Nkosi sent you this document is that he had someone inside the BEC who was giving him documents.

MR MNISI: I did not know. I do not know where that comes from. So I did not know where he received this.

ADV CHASKALSON SC: The obvious inference to be drawn from this was that Sergeant Nkosi had someone inside the BEC who was giving him documents. Do you take issue with that?

MR MNISI: I do take. That is not true.

20 **ADV CHASKALSON SC:** What other inference could you draw?

MR MNISI: The truth of where he received this.

CHAIRPERSON: From what other source could Sergeant Nkosi possibly have received this document? Bear in mind that you have said, ordinarily, this is a document used by

the BEC. So other than the BEC, what would his source have been ordinarily, other than the BEC?

MR MNISI: Yes, Commissioner. That information is known. He received this from the General. He did not receive it from anyone in the BEC.

ADV CHASKALSON SC: And where would the General have received it?

CHAIRPERSON: Was he not a member of the BEC?

MR MNISI: No, he was not a member of the BEC.

10 **ADV CHASKALSON SC**: Well, where would the General have received it?

MR MNISI: I do not know where he would have received it, but he would have received it internally. He would have received it somewhere internally.

ADV CHASKALSON SC: Presumably from someone inside the BEC.

MR MNISI: Presumably, yes.

ADV CHASKALSON SC: Sergeant Nkosi had an indirect route into the BEC through the General. You did not know it
20 at the time, but directly or indirectly, Sergeant Nkosi must have had a route into the BEC to get into the BEC to get this document.

MR MNISI: Well, I am not sure, and I cannot comment on that. I have got no comment on that.

ADV BALOYI SC: Mr Mnisi, was this a publicly available

document?

MR MNISI: The document is in its form, no.

ADV BALOYI SC: Yes, so he did not get it properly. It was not shared with him in a permissible way, in a regular way. Surely, you must accept that.

MR MNISI: I have accepted that, Commissioner, and I have agreed to that.

ADV BALOYI SC: Yes, that is a simple proposition that has been made to you.

10 **MR MNISI**: Yes.

ADV BALOYI SC: That Sergeant Nkosi had possession to a tender-related document that he should not have had. That is a simple proposition that has been made. You must accept that.

MR MNISI: Commissioner, I have accepted that.

ADV BALOYI SC: Okay.

MR MNISI: But if you had listened to the discussions, the inference was that Sergeant Nkosi received it from BEC directly. So ...[intervenes].

20 **ADV BALOYI SC**: I am reformulating. Sergeant Nkosi had access to a tender-related document that should not have been in his possession. You accept that?

MR MNISI: I have accepted that.

ADV BALOYI SC: And that suggests, or at least on the face of it, is a corruption already of the tender process. It

is being muddied. Do you accept that?

MR MNISI: No.

ADV BALOYI SC: That a tender document that is internal of an incomplete tender assessment process is sitting with a member of the public, because that is what he is. It is sitting with a member of the public. That is problematic for that tender process. No?

MR MNISI: Commissioner, I do not accept that, with all due respect.

10 **ADV BALOYI SC**: Okay, explain.

MR MNISI: The content of this report that is here does not contain any sensitive information whatsoever ...[intervenes].

ADV BALOYI SC: No, it does not matter. From my question, it does not matter whether it contains sensitive information or not. It is a tender document, or a tender-related document. As a matter of policy, it should not be outside of the municipality.

MR MNISI: I agree to that, yes.

ADV BALOYI SC: That it is outside of the municipality with
20 a member of the public in itself is an irregularity. You must be able to accept that.

MR MNISI: I would agree to that.

ADV BALOYI SC: Thank you. That is all I am checking with you. Thank you.

ADV CHASKALSON SC: But you did not take any steps

upon being made aware of this irregularity, did you?

MR MNISI: Indeed, again, I assessed the content of the document. The document, from my perspective, did not need me to take any further steps. The sort of information that was readily available to the public, upon my receiving of this document, did not contain anything sensitive or confidential. There was nothing for me to raise.

ADV CHASKALSON SC: But there was something for you to raise. It was that a document, internal to the City,
10 relating to this tender process, had made its way to Sergeant Nkosi.

MR MNISI: From my perspective, all I need to do is safeguard the procurement process, as I previously stated. In this instance, I assessed that the document that was received, it did not contain any sensitive information in terms of the evaluation process in its entirety. Hence, I felt there is no need for me to escalate this any further. I do not have any conclusive evidence on any leak at this stage in time, but I do agree this is a leaked draft administrative
20 report. It does not contain anything sensitive or confidential. I had nothing to report.

ADV CHASKALSON SC: Did the Probity report pick up that this document had made its way to Sergeant Nkosi?

MR MNISI: I am not certain if those are one of the reasons that were provided.

ADV CHASKALSON SC: If we go to the document, I think you will accept that it did not.

MR MNISI: It did not specifically say that Sergeant Nkosi received this, no.

ADV CHASKALSON SC: It did not specifically speak of leaking of any documents to members of the public, did it?

MR MNISI: No.

ADV CHASKALSON SC: So the Probity report was unable to pick up the leak of this document to members of the
10 public?

MR MNISI: No, it was unable to. It did not focus on that.

ADV CHASKALSON SC: So the Probity report did not have mechanisms that enabled it to identify potential leaks of information?

MR MNISI: This was a closing register, firstly. There is no sensitive information that is contained in this. And as far as I am concerned, there are sufficient processes that I have designed by the Probity Teams to test any potential leaks within the system.

20 **ADV CHASKALSON SC:** But they did not pick up this one?

MR MNISI: As far as I am concerned, the processes and systems are there.

CHAIRPERSON: At this point, Mr Chaskalson, I think we should take the adjournment. Let us adjourn and resume at quarter to 12.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: Chair, my learned friend has indicated that she would like to address the Commission.

ADV VAN DEN HEERVER: Chairperson, Commissioners, thank you for the opportunity. As a legal team we want to address you very briefly on the following. And what we say, we say with the utmost respect to yourselves, to my learned
10 friend and to the work that you do. We believe that to put to the witness that he is wasting time of the Commission by the manner in which he answers is unfair to the witness.

And to edit his responses is equally unfair at the end of the day. Of course, you are entitled to agree as Commission or disagree with what he says and that is accepted. I think Chairperson or Chairperson Baloyi, you indicated that the only person of the BAC that is here today that can comment on the workings of the BAC is the witness. And yet we see that he is not given, in our
20 respectful opinion, proper time to answer and explain what actually happened during the deliberation to come to this decision. None of us were there.

The only person, you are correct, that were there that can enlighten us on the process and the reasoning and what transpired is indeed the witness. And we respectfully

request that he be given an opportunity to explain why he answers in the way or to allow him to answer the questions in the manner that he believes is a way in which he can convey to the Commission what transpired. Thank you very much.

CHAIRPERSON: Can you please, Ms Van Den Heever substantiates the point that says Mr Mnisi's responses should not be edited?

ADV VAN DEN HEERVER: Edited in the sense that he is
10 cut off. He starts to provide an answer and then he is cut off. Very often, again with greatest of respect Commissioners, we were all in practise or some of us are still somewhere. It is very difficult when one tries to convey something and when one is cut off. Sometimes it influences your thought process, it makes you lose your trail of thought. And it is something I think one should be mindful of when it happens. So, again, what we place on record, we place on record with the greatest of respect to yourselves and to the work that is being done. Thank you very much.

20 **CHAIRPERSON:** Thank you. Thank you very much, Ms Van Den Heever. I will not invite a response from you, Mr Chaskalson, because this is directed at us. Your first point is that it is unfair to say that Mr Mnisi is wasting time. I think there is a nuance on that. I did not put it like that. It was in the context of Mr Mnisi wanting to explain. And I

immediately said, before anything else I said, I immediately said, Mr Mnisi, I am going to allow you to explain but let me make this comment.

I said, in basically all your responses, you explain. And you do that even in instances that patently or objectively show that there is no need for an explanation. I am retired now, but I was a practitioner for a number of years. And I will tell you this, as a practitioner, unfortunately as a judge, for the better part of my life as a
10 judge, I sat at an Appellate Court, so I did not again experience issues of questions, responses, and proper responses, improper responses.

But I did practise for a number of years, and I will tell you this. And I would be surprised if you will not agree with me, that there are questions that do not require explanations. I would be surprised if you disagree. And with those questions, explanations do not then become necessary purely because a witness thinks that they must explain.

20 If objectively the question does not require an explanation, it does not. And the answer to that cannot depend on what a witness thinks or how a witness feels. And then my mention of time was in that context. The context that it cannot be that all the time you must explain. So, all I did in that context, and having said short of the bit

about experience and practise and so on, having explained to Mr Mnisi that it cannot be that you must explain all your answers, it was in that context that I then made the point, we have limited time.

When I started, I referred to a nuance. It may be a distinction that lacks a difference, but I think I did not quite say you are wasting our time. So, it was in the context of what I have just explained that I then said, we have limited time. And I will say this, I am not going to, I understand
10 where you are coming from, but I will never agree that Mr Mnisi will be given a free hand to explain even where that is not necessary.

But I agree and I will be the first person that allows him to explain when that is necessary. And most times in fact, because he has been explaining since the probing questioning started, he has been explaining basically on each and every response. And we were patient with that. But at some point, or rather we must reach a point at which we say to him, Mr Mnisi, you cannot explain each and every
20 response you give.

And I do not think there is anything wrong with that. If you say there is, as I said earlier on, I would be surprised. Let me move on to your point about editing responses, which you explained by saying that we should not cut off Mr Mnisi. There again, I think much, much

leeway has been given to Mr Mnisi. But there are times when you will ask a question and from the moment, he opens his mouth, you see that the response he is beginning to give has nothing at all to do with the question that is being asked.

So, must we listen, keep quiet, whilst Mr Mnisi is going on and on and on about a response that has nothing to do with the question? But there again, as I say, we have given Mr Mnisi leeway. And I doubt that we have given any
10 other witness as much leeway as we have given Mr Mnisi. Lastly, you say that he was not given sufficient time to explain what transpired at the adjudication process.

And I did not finish my note here, but I think you were saying that you are asking that consideration be given to all of the issues that you have asked. There again, to the extent that perhaps you felt that he was not given sufficient opportunity, from where I am sitting, he gave lots and lots of responses with regard to this subject, going on to even say that there were additional reasons that informed
20 the resolution that was made in the end, and a whole lot of other substantiation.

I am not sure. I am not sure that he was shortchanged on that. But more importantly, I think, to the extent that you feel that he was shortchanged, you have the right to re-examine and traverse whatever ground you feel

ought to have been traversed, insofar as he may have been shortchanged.

ADV VAN DEN HEERVER: Thank you, Chairperson.

CHAIRPERSON: Thank you very much, Ms Van Den Heever. Mr Chaskalson.

ADV CHASKALSON SC: Thank you, Chair. Mr Mnisi, we had been discussing TMPD3 and the document that Sergeant Nkosi WhatsApped to you on the 25th of March. Do you know who the late Mr Msibi was?

10 **MR MNISI**: I know him. I do not know him.

ADV CHASKALSON SC: Sorry, do you know who he was?

MR MNISI: I know - I have read about him in newspaper articles. I know who he was.

ADV CHASKALSON SC: Right, you did not personally have a relationship with him?

MR MNISI: No, no, no. Not a personal relationship.

ADV CHASKALSON SC: Did you know that Sergeant Nkosi had a close personal relationship with the late Mr Msibi?

20 **MR MNISI**: No, I was not aware he had a close personal relationship. I was aware that they knew each other.

ADV CHASKALSON SC: I see. And in his evidence, Sergeant Nkosi referred to someone who he saved in his WhatsApp's as Mampane Taxi Man, and he described this person as the right-hand man of Mr Msibi. Have you any knowledge of Mampane Taxi Man, Mr Mampane, who is

someone communicating with Sergeant Nkosi?

MR MNISI: No, SC, I do not know who is that.

ADV CHASKALSON SC: You have never encountered any reference to Mr Mampane?

MR MNISI: I do not know who is Mr Mampane, and I have never met Mr Mampane.

ADV CHASKALSON SC: You see, the evidence of Sergeant Nkosi was that on the 30th of April 2025, remember, he sent you the TMPD3 draft report on the 25th of April, sorry, the 25th of March 2025, and then on 30 April 2025, he sent the same document to Mr Mampane. Were you aware of this?

MR MNISI: No, I was not aware of that.

ADV CHASKALSON SC: And the evidence of Sergeant Nkosi was that shortly after receiving this list, still on the 30th of April, Mr Mampane wrote back, WhatsApp back, saying, and I quote:

20 “*Boetie*, please let him say no to that appointment. *Boetie*, please let him say no to that appointment.”

Did Sergeant Nkosi ever speak to you about the TMPD3 tender?

MR MNISI: No.

ADV CHASKALSON SC: So, he sent you that draft report, and then never mentioned it again?

MR MNISI: Never mentioned it again.

ADV CHASKALSON SC: Never again?

MR MNISI: Never again.

ADV CHASKALSON SC: I see. But the BAC you chaired ended up cancelling that tender?

MR MNISI: Ended up cancelling the tender in line with the reasons that I provided.

ADV CHASKALSON SC: Yes, well, we have seen the reasons in the resolution, and I have already put to you that
10 none of the three reasons in the resolution justify cancellation of the tender.

MR MNISI: The BAC said, took into account, in the resolution we referenced the probity a number of times. That gives consistency that the probity report is part and parcel of the key reasons why we cancelled the tender.

ADV CHASKALSON SC: Yes, we have gone uphill and downhill on that front. My proposition stands that none of the three reasons given for cancellation in the resolution justify cancellation. And so, we have a situation where
20 Sergeant Nkosi is asked by Mampane, taxi man, to, quote:

“Let him say no to that appointment
under TMPD3.”

And then a BAC that you chair cancels TMPD3 so that there is no appointment and does so in terms of a resolution which gives three reasons for cancellation, none of which

justify cancellation. Do you have a comment on that?

MR MNISI: Yes, I do, SC, I respectfully disagree with that. I had indicated clearly that the probity report is a critical document that was considered by the BAC in terms of cancelling that. And I further disagree with the notion that I had any knowledge of whatever discussions were occurring between Mr Mampane or Sergeant Nkosi.

ADV CHASKALSON SC: Let us get to a different topic now. Can I ask you to go to page 131 in file 3? Sorry, 127.

10 Let us start with 127. Do you have 127?

MR MNISI: I have got page 127 within my bundle, third bundle.

ADV CHASKALSON SC: That is correct. And at the foot of page 127, you send Sergeant Nkosi a picture or screenshot that says:

“Collecting my weapons.”

It is a screenshot from a chat with someone who is described as Ntando Mfowethu. And lower down, there is another screenshot of the back of a man holding two
20 weapons, two rifles that look like automatic rifles to me. Who sent you these pictures?

MR MNISI: These are pictures that I saw from the status of a friend.

ADV CHASKALSON SC: Sorry, these are pictures that you have got?

MR MNISI: These are pictures that were sent from the status of a friend.

ADV CHASKALSON SC: From the status of a friend?

MR MNISI: Yes.

ADV CHASKALSON SC: Which friend?

MR MNISI: I do not recall which friend it was.

ADV CHASKALSON SC: You do not recall the friend whose status this was?

MR MNISI: No, the status is clear. The status is
10 Mfowethu.

ADV CHASKALSON SC: Sorry, I think I am mishearing you. Can you repeat? You got these pictures from where?

MR MNISI: I think it was clear, and you are aware of the details, that these were forwarded messages.

ADV CHASKALSON SC: Yes, they are forwarded messages, yes.

MR MNISI: So, these were forwarded messages from a friend of mine. And these were weapons that I like shooting, as part of my socialising that we normally do with
20 Sergeant Nkosi. These are weapons that I wanted to try out as well.

ADV CHASKALSON SC: So, you are saying that these were pictures of weapons that a friend sent to you, that were forwarded to you by a friend who presumably knew that you liked shooting?

MR MNISI: Yes.

ADV CHASKALSON SC: I see. And was that friend in Ntando Mfowethu?

MR MNISI: No, no, it was not him. It was a forwarded message.

ADV CHASKALSON SC: I see. Underneath those pictures, at the top of page 130, you message Sergeant Nkosi saying:

“They say he is coming for me *boet*.”

10 Who was coming for you?

MR MNISI: Chair, like I said, the content of this was me trying, making use of these weapons in our next shooting expedition. This was just me and Sergeant Nkosi saying, this was me expressing to him that I want to try out these weapons. No one was coming for me.

ADV CHASKALSON SC: Was it an autocorrect error?

MR MNISI: No, I am not saying it is an autocorrect, I am saying no one was coming for me. I do not recall the details of this discussion in particular, but what I want to
20 put to Commission is that the contents around our discussion was that these were weapons that I had seen, and I wanted to try them out after they had been sent to me.

ADV CHASKALSON SC: So, you see a picture, can you identify the man in the Vuitton 00 T-shirt that we see at page 129?

MR MNISI: No, I cannot see who is that.

ADV CHASKALSON SC: So, you see a picture of a man holding two automatic weapons. You message Sergeant Nkosi saying:

“They say he is coming for me *boet*.”

But you cannot remember who you were referring to.

MR MNISI: Chair, like I am saying to you, the content of this discussion was for me to try out those weapons. I do not really recall what was happening on that, but that was a
10 discussion that was having with Sergeant Nkosi. That I need to be ready, I need to be able to use weapons in whatever competition that I want to attend in the near future. I need to be certain that I am able to utilise these weapons accordingly. I love shooting.

ADV CHASKALSON SC: Sergeant Nkosi thought that you were referring to someone in particular because he responds back saying:

“He will not stand a chance.”

MR MNISI: Yes.

20 **ADV CHASKALSON SC**: But you were not referring to anybody.

MR MNISI: No, Chair.

ADV CHASKALSON SC: You spoke earlier about the removal of your security by I think it was Officers Nkomo and Mabunda of the TNP. You said that is why you asked

Sergeant Nkosi who they were.

MR MNISI: Yes.

ADV CHASKALSON SC: And you stated then that your security was removed in December 2024.

MR MNISI: Roughly in December 2024, yes.

ADV CHASKALSON SC: What security arrangements did you make following the removal of your security?

MR MNISI: I did not make any additional security arrangements. From a time-to-time basis, when I had to go
10 to various events, I would ask Sergeant Nkosi to accompany me. What I had done is requested him for services of a driver.

ADV CHASKALSON SC: Services of a driver?

MR MNISI: Of a driver. He recommends me someone who can help me with driving.

ADV CHASKALSON SC: No one other than a driver?

MR MNISI: Ad hoc. Sometimes we travel far and I would see that the driver gets tired and I would need to drive. So sometimes I would say, please beef up, I need an additional
20 individual so they can exchange between themselves when driving. Because I did not want to drive.

ADV CHASKALSON SC: And this was just driving it was not security?

MR MNISI: No, it was driving ad hoc, various places.

ADV CHASKALSON SC: Well, let us test that proposition.

Can you go to page 97? There you text Sergeant Nkosi and you say:

“Something is off with Bonkosi today.”

MR MNISI: Yes.

ADV CHASKALSON SC: Who is Bonkosi?

MR MNISI: The driver, my driver. My driver.

ADV CHASKALSON SC: The driver, right. And how long did you engage Bonkosi through Sergeant Nkosi?

MR MNISI: From this point it was from December.

10 **ADV CHASKALSON SC**: For how long did Bonkosi stay?

MR MNISI: From December, so at this stage it was about one month.

ADV CHASKALSON SC: No, my question is different. How long did Bonkosi stay as your driver?

MR MNISI: So, maybe just to add some context, he was not permanent. It was an ad hoc arrangement where I would need him. I was driving myself, Chair. On certain instances where I would need him to assist me, he would come by and drive me. So, it was not something that was a
20 permanent arrangement. I would utilise him in some instances for three to four days in a month, some instances ten days in a month. So, it was not a permanent arrangement. It was as and when I required the need, Bonkosi would come and I would pay Bonkosi from myself.

ADV CHASKALSON SC: And how long did that ad hoc

arrangement last? When did you stop engaging Bonkosi or do you still engage him?

MR MNISI: Roughly, at this point it stopped until about September-ish. I do not call the exact date, but on an as-and-when basis he still drives me.

ADV CHASKALSON SC: So, you say it stopped in September but on an as-and-when basis he still drives you?

MR MNISI: Yes, when I need him. But he stopped in September, I drove myself I think for about two months on
10 my own, and I started requesting him to drive me again sometimes from the beginning of this year. So, there was a break.

ADV CHASKALSON SC: And Sergeant Nkosi put you in touch with Bonkosi?

MR MNISI: Yes, yes, he did.

ADV CHASKALSON SC: And he was just a driver, not a security?

MR MNISI: Just a driver, Chair, he did not assist me with anything else.

20 **ADV CHASKALSON SC:** I see. So let us see what you say to Sergeant Nkosi at page 97:

“Something is off with Bonkosi today.

First, he is 30 minutes late when he picks me up. Second, he misses an off-ramp from the airport. Just informing you,

keep it between us, do not act yet.”

What action were you contemplating that Sergeant Nkosi might take?

MR MNISI: He needs to scold him, Chair. I mean how does he pick me up late? So, he needs to scold him. He allocated me this guy, he told me he is responsible, told me he is trustworthy. So, the first point of me picking this up, before me addressing him directly is, Sergeant Nkosi, you recommended a guy to me that you said was responsible.

10 Picking me up at the airport is irresponsible. So, you deal with it first, before I take action on my behalf. That was the point of that.

ADV CHASKALSON SC: So, you understood Bonkosi at some level to answer to Sergeant Nkosi?

MR MNISI: Well, he introduced him to me. He indicated to me that he is responsible. I am not saying he had to answer to him, but he is the one that recommended him for the job.

ADV CHASKALSON SC: But if he was not responsible for
20 Bonkosi, what role would he have in disciplining or chastising Sergeant Nkosi - Bonkosi?

MR MNISI: Well, he introduced him to me. So, he needs to be there to provide guidance when there is anything that goes wrong. Because the next action for me was to fire him and get someone else. So, I always give people an

opportunity, Chair. It is a fair opportunity that you need to give everyone. Could have been an honest mistake on that particular day. So, the individual who introduced him to me needs to address the matter.

ADV CHASKALSON SC: Well, why do you not address it directly with Bonkosi? He is the one ...[intervenes]

MR MNISI: Yes. So, at that point in time, there was no need for me. That was the first instance.

ADV CHASKALSON SC: Yes, but if it is the first instance,
10 why must Sergeant Nkosi address it rather than you? I mean, you sit in this man's car for large parts of the day, do you not?

MR MNISI: He drives my car. He sits in my car.

ADV CHASKALSON SC: You sit in your car being driven by him.

MR MNISI: Yes.

ADV CHASKALSON SC: You have the opportunity to raise complaints with his service.

MR MNISI: At this point, I give individuals the opportunity
20 to say, like I said, this is how I deal with individuals. This is how I deal with potential areas of conflict. Whoever introduced me to him needs to address the matter. I mean, it is a fair opportunity. Because my next action from there is the second opportunity, and most likely I will need to dismiss the individual. So, it is how I do things. It is my

way of managing people. It is how I just operate from a people management perspective.

ADV CHASKALSON SC: So, you were giving Sergeant Nkosi an opportunity to chastise Bonkosi because, absent that, you would have to dismiss him?

MR MNISI: To scold him. He needed to scold him.

ADV CHASKALSON SC: You did not want to scold him?

MR MNISI: At this point, there was no need for me. It is the first instance. When I intervene, I need to intervene
10 with decisive action. I am not just going to scold someone. I am going to be at a point of saying, this happened on this occasion, on this occasion this happened, this arrangement is not working. I think we should part ways. That is how I do things, SC.

ADV CHASKALSON SC: Well, let us look at how the chat progresses. 10:56, you say:

“We travel this road too much for him to miss an off-ramp. I am just being cautious.”

20 What do you mean by that?

MR MNISI: He was off, Chair. I mean, how do you miss an off-ramp that you travel so often? You know where you are going. How do you miss that? You are off. It means you are not concentrating. It means your mind is preoccupied with some other issues. Potentially, my life is not safe. If

someone is driving me and is not concentrating, cautionary measures must be applied. I could be involved in an accident.

ADV CHASKALSON SC: And you are not the one to take those measures yourself. You are not to say to him, Bonkosi, you have just missed that off-ramp. What is going on here? Focus.

MR MNISI: Chair, like I said, how I manage instances of this nature, I allow people a fair opportunity. It was the first
10 time this was occurring I had raised it to the individual who introduced him to me. I have done this on some other occasions as well.

ADV CHASKALSON SC: So, the opportunity you are giving is to Bonkosi?

MR MNISI: No, Chair, I do not understand you, SC.

ADV CHASKALSON SC: You said you allow people the opportunity. I am just trying to understand who is getting the opportunity here. Is this Bonkosi being given an opportunity by you because this is the first time he is
20 messed up?

MR MNISI: Indeed.

ADV CHASKALSON SC: And how you give him that opportunity is you tell Sergeant Nkosi to reprimand Bonkosi rather than reprimanding him yourself.

MR MNISI: Because he introduced him to me and he told

me he is a responsible individual, there was a massive element of irresponsibility in this case.

ADV CHASKALSON SC: Well, let us see how the chat progresses. Sergeant Nkosi says:

“Okay, please call me when you are alone.”

That is at 10:57 message time, 12:57. That is after your message at a minute previously. There is then a call, in the same minute as Sergeant Nkosi has said, please call me
10 when you are alone. And a minute later, you say to Sergeant Nkosi:

“I am going to release him the minute we get home, my brother. Is that fine?”

So, what happened to giving Bonkosi the opportunity?

MR MNISI: No, releasing him to go home. He is not fired. Releasing him does not mean he has been fired. For the rest of the day, I will drive myself moving forward. So, he can go home. As I said, this is as and when, it is not a permanent arrangement. Pick me up from the airport, drop
20 me off at home. From there, you can go home. I am finding my own, I will deal with my own duties for the rest of the day.

ADV CHASKALSON SC: And that comes after a ...[intervenes]

CHAIRPERSON: Oh, sorry, Mr Chaskalson. May I get an

idea where this is taking us?

ADV CHASKALSON SC: It is taking us to the relationship with Sergeant Nkosi. And it is taking us to the relationship with Sergeant Nkosi. And to the witnesses' failure to disclose the full extent of that relationship.

CHAIRPERSON: Okay, all right. Thanks.

ADV CHASKALSON SC: You say:

“I am going to release him the minute we get home, my brother. Is that fine?”

10 And Sergeant Nkosi says:

“Not now. Just finalise all your today's meetings and tomorrow you will decide. It must not be obvious to enemies that bodyguard was for only December. Let us confuse them for two or three days. It is your call, Mfowethu.”

So, Sergeant Nkosi regards Bonkosi as a bodyguard, does he not?

MR MNISI: That is what he says, yes.

20 **ADV CHASKALSON SC:** And why would he think Bonkosi is a bodyguard when all you have asked for is a driver?

MR MNISI: Well, I am not going to comment on why he wrote that up. I have asked for a driver, he was my driver. You can see the contents of our discussions is that of an individual who is driving me. If it is a bodyguard, there

would be no reason for me to even release him. Also, to be quite frank, a driver cannot be a bodyguard because he is concentrating on driving. How is that guy safeguarding my life if he is focussing on driving and concentrating on the road? So, I requested him for the service of a driver and that is how I viewed that request.

ADV CHASKALSON SC: So, Sergeant Nkosi clearly regarded Bonkosi as a bodyguard. He was speaking of enemies and enemies needing not to know that you would
10 be without a bodyguard after December.

MR MNISI: I cannot comment on Sergeant Nkosi's message. I can comment on what I requested for, what this relationship was about and how I understood it at the time of request and how I still understand it now, SC.

ADV CHASKALSON SC: So, your response to Sergeant Nkosi, immediate response:

“Okay, my brother, in order.”

So, he is saying:

20 “Let us confuse your enemies for two or three days. It cannot be obvious to them that the bodyguard was only for December.”

And your response is:

“Okay, my brother, in order.”

It is not, what are you talking about?

MR MNISI: For me, what was in order was not to release him for the day, let him continue driving me. Sergeant Nkosi was probably thinking for me that I probably had travelled late, I was on a flight, I must be tired. So why would I start driving myself now if I already had him for the day? My understanding and my response of saying, okay, my brother, that is in order, was purely meant at the advice that he was saying, no, finalise your duties for the day and then you can decide what to do.

10 **ADV CHASKALSON SC:** So, the reference to bodyguard and enemies was just a bizarre suggestion of Sergeant Nkosi. You did not know what he was referring to?

MR MNISI: No, Chair, I did not know what he was referring to. I focused on the contents of why I had engaged him and the advice that he was providing me, and that advice was just finish what you have to do for today, then you can release him if you want. That was relevant for me.

ADV CHASKALSON SC: Let us go down to page 287. Top of page 287, on the 17th of May, 06:58 pm, 08:58 actual
20 time, Sergeant Nkosi calls you and says:

“Mfowethu, how is it? I am told tomorrow you have got a trip. I am arranging extra personnel.”

Is he not arranging security personnel for you?

MR MNISI: It is an additional driver so drivers can swap.

Remember I indicated that I do not prefer a driving Chair. So, when a driver gets tired, instead of me taking over the wheel, I prefer someone else take over the wheel and proceed with the trip. I prefer not to drive at all. I had noticed that when it is just Nkosi and myself, I would see that he is tired throughout the driving process. Of course, then we have to swap. There was a major inconvenience for me. I do not like to drive. Hence, I said it was preferable to bring someone else so that they can exchange
10 between themselves so I can sit back and do what I normally do.

ADV CHASKALSON SC: Let us go to page 307. You say at 06:33 message time:

“Can you help me with a beef-up tomorrow, my brother? I need Bonkosi to drive the madam to Sosh tomorrow, May about 11.”

Is Sosh Soshanguve?

MR MNISI: Yes.

20 **ADV CHASKALSON SC:** And he says:

“Okay, cool, on it. Two guys will do, or more.”

ADV CHASKALSON SC: Why would you need more than two people to drive to Soshanguve?

MR MNISI: All right, I think you need to understand Chair

that if you were to drive the madam, they need to drive on their own. I am not going there. I had other responsibilities to do. So, if you bring two people, the other must drive with me, while the other one drives the madam. That is why you need two or more people.

ADV CHASKALSON SC: Why would you ever need more than two?

MR MNISI: If it is a long trip, Chair. Sometimes if it is a long trip, you need more than two.

10 **ADV CHASKALSON SC**: From where?

MR MNISI: It depends. Could be from Joburg to Nelspruit. But in this instance, the more than two, was it one, would continue driving the madam, while the others would drive me.

ADV CHASKALSON SC: So, what trip were you talking about? Where was the madam? What was the trip that involved the madam going to Soshanguve? Where was she starting?

MR MNISI: Chair, that is a private and confidential matter.
20 So I will not answer that question with all due respect.

ADV CHASKALSON SC: No, no, it is not a private and confidential matter. It is testing what seems to be a very implausible answer to a question that I have put to you under oath.

MR MNISI: For me, answering where an individual was

driving the madam, was driving her to Sosh.

ADV CHASKALSON SC: To Sosh, from where?

MR MNISI: From Joburg.

ADV CHASKALSON SC: You need two drivers, more than two drivers, to drive from Joburg to Soshanguve?

MR MNISI: So, the other would drive me.

ADV CHASKALSON SC: To where?

MR MNISI: To the office and all my other responsibilities, Chair.

10 **ADV CHASKALSON SC:** Yes, we have got two drivers now. We have understood that there is a need for two drivers. Why do you need more than two drivers?

MR MNISI: Because one would be driving the madam, and two would continue to drive me.

ADV CHASKALSON SC: To drive you back and from the office, you need two drivers.

MR MNISI: Not only for the office. What if I was going to a trip outside the province?

20 **ADV CHASKALSON SC:** You see, Mr Mnisi, what I want to put to you is that your answers on this line are actually false, and that it is quite clear that Sergeant Nkosi was providing protection for you.

MR MNISI: Okay.

ADV CHASKALSON SC: What is your response to that?

MR MNISI: I disagree with that. He was not providing

protection for me. I did not pay him in any instance or any form. I would pay the individuals that he would allocate or recommend to drive me on an as-and-when basis. So, I completely disagree.

ADV CHASKALSON SC: We are not talking about payment at the moment. We are talking about whether these individuals were providing security to you.

MR MNISI: From my understanding, these are driving services.

10 **ADV CHASKALSON SC**: And when he refers to enemies and bodyguards, he is just got it wrong.

MR MNISI: He will need to answer that for himself, Chair.

ADV CHASKALSON SC: I see. When you were asked in paragraph 2.5 of the Regulation 10(6) notice:

20 “Have you received any payment or benefit from Sergeant Nkosi, whether directly or indirectly? Please also address whether you received payment from a third party through Sergeant Nkosi.”

Your response mentioned:

“I have not received any payment or benefit, either directly or indirectly, from Sergeant Nkosi. I further confirm I have not received any payment or benefit from

a third party from Sergeant Nkosi. I do, however, wish to state that on a few occasions, Sergeant Nkosi accompanied me to meetings and/or gatherings because I felt unsafe or vulnerable, purely as a friend. I never perceived or understood him accompanying me to be a benefit of sorts for either of us.”

Do you recall that?

10 **MR MNISI**: Yes, that is my statement and that is what I provided to the Commission.

ADV CHASKALSON SC: So, there were occasions where you needed security. You felt unsafe.

MR MNISI: He is a friend. He has got a physical presence. So, if I go with a friend with a physical presence, I feel a bit safer.

ADV CHASKALSON SC: But you did not see fit to mention that he had provided people who he described as bodyguards to you.

20 **MR MNISI**: I had to provide a sworn statement of my understanding as per my request to him. I cannot provide a statement on what he might think of situations. As per my sworn statement, Chair, is that he provided me with a driver and I do state that in my sworn outfit of it and I further go on to disclose to the Commission that there are some

instances as well where Sergeant Nkosi himself would go with me, but not the people.

The people are something completely different because I pay those from my own pocket, where he himself comes. I view that as a possibility of being viewed as a benefit. However, I am clarifying that there was no financial exchange so there is no benefit that he obtains, number 1. Two, he is a friend. We socialised with a number of activities together and I disclosed that as far as I
10 could to the Commission.

ADV CHASKALSON SC: Let us look at other aspects of your relationship with Sergeant Nkosi. Can we go to page 100?

MR MNISI: Page 100, yes.

ADV CHASKALSON SC: 11th of January. Actually, 06:17 am message time, 08:17 am actual time. You message him:

“Off on an urgent meeting in Durban, we will be back later today, just an in and out. Morning, my brother, go well...”

20 He responds. You say:

“Cross your fingers, Mfowethu, going for a massive business deal that side.”

Do you recall what the business deal was?

MR MNISI: Yes, it is a personal matter that I had to go to.

ADV CHASKALSON SC: Yes, well, can you tell me what it

involved?

ADV VAN DEN HEERVER: I am going to object to my learned friend's line of questioning. The meeting is private and confidential and if my learned friend's case is that it is relevant to the work of the Commission, I would respectfully request that he motivates why this is relevant to the work of the Commission. Thank you, Chairperson.

ADV CHASKALSON SC: It is relevant to the work of Commission because Sergeant Nkosi's answer is:

10 “My man, I am crossing my fingers. I
 know when you grow, I will grow too.”

I stand by the question, Chairperson.

ADV VAN DEN HEERVER: I respectfully stand by the submissions that I made in this regard. To disclose here his private financial or business affairs with respect is not part of the work of the Commission.

CHAIRPERSON: Mr Chaskalson, without more, my inclination is to disallow the question.

ADV CHASKALSON SC: Chair, I will not persist then.
20 What did you understand - well, my next question then is, did Sergeant Nkosi know that you were talking about a private business deal?

MR MNISI: Of course. Yes, SC he did know.

ADV CHASKALSON SC: And his response is:

“I know when you grow, I will grow too.”

MR MNISI: He is happy for me. If he gets a promotion at work, I am happy for him. Friends being happy for each other when there is growth in their respective lives.

ADV CHASKALSON SC: I see.

ADV BALOYI SC: No, Mr Mnisi, that is not what that message is. You can read it and consider it again. That response that says, when you grow, I will grow too, it is clear that he is saying your growth will lead to his own growth. That is what that message says. So do reconsider
10 your answer.

MR MNISI: No, Commissioner, respectfully, I do not reconsider my answer. I read this message, I understood this message to mean, I am happy for you, my friend, in the same way I would say to him as well. It is a form of expression where deep friendship puts Sergeant Nkosi. So, I respectfully stick to the answer that I have given. I read this message, I understood it, that he is happy for me.

ADV BALOYI SC: He is not just happy for you he says your growth will lead to his own growth.

20 **MR MNISI**: Yes.

ADV BALOYI SC: You cannot say your answer therefore - your answer cannot be that when I succeed, he congratulates, and when he succeeds, I also congratulate. The message does not convey that. The message conveys on its own terms. It conveys that whatever growth you are

going to be reaping from this business, big business deal that you are going for, he knows that that growth for you will lead to his own growth. That has nothing to do with his employment. There is a clear relationship that he is creating. You may want to say he had no business to create a relationship, but the text creates a relationship. That you must accept ...[intervenes]

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

ADV BALOYI SC: No, I am asking the witness a question,
10 and the witness can answer, and if you want to re-examine, you can do that, but I will not allow you to interfere with my question. And if the witness does not want to answer, that is it, that is his answer. But I must insist the witness must answer my question. Mr Mnisi, answer my question.

MR MNISI: Commissioner, I respectfully disagree with you. I understood this message, to be a friend, happy for a friend, even says:

“Phakama mfwethu ixesha lifikile.”

That for me, the guy was happy for me. That is how I
20 understood the message at the time. That is how I still understand it now, and that is the answer I am providing to you as a commissioner.

ADV BALOYI SC: Thank you for your answer.

ADV CHASKALSON SC: And we have already established that you had a very close relationship with Sergeant Nkosi.

MR MNISI: Very close, yes.

ADV CHASKALSON SC: He described you in his New Year's message, I think we may have been there, as he says:

“Compliments my brother indeed, in you I found a true brother.”

MR MNISI: What page are we on, SC?

ADV CHASKALSON SC: I am on page 96.

MR MNISI: 96. Yes, I see that. It is preceded by me
10 sending him a message first.

ADV CHASKALSON SC: Yes.

MR MNISI: Yes.

ADV CHASKALSON SC: And then 281, in July, he says:

“Good evening, my brother. Remember, you are my brother forever.”

And you respond:

“Good morning, Mfowethu, I know my brother.”

Some thank you emojis.

20 **MR MNISI**: Spot on.

ADV CHASKALSON SC: So, a brother forever.

MR MNISI: Yes, we are friends.

ADV CHASKALSON SC: Now, I want to go back to huffing and puffing, because you have this incredibly close relationship, but essentially you are telling this Commission

that to someone who you regarded as a brother forever, you were willing to create the false impression that you were going along with his requests to appoint Ngaphesheya and Elshadai, despite the fact that you had no intention of doing that whatsoever.

MR MNISI: Spot on.

ADV CHASKALSON SC: So, you were misleading him in relation to your texts to him on Ngaphesheya and Elshadai on your version.

10 **MR MNISI**: In the same way as I presumed that he was misleading me, yes.

ADV CHASKALSON SC: Sorry, how was he misleading you?

MR MNISI: He was constantly sending me reminders that he needs me to check for compliance. I then established on my own that this is more than that.

ADV CHASKALSON SC: But it is after that that you exchange your messages about being brothers for life.

MR MNISI: It is within the context of those discussions.
20 These are not isolated events, SC, they are interrelated.

ADV CHASKALSON SC: Sorry, what is interrelated?

MR MNISI: You speaking about me huffing and puffing.

ADV CHASKALSON SC: Yes.

MR MNISI: I am explaining to you how that came about. Firstly, I am agreeing with you, yes. I did huff and puff. I

did create a false impression that I would check for compliance, as he would constantly request me to. However, due to the persistence, I indicated it. It was clear to me, even though he is not saying it verbatim, that I need to assist in checking for compliance, in my mind it rang a bell that this looks like it is more than that. I took a decision in my mind that he is also misleading me in some way or not. I am going to play the same game.

ADV CHASKALSON SC: But it was not to check for
10 compliance. By the time that you were huffing and puffing, it was quite clear that he was giving you a list of bidders in priority, and our list. So, he was no longer misleading you. If he, at the beginning, was asking for compliance, if that is what he was doing, by this stage it was clear that he was asking for something more.

MR MNISI: It was clear, Chair, but not verbatim. He did not at one point state that. Throughout our discussions on 148, 152 and 157, right through 177, the discussion was clear. Please check for compliance, please check for
20 compliance. In my mind it rang a bell that this is more than compliance. He does not say at any point, but I realised that from my own, due to the persistence. Hence on 177, I start misleading him intentionally to stop this matter from proceeding any further.

ADV CHASKALSON SC: I just want to correct something

that you have just stated. There is no text ever where he asks for compliance.

MR MNISI: I did mention to the Commission that we had a discussion. He phoned me on 148 when he initially sent me that. We had a telephonic discussion. I indicated to the Commission that there are various modes to communicate with one another. The first mode would be via text message. The second mode would be via telephonic discussion. In this instance, he raised that via a WhatsApp
10 telephonic discussion.

ADV CHASKALSON SC: The message that he sends you, saying:

“Find below our vehicles for land to be given Mfowethu in order or priority...”

Is not preceded by any discussion.

MR MNISI: SC, what page are we on?

ADV CHASKALSON SC: We are on page 177.

MR MNISI: 177 is the last instance of trigger. This is where I start huffing and puffing intentionally as well.
20 Before that, if you go to 148, this is where you see the discussion which takes place. 148, after that, there is a telephonic call that comes on board. He then explains to me why he is sending me those things. I clearly indicate to him that, Sergeant Nkosi, there is nothing I can do for you. I cannot check for compliance on 148 after he has sent me

that. That is the evidence I provided yesterday.

ADV CHASKALSON SC: Yes, but if we go back to 177, it is your response to the list of vehicles for land in order of priorities, you are on top of it.

MR MNISI: Yes.

ADV CHASKALSON SC: And it is more:

“This is ours, Mfowethu. This is the final list, right?”

And his response is:

10 “Yes, it is our final list.”

MR MNISI: Yes.

ADV CHASKALSON SC: At that stage, there is no doubt about what he is asking you about.

MR MNISI: And this is exactly why I responded in the manner that I responded, with the evidence that I provided to the committee - to the Commission, apologies. This was me huffing and puffing now.

ADV CHASKALSON SC: So, this is your huffing and puffing ...[intervenes]

20 **MR MNISI:** Yes.

ADV CHASKALSON SC: And what you are doing is you are taking someone who you regard as a brother for life, and you are misleading him.

MR MNISI: Yes, in the same way, he misled me by persistently saying, check for compliance. And I realised

that it is more than that.

ADV CHASKALSON SC: Why do you not take him up? Is your complaint, then, that he misled you? That he said he just wanted you to check for compliance, whereas in actual fact he wanted you to rig the tender?

MR MNISI: The reason I do not take him on is previously stated.

ADV CHASKALSON SC: I just need to understand what your complaint was. Was your complaint that he misled you
10 by asking to check for compliance when in actual fact he wanted you to rig the tender? Was that your complaint?

MR MNISI: There is no complaint.

ADV CHASKALSON SC: Is that why you ...[intervenes]

MR MNISI: There is no complaint. I strategically took a decision to take ownership and manage the situation. There is no complaint from me.

ADV CHASKALSON SC: You said you started misleading him only after he had been misleading you.

MR MNISI: Spot on.

20 **ADV CHASKALSON SC:** And the misleading of you was that he asked you to check for compliance when in actual fact he wanted you to rig a tender. Is that what you are saying?

MR MNISI: That is exactly what I am saying.

ADV CHASKALSON SC: And so, despite the fact that he is

misled you, you mislead him, you regard each other as brothers for life?

MR MNISI: Yes.

ADV CHASKALSON SC: Is this how you deal with your brothers?

MR MNISI: Yes, that is how I dealt with the situation, and I would deal with it in the same way again.

ADV CHASKALSON SC: You see, what we have if we step back and we look at the overall picture is you and Sargent
10 Nkosi have an incredibly close relationship. You describe each other as brothers for life. He clearly cares about you very much, and you clearly care about him very much. You accept all of that?

MR MNISI: I have accepted that, SC.

ADV CHASKALSON SC: In respect of TMPD1, he engages you wanting the bid to be awarded to Ngaphesheya and Elshadai.

MR MNISI: He engages me asking me for compliance.

ADV CHASKALSON SC: No, but at a certain point he
20 moves from compliance to rigging the tender. That is what you have just said.

MR MNISI: He does not move I assume because of his actions. I assume that because I picked up from the persistence. There is no way where he verbatim tells me, rig these tenders in favour of this.

ADV CHASKALSON SC: Sorry, Mr Mnisi, a minute ago you said you only started misleading him because he was misleading you. He was misleading you by asking for compliance when he really wanted you to rig the tender.

MR MNISI: That is exactly what I said, SC.

ADV CHASKALSON SC: So, he was asking you to rig the tender is what you understood the situation to be.

MR MNISI: That is what I assumed on my own, SC. He did not verbatim ask me anywhere.

10 **ADV CHASKALSON SC:** And he wanted you to rig the tender in favour of Ngaphesheya and Elshadai.

MR MNISI: From my reading of that, he wanted me to prioritise that, yes.

ADV CHASKALSON SC: Yes, and out of the 57 bidders who initially competed in this tender, two of the seven ultimate successful bidders were Ngaphesheya and Elshadai.

MR MNISI: Through the rigorous procurement process that was undertaken and the probity report from external parties,
20 that is true.

ADV CHASKALSON SC: Then we come to TMPD3. And there we know that Sergeant Nkosi has been asked to get the award cancelled.

MR MNISI: Which is something I know nothing about. I do not know the gentleman who sent him that request. There

is no certainty that he, that they are speaking to, is me. Secondly, he does not even forward me that message at all.

ADV CHASKALSON SC: And lo and behold, TMPD3 does get cancelled in terms of a resolution that provides three reasons for cancellation, none of which justify cancellation.

MR MNISI: As well as the probity report, which is a critical part of the procurement process.

ADV CHASKALSON SC: I see. I am putting to you, Mr Mnisi, that if one looks at the object effects, as opposed to
10 what you say happened and what you say documents actually meant, it looks very much like your very close relationship with Sergeant Nkosi tainted both of these tender processes that you presided over.

MR MNISI: I respectfully disagree with you. There was no bias or any impairment of my objectivity in terms of handling both tenders. Tender TMPD1, the process was followed right to the T, with a conclusive probity report from an external party validating that. Tender TMPD03, I further disagree with you respectfully, SC, as a result of the probity
20 report must be read in consideration with the bid adjudication committee resolution. The BAC resolution is not the sole reason that was mentioned there for cancellation. The probity report is a critical component which must be brought on board when we are making conclusions. For those reasons, I respectfully disagree with

you.

ADV CHASKALSON SC: But, of course, everything you say about probity is not mentioned in the resolution at all.

MR MNISI: In the resolution, we only mention additional matters, as I stated before. The probity report was part and parcel of this. Within the resolution itself, we refer to the probity, probity, which means it has to be read together. You cannot read the BAC resolution in isolation of the probity report.

10 Had there been an instance where, in the BAC resolution that signed off, we do not refer to probity at all, potentially I would say, hey, I think I am tempted to agree with you. By virtue of the actual proceedings of BAC, including the probity report is a critical document, and by virtue of the resolutions making reference, I think on three occasions, to the probity report, further justify that the probity report was an essential document which was considered for the cancellation.

ADV CHASKALSON SC: Can you just take me to this
20 resolution and show me where the references to the probity report on which you are placing such reliance are?

MR MNISI: On page 429 of the pack.

ADV CHASKALSON SC: 428. Your first reference is 429.

MR MNISI: Yes, I am starting with 429.

CHAIRPERSON: Is that of 3, Mr Mnisi?

ADV CHASKALSON SC: Two.

CHAIRPERSON: Two, I am sorry.

ADV CHASKALSON SC: What is the reference you are relying on? What are the references to probity?

MR MNISI: I am just waiting for the Chair to have the same page. Thank you so much, Chair. Firstly, on page 429, paragraph from the item number 4, bullet point number 2 it says:

10 “Material irregularities identified by
 probity.”

Which means the probity ...[intervenes]

ADV CHASKALSON SC: Sorry, keep reading, keep reading.

MR MNISI: Yes:

 “The probity report...”

Well, Chair:

20 “That the material regularities identified
 by probity were due to the pricing
 schedule, which were issued as an
 addendum. In regard to the
 interpretation of the addendum, it
 stipulates that the pricing schedule must
 be completed in full, not blank spaces.”

ADV CHASKALSON SC: Sorry, are any of the probity complaints that you are placing such reliance on linked in

any way to the pricing schedule?

MR MNISI: I am bringing to your attention, SC, to the word probity, that the probity report was considered, that this BAC did not take place without reviewing that. By referring on bullet point number 2 to the word probity, there is only one probity report that is there, and that is in reference to the previous GM20 that was just prevented. It is the only feasible resolution that we can refer back to within the sequence of those events. Secondly, if you go down, there

10 is another reference to probity, bullet point number 3:

“The BEC interpretation is that the pricing schedule need not have blank spaces, according to probity report, which its recommendations have changed. The initial BEC recommendations stated that blank spaces must be completed with numerical figures. This resulted in potential selective evaluation of bidders and the potential unjustified disqualification of bidders.”

20

The second line of bullet point number 3, clearly reference to the probity report, which is GM20.

ADV CHASKALSON SC: Yes, and it is referring to the issue of blank spaces versus numerical figures, is it not?

MR MNISI: Over and above a probity report.

ADV CHASKALSON SC: No, no, not over and above probity report. It is saying that the probity recommendation states that blank spaces must be completed with numerical figures. That is the point of that reference to probity.

MR MNISI: It says according to the probity report, which references GM20, the entire report. You do not just look at this without considering that. By virtue of this second bullet point, well, the third bullet point and the second sentence
10 referring to a full probity report, this probity report, in all fairness, can only be referenced to GM20.

ADV CHASKALSON SC: It is GM20. It is obviously GM20. But the point is what you take out of GM20, out of GM20, is the issue of the blank spaces, not anything else.

MR MNISI: And that is what I was trying to explain from when we started this discussion, SC, that if we agree from the beginning to look at the BAC report in isolation of the probity report, we will have issues of this nature in the end. And so now I want to bring it back on point again that the
20 BEC - BAC report that considered this cancellation was read out in conjunction with the probity report, and it was referred to GM20, the entire probity report. The additional elements that are raised here is as a result of BAC picking up additional matters that must be emphasised upon, but the probity report in its entirety is the baseline document

which leads to cancellation.

ADV CHASKALSON SC: Sorry, let us look at the only reference to the probity report in the actual resolution. It is not an additional issue. It is an issue raised in the probity report, the issue of blank spaces versus not blank spaces, numerical insertions versus deletions. That is mentioned in the probity report. During the meeting between the BEC and probity teams on 26 August, it became apparent that there were multiple interpretations of the specifications.

10 That is an issue that comes out of probity. It is not an additional issue.

MR MNISI: I was explaining the context and what happens at BAC, this specific BAC that is set on this specific day. I was explaining that maybe there needs to be, in fact not maybe, there needs to be an improvement in how discussions are captured, but when we are capturing resolutions, it is a summary of the discussion that took place.

20 Within those discussions, there is an entire pack that is before it is sent through to the city manager for approval. So not only was this considered in isolation, the entire pack, which included the probity report, was received and assessed and analysed by the accounting officer from the BAC, further concurred with his reasons. He interacted with the entire pack, would never have signed this if the city

manager was not of the view that he is happy with the reasons provided by the BAC.

It is within his rights to refer this back. The city manager by profession is an attorney as well, so he would have seen issues of this nature, and he would have probably been aware more than I would have been as a finance individual of any law-related matters that I could not have foresaw at that point in time.

So, when he considered this cancellation report, it
10 was not in isolation of the probity report. He assessed the contents of those findings as per the probity report, then agreed that the reasons within the BAC report, coupled with the probity report, are sufficient. We do not want to incur irregular expenditure as a city.

ADV CHASKALSON SC: I am going to move to a different topic now. I can take a very short topic so that we can still get it in before the lunch break. Can I take you to page 230.

MR MNISI: Of the?

20 **ADV CHASKALSON SC:** Bundle 3, file 3.

MR MNISI: Page 230, yes.

ADV CHASKALSON SC: And there you will see that from page 230 to page 275 there are 45 pages of pictures of two SUVs.

MR MNISI: Yes.

ADV CHASKALSON SC: Can you explain what these pictures are about?

MR MNISI: Well, these are pictures of cars. He was asking me for advice in terms of which is a nice car.

ADV CHASKALSON SC: So, he sent you a nice car for what?

MR MNISI: Well, I presume he was contemplating on purchasing it, but I do not know. He sent me a picture for cars to give him my comment and my views in terms of
10 which car do I think is nice.

ADV CHASKALSON SC: So, you understood him to be advising you on - sorry, to be asking your advice on which car he should buy.

MR MNISI: On which car is nice.

ADV CHASKALSON SC: Did you not discuss this at all? I mean there are calls beforehand and it is quite strange to send 45 pages of pictures without a discussion.

MR MNISI: I think we discussed it afterwards because afterwards in 275 you can see their responses and then we
20 discussed this matter afterwards in terms of, I think this one is nice because of these reasons, not beforehand.

ADV CHASKALSON SC: Yes, but before you even have a call on page 275 you are saying this is the one. What was it the one, what was the one for?

MR MNISI: That is the nice one, that is the one I like.

ADV CHASKALSON SC: Yes, that is the one you like.

MR MNISI: Yes.

ADV CHASKALSON SC: But what did you understand him to be asking you in relation?

MR MNISI: Asking me to check which vehicle is nice.

ADV CHASKALSON SC: And that presumably came before the exchange in relation to this car?

MR MNISI: Well, I say this one referring to the one above, meaning I like this one. He then obviously either does not
10 understand me when he calls me on the next message. I clarify that for him, SC.

ADV CHASKALSON SC: Yes, but my question is presumably before he sent all of these pictures of cars to you he must have given you some context for it.

MR MNISI: No, no context given.

ADV CHASKALSON SC: So, all right, the pictures of the car in the bundle come immediately before a pin that he sends you.

MR MNISI: What page is that?

20 **ADV CHASKALSON SC:** So, if you, that is the - your exchange ends on page 275 and then on page 276 the following day he sends you a pin which is at page, well at 03:28 on message time, 05:28 on the 30th of April.

MR MNISI: Page 276, yes, I see that.

ADV CHASKALSON SC: What was that pin for?

MR MNISI: This must be related to page 277 as well. If you look at page 277 there is a screenshot.

ADV CHASKALSON SC: Yes.

MR MNISI: On page 277 this is where he was going. I presumably think that was the pin.

ADV CHASKALSON SC: Where was he going?

MR MNISI: He was going, there you go, he was going to see Mr Joe Sibanyoni.

ADV CHASKALSON SC: And why was he sending you a
10 message saying I am going to see Mr Joe Sibanyoni?

MR MNISI: We probably had to meet, so he was unable to meet me if I recall correctly. That is the only reason, there is no other reason he would send me that. So, in fact he was telling me we cannot meet up anymore, I have got a meeting at this place.

ADV CHASKALSON SC: If you go down, you will see that your message is:

“Okay my brother, let me know how it goes.”

20 **MR MNISI**: Yes.

ADV CHASKALSON SC: Why were you interested in his meeting with Mr Sibanyoni?

MR MNISI: I was not interested per se, I mean you just cancelled our engagement that we should have went to, so just let me know how it goes, so we can go and meet. Let

me know when you are done, so that we can resume the activities that we needed to do.

ADV CHASKALSON SC: Had he previously mentioned Mr Sibanyoni to you?

MR MNISI: We will have to check, Chair, I think previously he had sent me a TikTok video of some sort of Mr Sibanyoni, so he might have mentioned it. I cannot say for certain, yes or no, but I think he might have.

ADV CHASKALSON SC: I think the TikTok video you are
10 referring to is at page 42.

MR MNISI: Oh yes, then he has.

ADV CHASKALSON SC: And what was that about?

MR MNISI: He was just sending me a TikTok video, that was trending.

ADV CHASKALSON SC: A trending message about the launch of the Joe Sibanyoni Foundation?

MR MNISI: That is spot on.

ADV CHASKALSON SC: And why did he think you would
20 be interested in the launch of the Joe Sibanyoni Foundation?

MR MNISI: In the same way I would send him articles, just sharing information, I guess. I was not interested in the Joe Sibanyoni Foundation, I had no interest in matters of that nature, never met Mr Joe Sibanyoni, he was just sending me this in a similar way, I would send him articles.

ADV CHASKALSON SC: Can I take you to the foot of page 86?

MR MNISI: Page 86.

ADV CHASKALSON SC: There on the 16th of December, you say at the foot of page:

“I am okay my bro, I always wake up early, it is in my blood now, I am taking it easy today, how is the madam feeling?”

He responds:

10 “She is great, thanks, I have got a call at 06:30 to come see number 1.”

You say:

“Who my bro? Number one?”

And then you say:

“JS?”

MR MNISI: Yes.

ADV CHASKALSON SC: Who were you asking in relation to JS?

MR MNISI: I was referring to Mr Joe Sibanyoni.

20 **ADV CHASKALSON SC:** And why did you think that Sergeant Nkosi, when he refers to seeing number one, would be referring to Mr Sibanyoni?

MR MNISI: He is the president of one of the taxi associations, he is number one within the taxi fraternity as far I was concerned.

ADV CHASKALSON SC: He is number one in the taxi fraternity?

MR MNISI: As far as I am concerned.

ADV CHASKALSON SC: As far as you are concerned, yes.

MR MNISI: Yes.

ADV CHASKALSON SC: And you must have known then that Sergeant Nkosi had a relationship with him?

MR MNISI: We had had a discussion, he had sent me this, he told me he knew him. Whether it is a personal business
10 relationship, I did not know, and honestly, I was not interested as well. I knew they knew each other, I knew they met occasionally as well, but I was not interested in their discussions, they are none of my business.

ADV CHASKALSON SC: You see, earlier when I asked you if you had ever had discussions with Sergeant Nkosi about Mr Sibanyoni, you could not remember. You vaguely remembered a TikTok in relation to the launch.

MR MNISI: This is 2024, almost two years ago. So, I mean, when you bring it up, my memory is charging up, and
20 I am recalling that matter.

ADV CHASKALSON SC: But now when I point you to the fact that you do refer to Joe Sibanyoni, suddenly your memory is refreshed.

MR MNISI: Of course, SC, I mean discussions are clear, and I am fully aware as we are doing the cross-examination,

what these discussions are, my memory is being jogged.

ADV CHASKALSON SC: Why would you not have remembered a discussion about Mr Sibanyoni when I first asked you, but only when I pointed you to the fact that you were referring to Sergeant Nkosi about meeting with Joe Sibanyoni?

MR MNISI: Yes, I think we were moving from topic to topic, so my mind was still trying to conclude the previous topic that we had done. So immediately when you brought
10 that up, my mind could not immediately recall. But I did state to you that yes, I think you did send me a TikTok video, which was true, because that is what came out of my mind immediately.

So, I did not say I did not have any discussions, I referred to you what immediately came to my mind when you asked that question. And of course, when the cross-examination is proceeding, and you are pointing me out to certain discussion leading to that, I am responding to you honestly.

20 **ADV CHASKALSON SC:** So, you now say you recall that he had had a conversation about Joe Sibanyoni with you at an earlier stage, was it one, several?

MR MNISI: Chair, as we have seen now, there are three instances. We saw the TikTok video, we saw him sending me a pin that he is going there on the 29th or the 30th of

April, you are now pointing me out to this additional one that takes place here. So, there is three that I am seeing now.

ADV CHASKALSON SC: I see. Let us go a little lower down. He tells you it is Joe Sibanyoni, he says JS. And he says:

“We will handle him with...”

I think it is we will let you know is what he meant to say. Your response is:

10 “Eish, should we be worried?”

Why would you be worried about him going to see Joe Sibanyoni?

MR MNISI: Again, firstly, the ‘we’ is not me. And this is what I was trying to refer to the Commission that this was our way of speaking. This is another example of that we, of that ours, *et cetera*. So, this we are not me, it is him. Why I am saying that Chair, we are sitting here on the 16th of December, it is a public holiday, as far as I am concerned, someone wants you at 06:30 in the morning.

20 So, for me, what is going on? What is such an urgency that is required when it is a public holiday, people should be resting? So, I think on those bases and on those grounds, I asked that question, but the ‘we’ is our way of speaking. And I did raise this to the Commission as well earlier on in terms of various discussions. I was not

referring to me at all.

ADV CHASKALSON SC: So, it is not 06:30 in the morning, it is 10:30 in the morning. And you see that? Eish, should we be worried is at message time 08:30, which is 10:30.

MR MNISI: So, if you go to page 86. Page 86 says she is great. Thanks. I have got a call at 06:30 to come and see number one. That is the 06:30 I am referring to.

ADV CHASKALSON SC: Yes, but the first time that Mr Sibanyoni has mentioned, even indirectly, is at 08:26 at the
10 foot of page 86, 08:26 being 10:26. I have got a call at 06:30 to come see number one. So 10:36, he mentions Mr Sibanyoni.

MR MNISI: Yes.

ADV CHASKALSON SC: And you think this may be a cause for concern?

MR MNISI: Yes, because he tells me that Mr Joe Sibanyoni calls me at 06:30 on page 86 at the foot, says I have got a call at 06:30. So why would someone call him so early? Yes, he raises the, we have a discussion at 10,
20 but he received a call at 06:30.

ADV CHASKALSON SC: I see. And why would a meeting with Mr Sibanyoni be a cause for concern on the part of Sergeant Nkosi, even if it was a meeting called at 06:30?

MR MNISI: Even if it was a meeting called by someone other than Mr Joe Sibanyoni, by virtue of this being a public

holiday, you assume almost everyone is sitting with their families, relaxing, partaking in whatever preferential hobbies that they have. If someone calls you at 06:30 in the morning on a public holiday, there is a presumption that there is something urgent that must be going on. Hence, in the presumption of the entire situation, I ask, is it a cause for concern? It would only be natural taking those factors into account.

ADV CHASKALSON SC: And yet again, this is, should we
10 be worried? You are referring not to you, you have no worries at all?

MR MNISI: One hundred percent.

ADV CHASKALSON SC: You are using ‘we’ to refer to Sergeant Nkosi?

MR MNISI: Yes, SC.

ADV CHASKALSON SC: I see. He says:

“Not at all, he sounded in good mood around afternoon time, we will give you feedback.”

20 And you say:

“Okay, my brother.”

What feedback did he give you?

MR MNISI: I do not recall.

ADV CHASKALSON SC: You do not recall?

MR MNISI: No, I do not recall. I do not even think he gave

me feedback. I do not recall, SC.

ADV CHASKALSON SC: Were you not interested in the feedback after you were concerned that this meeting had been called?

MR MNISI: Had he told me about it, I would have listened and probably given an input, Chair, but it was none of my business.

ADV CHASKALSON SC: When we asked Sergeant Nkosi about this meeting, he denied that JS was Joe Sibanyoni.

10 You are clear that it was Joe Sibanyoni?

MR MNISI: When I sent this, that is what I understood. I cannot answer for him and how he understood that I think he needs to answer that for himself. In terms of my communications, I am clear. When I sent this communication, that is what I understood and that is what I was asking.

ADV KHUMALO SC: Why do you call him JS?

MR MNISI: It is short and it is long to write Joe Sibanyoni, it is informal communications, Chair. So, JS would have
20 been easier for me.

ADV KHUMALO SC: And Sergeant Nkosi knows when you say JS, you mean Mr Sibanyoni?

MR MNISI: I cannot speak for him, I hope he knew. That is why I put it in this manner, I hope he knew.

ADV BALOYI SC: I thought your answer earlier was, you

referred to, the two of you referred to Joe Sibanyoni as number one, because he was the president of the Taxi Association or something?

MR MNISI: No, we do not refer him to that, that is how I knew.

ADV BALOYI SC: You knew that is how he is referred to?

MR MNISI: Yes.

ADV BALOYI SC: Okay.

MR MNISI: We do not refer to him as that I just knew that.

10 **ADV BALOYI SC:** So, it is more than, that is what you thought at the time or that is what you understood at the time. You knew that number one is JS.

MR MNISI: I knew that, Commissioner, indeed.

ADV BALOYI SC: Thank you.

ADV CHASKALSON SC: Chair, we have gone past 1 o'clock at this point, I wonder if we should take the adjournment.

CHAIRPERSON: Let us adjourn and resume at 5 past 2.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: Thank you, Chair. Mr Mnisi, I want to turn now to the issue of the invoices for *ad hoc* security services that we have touched on, and I am going to deal with it in three different sections, so I would like,

you will have the opportunity to address each of the three sections. The first section relates to the events of 5 and 6 March, where there was a mad rush to get the invoices paid. The second section deals with the events of 4 April, where there was another mad rush to pay the one outstanding invoice that related to a previous financial year. And the third and last relates to the events of 26 June, when the provision of *ad hoc* security services is terminated.

10 So I would like you not to deal with later events when we are dealing with the earlier events. You will get the opportunity to do that. And to start on the events of 5 March, for the most part, I am just interested in the structure of the communications. So what I want to do is I want to take you through the full set of communications between yourself and General Dhlamini that are mediated through Sergeant Nkosi, and I want to take you through them all first, and then I will be asking you questions.

20 And for the purposes of this process, you really need to have files 3 and 4 open simultaneously, because you are going to be communicating with Sergeant Nkosi in file 3, and then Sergeant Nkosi is going to be communicating with General Dhlamini in file 4. And the starting point, I suppose the starting point is the version in your statement which you address at page 31 of your

statement. So before we get to the actual chats, let us look at what you say in the statement. Page 31, paragraph 125, you say that:

10 “Sergeant Nkosi overheard a telephone conversation between me and Mr Calvin Mahlangu, during which he complained about the City owing his company a significant amount in outstanding payments. He indicated that legal action against the City was being contemplated, should the matter remain unresolved.”

 And then you describe the previous correspondence going all the way, and what you communicated to Mr Mahlangu. But the first question I want to ask is, that conversation, when did it take place, was it on the day when there was this mad rush to get the invoices paid, or was it earlier?

20 **MR MNISI:** It was not on the day, when Mr Calvin Mahlangu called me. It was in the early days of March.

ADV CHASKALSON SC: On the 3rd of March?

MR MNISI: The early days of March.

ADV CHASKALSON SC: Early days of March, so it was before the 5th.

MR MNISI: Before the 5th.

ADV CHASKALSON SC: Yes. So, it, so, Sergeant Nkosi overhears you speaking to Mr Mahlangu sometime before the 5th of March ...[intervenes].

MR MNISI: Yes.

ADV CHASKALSON SC: A few days before the 5th of March.

MR MNISI: Yes.

ADV CHASKALSON SC: Right. What you say then is that following the call, if we go down to page 33:

10 “Sergeant Nkosi, as I discovered
 subsequently, took it upon himself to
 assist as he knew Deputy Chief, Mr
 Umashi DhDhlamini of the TMPD.”

132. Now when did you discover that Sergeant Nkosi had taken it upon himself?

MR MNISI: So I was driving, he went on a call, he called Deputy Chief Dhlamini, and he gave me the phone. That is when I identified that he had given him a call already.

ADV CHASKALSON SC: Sorry, so you are driving with
20 Sergeant Nkosi on the 3rd of March, or early days of March, and he overhears a call from Mr Mahlangu to you.

MR MNISI: Yes.

ADV CHASKALSON SC: A few days later you are driving with him again, and you overhear him calling Deputy Chief Dhlamini.

MR MNISI: No, you see, that is incorrect. On the same day. While I was wrapping up my call with Mr Calvin Mahlangu, Sergeant Nkosi calls Deputy Chief Dhlamini on the same day.

ADV CHASKALSON SC: Okay. So, when you say in 132:

“Following the call, Sergeant Nkosi clearly, as I discovered subsequently, took it upon himself to assist as he knew Deputy Chief.”

10 But in fact, it was not. You did not discover this subsequently, you discovered it on the same day.

MR MNISI: Yes, it was subsequent to my call with Mr Calvin Mahlangu. It was on the same day and subsequently does not mean another day, you see.

ADV CHASKALSON SC: Yes, but you say, as I discovered subsequently. There was no discovery. It was happening right in front of your eyes, or ears, in this case.

MR MNISI: It was happening while I was concluding, on my phone as well. So I was not really concentrating on what he
20 was doing. I was concentrating on wrapping up what I was doing.

ADV CHASKALSON SC: Okay, so while you are speaking to Mr Mahlangu, Sergeant Nkosi is speaking to Deputy Chief Dhlamini.

MR MNISI: Yes.

ADV CHASKALSON SC: And that is on the 2nd or 3rd of March, a few days before the 5th.

MR MNISI: Yes.

ADV CHASKALSON SC: Now, what we then see is the texts which start on page 141 in file 3 and at the same time have page 503 open on, well, it will be 427 and 503 as we jump through file 4. So, on the 5th of March, towards the foot of page 141 at 9:38, you message Sergeant Nkosi saying:

10 "Is the General winning?"

MR MNISI: Yes.

ADV CHASKALSON SC: Now this is at least two days after you have had the call from Mr Mahlangu ...[intervenes].

MR MNISI: Yes.

ADV CHASKALSON SC: And you understand what the issue is.

MR MNISI: Yes.

ADV CHASKALSON SC: Now, you are asking Sergeant
20 Nkosi:

"Is the General winning?"

So you know he is engaging with the General.

MR MNISI: Yes.

ADV CHASKALSON SC: How did you know that?

MR MNISI: On the day when he called Deputy Chief

Dhlamini, he handed me the phone. I spoke to the Deputy Chief Dhlamini. I expressed to him the concerns on the call that I just received. He said he was not aware of this matter, however, he will look into it accordingly. Then I requested, you will then give advice, and the call ended.

ADV CHASKALSON SC: But this is a Tshwane matter, is it not?

MR MNISI: It is a Tshwane matter, yes, SC.

ADV CHASKALSON SC: And when you asked General
10 Deputy Chief Dhlamini to give advice, presumably he gives advice to you as the CFO.

MR MNISI: Yes.

ADV CHASKALSON SC: So why is Sergeant Nkosi staying involved in this two days later?

MR MNISI: At this point, after the call had been made, Sergeant Nkosi was already involved. From my perspective, it was convenient for him, taking into account that I was busy with other strategic matters as well. So one operational matter off my table would be easier for me to
20 focus on the strategic nature of my job. In hindsight, I did admit that at this point, I should have requested for the contact details of Deputy Chief Dhlamini.

ADV CHASKALSON SC: So you effectively used Sergeant Nkosi as your representative in dealing with Deputy Chief Dhlamini on this issue on the 5th of March.

MR MNISI: Because he was already involved and I knew they were close to each other, I asked him for feedback. I was not necessarily using him as an official representative. That is too formal and it is, it is as if I was formalising this. It was still informal in nature. I took advantage of the convenience for me because I could then focus on other essential work that I was to do.

ADV CHASKALSON SC: So this was just an issue of convenience. Sergeant Nkosi was offering to do part of
10 your job at the City.

MR MNISI: It was an issue of convenience, but this is not Sergeant Nkosi doing part of my job.

ADV CHASKALSON SC: Well, what is he doing?

MR MNISI: He is coordinating a message between myself and Deputy Chief Dhlamini.

ADV CHASKALSON SC: But why can you not just deal with Chief Dhlamini directly?

MR MNISI: As I alluded to, in hindsight, I should have done that, and that is the point where I should have
20 obtained his contact details. I would have then dealt with him directly. Unfortunately, at this point in time, I did not do that and I took advantage of the convenience that I am alluding to now.

ADV BALOYI SC: Can I just ask, sorry Mr Chaskalson. I might have missed what you said, Mr Mnisi. Before you

sent this message, “Is the General winning”, between this and when you received the call from Calvin Mahlangu in the car, did you speak to General Dhlamini about this at all?

MR MNISI: In fact, me bringing up this as a reminder, I had received a call from Mr Mahlangu again in the morning. It was the 5th. He had called me earlier in March. There was presumably nothing that was proceeding. He called me in the morning, hence, I requested Sergeant Nkosi, “Is the General winning?” What prompted me to send this message
10 was me receiving a call from the service provider requesting for feedback.

ADV BALOYI SC: Yes, my question was, did you speak to General Dhlamini? So you got the first call from Mr Mahlangu, you say, the very first time he calls you.

MR MNISI: Yes.

ADV BALOYI SC: My question is, after you got that call and before you asked Sergeant Nkosi whether the General is winning, in that intervening period, did you speak to General Dhlamini about this inquiry from Mahlangu?

20 **MR MNISI**: Yes, Sergeant Nkosi handed me the phone. While we were driving, just as I was about to conclude my discussion with Mr Calvin Mahlangu, Sergeant Nkosi was already phoning the Deputy Chief. At that point, he gave me his phone and I spoke to the Deputy Chief.

ADV BALOYI SC: I see. Thank you.

ADV KHUMALO SC: Can you just clarify this. Afternoon, Mr Mnisi. You just said a few minutes ago Sergeant Nkosi getting involved was one operational issue off your table.

MR MNISI: Yes.

ADV KHUMALO SC: What does that mean? Have you delegated an operational issue to Sergeant Nkosi?

MR MNISI: No, I have not delegated.

ADV KHUMALO SC: So what do you mean when you say him getting involved is one operational issue off your table, because it suggests to me it is an operational issue you had to deal with, but now Sergeant Nkosi was dealing with it. Correct?

MR MNISI: So what I mean, and I said, it was convenience. The only reason I asked Sergeant Nkosi to send the communications to the Deputy Chief Dhlamini was an element of convenience for me. In hindsight, I would have done that directly with the Deputy Chief Dhlamini. I was not delegating anything to Sergeant Nkosi. He is not an official of the City. He can in no way have any delegations to deal with any matters.

ADV KHUMALO SC: I am concerned with what you mean when you say it is one operational issue off your table because Nkosi is now dealing with it, which is what you said, and you confirmed that that is what you said. Let me go back. An operational issue it is something that you as

CFO have had to deal with, correct?

MR MNISI: Correct.

ADV CHASKALSON SC: And now Nkosi was dealing with it.

MR MNISI: He was not actively dealing with the matter. He was sending, Deputy Chief Dhlamini was dealing with the matter actively. The individual that was actively dealing with the matter, resolving, analysing documentation is the Deputy Chief Dhlamini. Nkosi was not actively dealing with
10 the matter. Nkosi was the individual who was sending the message on my behalf. He was not actively dealing with this. He did not even have the details of what was going on in this. I used this as an element of convenience for myself.

ADV KHUMALO SC: So he was inactively dealing with the matter because you deliberately chose the word actively. Are you saying he was inactively dealing with the matter?

MR MNISI: I will say he was, but not on delegation as a means of convenience.

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

ADV BALOYI SC: That convenience, Mr Mnisi, you accept you would have been dealing with it otherwise. So you would have been communicating with General Dhlamini if Nkosi had not inserted himself or been inserted by you to be the go-between.

MR MNISI: In hindsight, I accept that.

ADV BALOYI SC: Okay, thank you.

ADV CHASKALSON SC: I am still not really understanding why it is convenient. If you deal with it yourself, you speak to General Dhlamini or Deputy Chief Dhlamini, you tell him what needs to be done, he comes back to you. This way, what happens is he speak to Sergeant Nkosi. Sergeant Nkosi then conveys your message to Deputy Chief Dhlamini. Deputy Chief Dhlamini responds to Sergeant Nkosi.
10 Sergeant Nkosi then conveys Deputy Chief Dhlamini's message to you. What is convenient about that process?

MR MNISI: Like I said, ideally I should have got the contact details of the Deputy Chief. I did not have his details at this point in time. He did not have my details as well, obviously. Even if you look at what Sergeant Nkosi was doing, he was just sending those messages verbatim as they were. So it was convenient for me because the matter was being attended to, but in hindsight, I do agree that I should have got his numbers directly and had
20 communications with him initially from the matter, when that matter was raised, Chair.

ADV CHASKALSON SC: But I am still not understanding why it would be convenient. This seems to be much more complicated with much more potential for a sort of broken chain of communication than your dealing with him directly.

What is your response to that?

MR MNISI: I did not have his contact details at this point, Chair, this is why I did not deal with him directly.

ADV CHASKALSON SC: Yes, but Sergeant Nkosi did, and you could have asked Sergeant Nkosi.

MR MNISI: I should have asked it, and I agree. I should have asked for them, but I did not ask for them for my thought process of saying it is just convenient for me. While I am busy in other engagements, I could easily check,
10 is General winning with this matter. So at that point in time, it was convenient for me. I did not have his contact details, which is what limited me from dealing with him directly. I should have had that, Chair. I do agree to that. In hindsight, it is something I should have done to avoid this entire complication.

ADV CHASKALSON SC: How long have you been at the City by this point?

MR MNISI: Since November 2023.

ADV CHASKALSON SC: So it is about 16, 17 months
20 already, and you did not have the contact details of the Deputy Head of the TMPD?

MR MNISI: No. I normally engage the Chief of Police.

ADV CHASKALSON SC: And you do not have a central directory available for senior executives at Tshwane?

MR MNISI: That give cellphone numbers, no.

ADV BALOYI SC: You do not have administrative staff in your office?

MR MNISI: We do have.

ADV BALOYI SC: So you have a PA?

MR MNISI: I do have a PA.

ADV BALOYI SC: And you did not think the PA should deal with this and communicate with General instead of, with General Dhlamini instead of an outsider who is really a member of the public for all intents and purposes?

10 **MR MNISI:** At this point in time, it did not cross my mind, Chair.

ADV BALOYI SC: Okay.

MR MNISI: In hindsight, I should have.

ADV CHASKALSON SC: Well, let us just quickly run through these messages. 141, you say:

“Is the General winning?”

That is at 9:38. The response by Sergeant Nkosi is at 9:46.

“Morning, my brother. I am on to him.”

20 Then at, if we go to 503 of file 4, you see that that, there is a screenshot then that Sergeant Nkosi sends to the General of your conversation.

MR MNISI: 503 of file 4 on my side is a transcript. So I have got bundle 3 open.

ADV CHASKALSON SC: Bundle 3, or 503 of bundle 3,

which is, I think, file 4, unless I have got the, unless I have got the ...[intervenes].

MR MNISI: Okay.

ADV CHASKALSON SC: So it is your bundle 3. So we will just be dealing with bundle 3.

MR MNISI: Same document, okay.

ADV CHASKALSON SC: So 503 is a screenshot that was sent to Sergeant Nkosi at 9:46 of, sorry, it was sent to General Dhlamini at 9:46 by Sergeant Nkosi. It is a
10 screenshot of your conversation with him. He then comes back to you at 9:48 saying he confirmed it will be sorted now. Now, now, he will give feedback soon before 12. That is at 9:48. At 9:55, you tell Sergeant Nkosi:

“Okay, it is not yet in my system.”

And he sends you an image of fingers crossed. That is at 10:07. Before he sends you the image of fingers crossed, he has WhatsApp'd your subsequent exchanges to General Dhlamini. That is at 5:04. So now there is a similar screenshot, except it now includes your message,
20 okay, it is not in my system. Back to 143, and Sergeant Nkosi tells you that the General said he will not disappoint. You say to him, “Thanks, Mfowethu.” At 10:11 and then at 12:20, and for this we have got to go to 427, General Dhlamini sends him a message. That is page 427, 12:20.

“Morning, Captain. Please confirm for Mfowethu

ukuthi I am processing the issue, and I have spoken to Cain and Vusi also to increase the target value as the amount is a bit higher, and as soon as all of them are released, I will let you know for his intervention to ensure that Tommy makes payment urgently.”

Now, Cain, we have learnt, is Cain Mpofo, who is in the Procurement Department of Tshwane. Vusi, who is Vusi?

MR MNISI: He is an official of the City within Procurement
10 as well.

ADV CHASKALSON SC: Also within Procurement.

MR MNISI: Yes.

ADV CHASKALSON SC: And Tommy, I think you mentioned earlier, was in charge of payments.

MR MNISI: Payments.

ADV CHASKALSON SC: In your department?

MR MNISI: In Treasury.

ADV CHASKALSON SC: In Treasury.

MR MNISI: Yes.

20 **ADV CHASKALSON SC**: Are you ...[intervenes].

MR MNISI: Still within Group Financial Services.

ADV CHASKALSON SC: Yes, so he is under you, Tommy.

MR MNISI: He is under me, yes, Chair.

ADV CHASKALSON SC: Now, what does he mean, increase the target value?

MR MNISI: Okay, so budget is made available to departments either monthly or quarterly. So at this point in time, the budget that was made available for TMPD ...[indistinct] services had depleted for the quarter in question, so they needed to make a motivation in order to increase the target amount based on whatever motivation they would bring on board. So in terms of increasing the target value, it was saying of the approved budget, let us make all funds up until the end of the month available in
10 order to process these invoices.

ADV CHASKALSON SC: And what would be involved in increasing the target value? Who has to authorise increase of target value?

MR MNISI: It is a delegated function that is delegated to the Divisional Head within Supply Chain Management and the Procurement, so it would have been Cain as well as Vusi.

ADV CHASKALSON SC: And so what this does is it says, although your budget says you can spend this amount this
20 quarter, are we going to adjust the budget upwards?

MR MNISI: No ...[intervenes].

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

MR MNISI: Sorry, SC. We are going to make monies available up until the end of the month. The budget is approved, we are not increasing the thresholds of the

budget, we are not making any additional funds available, it is just increasing what could be committed at this stage on the funds that are already allocated and assigned to TMPD for the full financial year.

ADV CHASKALSON SC: So we have got a monthly guideline, as it were, or a monthly informal limit as to what you can spend under each budget line item.

MR MNISI: Yes.

ADV CHASKALSON SC: We are going to bump that one
10 up?

MR MNISI: Yes.

ADV CHASKALSON SC: We then go back at 1:43 and that message is then forwarded to you by Sergeant Nkosi at 12:52. So it comes at 12:20, it only gets to you at 12:52, more than half an hour later, and you respond immediately at 12:56:

“Thanks, Mfowethu, thanks.”

Can I just pause there. What we are seeing in this example is how the allegedly convenient mechanism that
20 you are using to address this situation actually results in delays in your getting the information that you would otherwise get. So the General communicates this at 20 past 12, you only learn about it from Sergeant Nkosi half an hour after that, at 12:52. You are nodding your head.

MR MNISI: Yes, I am agreeing to that.

ADV CHASKALSON SC: So you are accepting that there are some inconveniences in this situation?

MR MNISI: I am accepting the matter of the messages being sent a few minutes later, but I am not accepting the issue that there is inconvenience. I am happy that the matter is being attended to. Besides, at this point in time, I might be occupied with other matters of Council as well. As long as I am getting feedback that the matter is attended to, I am happy.

10 **ADV CHASKALSON SC:** But that feedback is being delayed by half an hour, more than half an hour.

MR MNISI: Yes, and I am still happy because the matter is at least being attended to.

ADV CHASKALSON SC: Some three hours later, at 3:52 pm, you WhatsApp Sergeant Nkosi again, saying:

“Thanks, is the General winning?”

MR MNISI: Yes.

ADV CHASKALSON SC: -:

“Mfowethu, is the General winning?”

20 It takes him more than half an hour to respond to you, at which point he forwards something from the General saying:

“Yes, we have won, busy with creating requisitions and at the same time releasing them in order for buyers to

create purchase orders. The process is a bit long as invoices have to be scanned and uploaded individually, and I trust we will conclude the entire process before 17h00. As soon as the buyers have created purchase orders, we will create service entries and submit them for payment.”

So you get that message more than half an hour, or
10 40 minutes after you have asked, is the General winning.
And the General says he is still in the office monitoring the process underneath, which is forwarded to you by Sergeant Nkosi. You also get a copy of the invoice that we will deal with later, which is the invoice from the 23/24 financial year, and there will be problems with that.

235 you say:

“Thanks Mfowethu.”

Sorry, that is 435. The next communication is roughly two hours after that. It is now 8.23 pm when you
20 get forwarded through this chain a message from the General saying:

“Evening, Captain. Just to confirm for Mfowethu ukuthi everything has been processed, and I have spoken to Cain, and he promised to ensure that the

buyers create purchase orders. As soon as I receive the purchase orders, I will fast-track the service entries.”

So that is a full almost four hours later that you get that message, and then you say:

“Thank you, Mfowethu, much appreciated. Let us push to finalize everything tomorrow so we can pay those guys before Friday.”

10 And on and on it goes until after 11, well, until the next morning. Your last exchange with Sergeant Nkosi on that day is at 11:24 pm, a call at 11:24 pm. And the next morning you hear from, you call Sergeant, you message Sergeant Nkosi saying:

“Please extend my gratitude to the General, he has delivered purchase orders as per the request of being approved. See you later.”

20 That is at 11:32 the next day. That is then forwarded by Sergeant Nkosi to the General, and at 11:45 at the top of page 146, you see that the message comes back from the General.

“Morning Captain. I can see that Mfowethu is happy and we are also grateful that we have assisted.”

So over these 24 hours, through Sergeant Nkosi's intervention, you have managed to have a conversation with the General that has resulted in these invoices being paid.

MR MNISI: Yes.

ADV CHASKALSON SC: Your version is that you just used Sergeant Nkosi because it was convenient.

MR MNISI: Maybe just to make a quick correction, not invoices paid, purchase orders processed.

ADV CHASKALSON SC: Purchase orders processed,
10 sorry.

MR MNISI: Yes.

ADV CHASKALSON SC: I accept that. Your version is that you used Sergeant Nkosi because that is convenient.

MR MNISI: It was easy for me, Chair, and I needed to ensure that the matter is being dealt with, and it was being dealt with.

ADV CHASKALSON SC: But in the process, what you have effectively done is you have taken an outsider to the City, and you have involved him in communications relating
20 to City payment processes.

MR MNISI: He had involved himself, Chair. What I should have done, which I have conceded, was that I should have, at the point where he involved himself and called the Deputy Chief, requested for those contact details, which was a flaw on my side on that matter.

ADV BALOYI SC: Can I just ask, when you say he has involved himself, at which point does he involve himself, because on your account, you are both in the car. He overhears the Mahlangu conversation. He speaks to General Dhlamini in your presence, and you become aware of that because you are all in the same car.

And then a few days later, two, three days later, you ask him, is the General winning? So there is an unexplained gap of his involvement before you ask him, is the General winning. So when you say he had involved himself already before you asked, is the General winning, what did you know about his involvement, other than what happened in the car when you were together? What did you know about his continuing involvement in this, and how did you know?

MR MNISI: So firstly, Commissioner, I did not ask him to phone Deputy Chief Dhlamini when we were in the car. He took it upon himself to call him. Once he had made that call, of course I had a discussion or interaction with the Deputy Chief Dhlamini in terms of the matter that we are facing. Upon that phone call concluding, we concluded on the basis that I will get feedback. And then Sergeant Nkosi, of course, took it upon himself to be the one to give that feedback.

ADV BALOYI SC: So, when you say Sergeant Nkosi was

already involved, you mean only that he called while you were both in the vehicle? He called General Dhlamini and had a conversation with him in your presence? Is that all you are referring to?

MR MNISI: And also when ...[intervenes].

ADV BALOYI SC: As him already involved.

MR MNISI: That was a starting point and also his commitment that he will give feedback.

ADV BALOYI SC: So in the vehicle, as you were together
10 ...[intervenes].

MR MNISI: Yes.

ADV BALOYI SC: He said to you, I will give you feedback?

MR MNISI: Yes.

ADV BALOYI SC: And the next thing is when you ask him, is the General winning?

MR MNISI: Yes.

ADV BALOYI SC: Okay, thank you.

ADV CHASKALSON SC: So now we are going to move to
4th of April, and as I understand it, all of the invoices other
20 than that 23/24 financial year invoice had been resolved by
the earlier process.

MR MNISI: I agree with you.

ADV CHASKALSON SC: On the 4th of April, at page 443,
you will see that at 2:59:37 pm, chat number 2.

MR MNISI: 443?

ADV CHASKALSON SC: 443.

MR MNISI: Yes.

ADV CHASKALSON SC: The General messages Sergeant Nkosi saying:

“Good day, Captain. Please check with Mfowethu if he has spoken to Cain about Gubis for processing. He just called me to say Mfowethu has given a go-ahead.”

10 What was that about?

MR MNISI: This message was never forwarded to myself. I have never received it. I cannot comment on that.

ADV CHASKALSON SC: Well, what did happen, that was at 2:59, at 3:34, there are a succession of calls between yourself and Sergeant Nkosi. They start on page 187.

MR MNISI: Okay, 187.

ADV CHASKALSON SC: And if you see, it start with message time 1:34:25, then 1:34:34, then 1:34:39, a call back from Sergeant Nkosi, and then at 1:34:41, you
20 message:

“I need General quickly.”

Why would you have needed the General quickly at this point?

MR MNISI: I think this is when, via the telephonic discussions that we were having, he was giving me

feedback that there is a perception that I have given a go-ahead, if I recall correctly, so I needed to clarify that, that I have not given any go-ahead. Necessary processes in terms of approving *ex post facto* invoices must be followed. So I needed to explain this to the Deputy Chief directly.

ADV CHASKALSON SC: So you had not authorized payment of this previous financial year's invoice?

MR MNISI: No, I could not. It is beyond my powers. I had not done that.

10 **ADV CHASKALSON SC:** And what the General understood came to have reported was wrong?

MR MNISI: Clearly.

ADV CHASKALSON SC: And you needed to communicate that to the General?

MR MNISI: Exactly.

ADV CHASKALSON SC: And you then get from Sergeant Nkosi the General's contact details?

MR MNISI: Yes.

ADV CHASKALSON SC: Did you then call the General?

20 **MR MNISI:** I think I might have given him a call to explain this matter and to try and put the matter to rest.

ADV CHASKALSON SC: That is at 3:38. At 4:33, you call Sergeant Nkosi, and then at 4:37, you send Sergeant Nkosi a screenshot. In fact, first at 3:37:41, you sent him a screenshot, sorry, 4:37:41, you sent him a screenshot of a

WhatsApp call from Chairman Obonzo, and I presume that is Mr Modise?

MR MNISI: That is Mr Modise, yes, I confirm.

ADV CHASKALSON SC: And then underneath, another screenshot of a call from Mr Modise.

MR MNISI: Indeed.

ADV CHASKALSON SC: Do you recall what this was about?

MR MNISI: Yes, I do recall.

10 **ADV CHASKALSON SC**: And will you share it with us?

MR MNISI: If you go later on in the communications, the Deputy Executive Mayor wanted me to accompany him to, I will say, a political event where they needed to give feedback on the engagement and the status of Gauteng Municipalities. If you go down just a bit on 191 and 192, 193 and 194, this was in relation to that. So at this point in time, I clarified to the Deputy Executive Mayor, look, this is not an official provincial government matter. It looks like it is more political party related. I am uncomfortable to attend
20 to such. So what I can do is just do the report for you and take you through the content of that report. You should be in a position to articulate that.

So why I am sending this to Sergeant Nkosi is part of me just venting and crying around saying, hey, this individual, which is his associate, and I had known this as

well, keeps on calling me, wanting me to accompany him to this. I was uncomfortable with that, taking into account that it is not an official City or provincial government related function. It was more political party related. Due to my impartiality, I was extremely uncomfortable.

So why I send him this, I was just venting and raving and just needed a friend to talk to. I did not expect him to do anything for me on that.

ADV CHASKALSON SC: So it has nothing to do with the 4
10 April, with the previous issues relating to that 2013/14 invoice.

MR MNISI: Absolutely nothing to do with that.

ADV CHASKALSON SC: Sorry, 23/24 invoice. And your need to call the General urgently was to say I have not approved payment of this out of your invoice and do not do it under my name.

MR MNISI: Precisely, SC.

ADV CHASKALSON SC: Let us go then to page 331.

ADV BALOYI SC: Before you move on, at that page 191,
20 the way you explain your calls to Sergeant Nkosi does not seem to accord with the text of these WhatsApp messages. You start off:

“Good morning. Did the Deputy Mayor call you regarding the meeting on Sunday?”

That is you.

MR MNISI: Yes, that is me, Commissioner.

ADV BALOYI SC: Yes. So what meeting would the Deputy Mayor be calling Sergeant Nkosi about, who is a member of the SAPS? What would he be calling him about?

MR MNISI: There is a relationship to what was going on here. What was going on was that the Deputy Mayor knew that Sergeant Nkosi was an associate of mine. And within doing that, I presumably think he wanted him to convince
10 me that I need to attend matters of this nature as well. I cannot leave him to go alone, so we will need to have that discussion to outline that. This was linked and fully aligned to the engagement which I was uncomfortable going, and I had expressed that to the Deputy Mayor previously.

ADV BALOYI SC: And then in the next text you say:

“I told them that I cannot get hold of you.”

MR MNISI: Yes.

ADV BALOYI SC: You say you told Nkosi, you are telling Nkosi here that you told the Deputy Mayor that you cannot
20 get hold of Nkosi.

MR MNISI: Yes.

ADV BALOYI SC: Why would that be an issue that you, between you and the Deputy Mayor that you cannot get hold of Nkosi?

MR MNISI: He had said to me that in the meeting I need to

bring him and I said no ...[intervenes].

ADV BALOYI SC: That you need what?

MR MNISI: That I need to bring Sergeant Nkosi, I think.
So ...[intervenes].

ADV BALOYI SC: Deputy Mayor ...[intervenes].

MR MNISI: So the purpose of me saying this was that I told him I cannot get hold of you, he must call you himself. I do not want to get involved. I told them I cannot get hold of you. So if he needs you to come to this meeting where I
10 must be convinced to sort of engage in the political party related engagements, he must call you himself. So I was expressing to Sergeant Nkosi that he said he is going to call you. I said I am not getting involved. So did he call you? I was asking out of interest.

ADV BALOYI SC: So the Deputy Mayor invites you, the CFO of the City ...[intervenes].

MR MNISI: Yes.

ADV BALOYI SC: To come to a meeting on Sunday.

MR MNISI: Yes.

20 **ADV BALOYI SC:** And what does he say about Sergeant Nkosi when he invites you to a meeting?

MR MNISI: We were having a discussion and I had already indicated to him that I am uncomfortable.

ADV BALOYI SC: Yes.

MR MNISI: So, I, he did not express that, but I presumed

that maybe he wants Sergeant Nkosi to try and convince me that I need to support him in all aspects, that if I do not attend this, I am not supporting him and it is part and parcel of my job, maybe. But that is what the context of this discussion was about, Commissioner.

ADV BALOYI SC: So he said to you, I am going to call Nkosi.

MR MNISI: Ja.

ADV BALOYI SC: I am trying to make sense of this text
10 because you then also, then ...[indistinct] to say, I told them that I cannot get hold of you, as if the Deputy Mayor sent you to get hold of Sergeant Nkosi.

MR MNISI: It was both instances. He said, I could not get hold of him, you try to get hold of him. I said, oh, I also cannot get hold of him.

ADV BALOYI SC: Okay. I still do not understand, but I guess I will leave it there. Thank you. I think, Mr Chaskalson, before you move off too far, let me, you moved too fast ahead for me. Can we go back to page 143? This
20 is where, in that WhatsApp message, where the, that is the third WhatsApp message, where:

“Morning, Captain. Please just confirm from Mfowethu ukuthi, I am processing the issue and I have spoken to Cain and Vusi also to increase the target

value as the amount is a bit higher and as soon as all of them are released, I will let you know for his intervention to ensure that Tommy makes payment urgently.”

What intervention by you is being spoken about in this WhatsApp message?

MR MNISI: Presumably for me to have oversight on the payment process as well, because this is ...[intervenes].

10 **ADV BALOYI SC**: Sorry, to have what?

MR MNISI: To have oversight on the payment process once the purchase orders have been created, taking into account that this is a matter that has been outstanding for the past seven months, since June 2024, I think.

ADV BALOYI SC: Ja, intervention is different from oversight. I think intervention is more an active ...[intervenes].

MR MNISI: Yes.

20 **ADV BALOYI SC**: Step by you to do something to ensure that Tommy makes payment urgently. I think it is, in my understanding, it is different from having oversight.

MR MNISI: Yes, Commissioner.

ADV BALOYI SC: What was anticipated?

MR MNISI: So it is me reading this. Me reading this and understanding this, I needed to assist in playing oversight

so that the matter is completed. Once purchase orders are created, the payment needs to be effected as well. So I understood this as me playing oversight, no intervention that I could do to force payment down. I have got a cash flow management function that operates within the City. But in this instance as well, I can even confirm the payment was done by the 14th of March, if I am not mistaken, in line with the City's normal processes of payments. So I read this as a form of me playing oversight in the payment
10 process.

ADV BALOYI SC: Yes, oversight as inactive, just watching and making sure it is being done.

MR MNISI: No, watching and ensuring that it is done. Playing oversight so that this does not fall through the cracks again.

ADV BALOYI SC: Yes.

MR MNISI: Yes.

ADV BALOYI SC: You see, when I read the rest of that sentence, which says to ensure that Tommy makes payment
20 urgently, it suggests to me that you are going to do more than just looking at your computer to see that this is being done. You would unlock whatever, you would be, you would play a role in ensuring that Tommy makes payment urgently. That is how I am reading it, and my reading of it accords with my understanding of intervention being a much more

active role by you than just oversight, a passive role of just overseeing.

MR MNISI: Indeed, Commissioner, I agree to your thought process, but I need to align this to the work that I do as well, and the work that I do, there are strict processes, and payment files are issued on various days. So I need to play oversight to ensure the payment is included in line with the necessary payment file uploading process with the City's general processes. That is how I understood this, and that
10 is what happened in this case.

ADV BALOYI SC: Thank you.

ADV KHUMALO SC: Can you just clarify this one thing, Mr Mnisi. When you are in the car with Mr, Sergeant Nkosi, and you are having this phone call with, it is Mr Malatji?

MR MNISI: DC Dhlamini.

ADV KHUMALO SC: Dhlamini?

MR MNISI: Yes.

ADV KHUMALO SC: No, no, before then. The call that Sergeant Nkosi overheard.

20 **MR MNISI**: Oh, Mr Mahlangu.

ADV KHUMALO SC: Yes.

MR MNISI: Yes, yes, Commissioner.

ADV KHUMALO SC: Yes, Mahlangu, sorry, not Malatji. The call that he overhears. How does Sergeant Nkosi know that the person at TMPD he must speak to is Mr Dhlamini so

that the process of payments can move forward, because you say that is the first time he gets involved. He picks up his phone. He makes a phone call. He knows who to call, and that is how he inserts himself in the payment processes of Tshwane which you then enable because you allow him to continue doing that. But how did he know that the person he must speak to, to make these things happen is Mr Dhlamini?

MR MNISI: I think Sergeant Nkosi has a relationship with
10 Deputy Chief Dhlamini. He knew that he was a Deputy Chief responsible for support and services and finance within TMPD. So by virtue of their own relationship, he had known his roles and functions and what he does. That is how he knew.

ADV KHUMALO SC: No, thank you.

ADV BALOYI SC: Can I also ask this. This process that is
in 143 in these WhatsApp chats and your participation in them, how does it accord with the process that you described yesterday, ja, that you described Tuesday,
20 because all of it is happening on the 5th of March, and you described a process that involves other parties, right, the, I think you said TMPD, SCM, and then there was a third. I think it was you or something.

MR MNISI: Yes.

ADV BALOYI SC: The third party. Now, when I look at all

of these WhatsApp messages, they do not seem to align with the process that you described where, I think among other things, you were explaining that certain documents must be in, they must be checked, verified, the service was provided, was it properly authorized, does it accord with the deployment letters or the terms of the contract, all of that. This process that is happening within hours does not seem to align with what you described yesterday. Can you just explain?

- 10 **MR MNISI:** Yes. So, while this was happening, a lot was happening in the background, Commissioner. A lot was happening in the background, where the Deputy Chief was obviously in engagements with individuals from APSS, Supply Chain Management. He played a role that coordinated all parties. He did not give a step-by-step feedback where he was.

20 What is important for us to take note of, at this stage, invoices had already been confirmed and signed off by the relevant departments, by APSS, as seen with one example here. So, invoices were not being submitted from scratch, and the process was not starting from scratch. The process had halted at this stage and was at a stage where purchase orders needed to be processed on the system. So, the entire process from the beginning up to this point was already done.

There was a standoff now on which budget must be utilized to proceed with the generation of the purchase orders and which cost centre must be consumed. So, the entire process had happened at this stage. There was just a deadlock at this point, where budget and funds availability to a standoff between the department requested and TMPD.

And Deputy Chief Dhlamini, throughout that process, was, of course, engaging. So, the process was already at this stage, at this point in time. So, it was easier
10 to resolve, and a lot was going on in the background, Chair.

ADV BALOYI SC: I mean, I am not seeing you, for example, here. You are facilitating payment that you say is due and must be paid. I do not see any communication that suggests that you took, you said something at the very least that seeks to ensure that the necessary documents are in. I mean, you got a call from Calvin. That is your limited involvement.

You got a call from Calvin. He never sent you, I do not understand you, and please correct me if I am wrong, I
20 never understood your evidence to be that you ended up with the evidence, the documentary evidence that shows that the services were rendered. They were contracted for, they were rendered, and, and, and. Your limited involvement on your account is that telephone call. And the next thing that we see is you overseeing, as the language

that you use, without any indication that you satisfied yourself, that you are overseeing and authorizing, and I am using authorizing loosely.

As an overseer, you are, you are assisting in payments to be made where all the necessary documents that are required and that contain the necessary information have, in fact, been submitted to the different people in the City, in the TMPD, including in your Finance, that must receive all of that information.

10 I do not see that in these texts. I do not know if that, I think I spoke long. I think the summary of what I am saying is, it does not seem from these texts that you satisfied yourself independently, that your internal processes and documents are all in order.

MR MNISI: Thanks, Commissioner. I think, in short, this is not the first time the matter is brought to my attention. I attached in my second bundle GM22 and GM23, where the first discussion started occurring, when representatives from Gubis Security Services were sending escalation
20 communications to Supply Chain Management requesting for payment. That was on the 29th of, no, no, yes, 29th of January. It is there in Annexure GM22.

Nothing is done by Supply Chain Management. The representatives of Gubis escalated that matter to me formally through email, and that is clearly indicated in

GM23, if you might recall, on the 7th of February, good day, CFO. We have this issue. Our invoices have not been paid. But within that is an attached letter, statement of account, and invoices, which appear to have been certified as correct and work done by the relevant departments.

So what I do from there, also within GM23, as per my bundle, I escalate that further immediately. I say, TMPD, I directed that matter to Mr Tshukudu Malatji, who was on the email. I then cc Cain, or I direct to Cain. I do
10 not cc him. I reply all. But replying all, I isolate the two individuals whom I think should be in a position to resolve this matter.

Within that process, this is the 7th of February, nothing is done. Then I receive a call early March from the director of this company. So I had seen those documents throughout the escalation process.

ADV BALOYI SC: Okay, thank you.

ADV CHASKALSON SC: Can we then deal with the events of 26 June, and possibly the best starting point for 26 June
20 is file 4, page 566, which is the letter that Mr Spies sends to Gubis Solutions. And there you will see that Mr Spies writes a letter that is dated 24 June. It is received on the 24 June. It is actually signed for on the, as received on the 24 June. It says:

“Stoppage of *ad hoc* security services

which have not been approved in terms of any written process.”

It says:

10 “Kindly take note that all the sites mentioned on the attached Annexure A were identified by the TMPD as sites belonging to the Department of Water, on which *ad hoc* security services are being rendered without any approval based on written process. Therefore, the Tshwane Metro Police Department has taken a decision to stop these services with effect from 1 July. To this effect, you are hereby requested not to continue deploying security on all of these sites listed on Annexure A.”

20 And that is received on the 24th of June, and it is forwarded by you to Sergeant Nkosi on the 26th of June, and that is at page 331. And there at page 331, we see that on the 26th of June at 9:57, message time 7:57, you forward to Sergeant Nkosi the termination letter and then you say:

“Call him, Mfowethu.”

Who did you want Sergeant Nkosi to call?

MR MNISI: Deputy Chief Dhlamini.

ADV CHASKALSON SC: Why?

MR MNISI: Because we needed to close the loop on this matter. There needed not to be any further uncertainty. There was clarity on how the new internal control process that are implemented. *Ad hoc* security services was now fully assigned to the full control of TMPD. So this was me saying this matter has now reached finality.

I just need to close on this effectively and ensure that all parties involved are clear and there will be no elements of uncertainty moving forward. The TMPD has
10 taken full authority of this matter, and Water Department, if there is a need for any *ad hoc* services, they will communicate with TMPD. That was the purposes of me ...[intervenes].

ADV KHUMALO SC: So, this is another example of you involving Sergeant Nkosi in operational matters that have nothing to do with him. Mr Mnisi, this is another example of you involving Sergeant Nkosi in operational TMPD matters that have nothing to do with him. Is that correct?

MR MNISI: Yes, Commissioner, it is correct.

20 **ADV KHUMALO SC:** He is not inserting himself here. You are inserting him.

MR MNISI: Yes, I am.

ADV KHUMALO SC: You are sharing with him contractual documents between Tshwane and its service providers.

MR MNISI: Yes, Commissioner.

ADV KHUMALO SC: Dealing with termination of contracts between Tshwane and its service providers.

MR MNISI: I agree with you, Commissioner.

ADV KHUMALO SC: And you consider that appropriate?

MR MNISI: No, Commissioner. However, he was already involved in this matter, and this was closing the loop. This was all in relation to addressing these matters. If you can see further on ...[intervenes].

ADV KHUMALO SC: Can you not, please, we agreed on
10 this yesterday, that if you answer my question and you want to explain, I will allow you.

MR MNISI: Okay.

ADV KHUMALO SC: And believe me, I will not gag you at all.

MR MNISI: Okay. Apologies, Commissioner.

ADV KHUMALO SC: Sergeant Nkosi was involved in the payment issue relating to an invoice. We are now dealing here with termination, and you say he was still involved. How was he involved in the termination of the appointment
20 of Gubis? Please explain that to me.

MR MNISI: So from my perspective, this was the context of that starting point of that matter, that this matter needs to cease. And if you look at the next chat, Chair ...[intervenes].

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

MR MNISI: I do ask for Dhlamini's number. This is Dhlamini's number.

ADV KHUMALO SC: I do not want to go to the next chat. I am asking you, how was he involved in the issue of the termination?

MR MNISI: From my perspective, it was still around the same topic. When we are discussing it now, it does provide a perception that it is two separate events, but in my mind, Chair, this was closing the loop on this matter indefinitely,
10 that we will no longer have any issues of this nature, and I wanted to communicate this with the Deputy Chief Dhlamini.

ADV KHUMALO SC: Remember that it is Commissioner Spies who takes the decision.

MR MNISI: It is a committee which sat and I was part of that. Within that, there was a discussion with Water Services. Deputy Chief Spies was assigned to ensure that he runs the process moving forward, because this function was now fully delegated to him, and there is no uncertainty any further.

20 **ADV KHUMALO SC:** Let me tell you, because Deputy Spies has given evidence before this Commission. He says on the 12th of March, he gave an instruction to Mr Malatji to terminate this *ad hoc* appointments the following morning, the 13th of March. Mr Malatji did not comply with that instruction, because he said the instruction had to be in

writing. And when Deputy Spies realised that Mr Malatji was stalling with these terminations, following an investigation which led to Mr Malatji's suspension around the same period, he then wrote the letter terminating the services. And that is his evidence, which Mr Malatji came here, although he disputed the issue of the insubordination, he admitted that that is the sequence. Now, was Sergeant Nkosi part of the committee discussions to terminate the appointment of Gubis?

10 **MR MNISI**: No, Sergeant Nkosi was not part of that.

ADV KHUMALO SC: So he was not part of that. Now this letter deals with that termination.

MR MNISI: Yes.

ADV KHUMALO SC: So when you say he was involved, not in the one invoice from 2024, the termination in June 2025, how was he involved?

MR MNISI: In the context of my discussion and how I am responding to you, Commissioner, this was closing the loop and closing this matter. Yes, it might seem like it is two
20 separate events, but from my perspective it was around, it was for the same incident that he was involved in, in terms of *ad hoc* services. It was for the same instance of the same company that we are dealing with here. So I assumed at that point in time that he was closing the loop. And in fact, what I should have done was ask for the number first,

because I asked for the number afterwards, and it is a hindsight that I have done, because immediately after that, I asked him for the details because I realized I should communicate directly. Presumably I had forgotten that I already asked for his details or I had not saved his details earlier on, but I do ask for his details and he does send it to me, and I then have further communications directly with the Deputy Chief.

ADV BALOYI SC: Mr Mnisi, I have a different issue with
10 this, that the date of this letter received is 24 June 2025. The invoices that you were involved with overseeing payment following the call from Mr Mahlangu, as at this date that had been resolved, no?

MR MNISI: It had been resolved, except for the *ex post facto* invoice.

ADV BALOYI SC: Yes, so when you say if those invoices were resolved and there is only the *ex post facto* invoice, which according to your evidence was something above your grade, it was not for you to resolve the *ex post facto*
20 invoice, at this point there is no outstanding invoice issues that require the closing of the loop. So what loop are you talking about closing at this point?

MR MNISI: I agree with you, Commissioner, as I have agreed with Commissioner Khumalo, reason being, I am saying that it was for the same services, being *ad hoc*, it

was for the same company involved. In my mind, I assumed that it is closing the loop for this matter indefinitely, so there is no longer the confusion. But I am agreeing that in hindsight, it does look like these are two separate complete events, but I ...[intervenes].

ADV BALOYI SC: It does not look like they are completely separate things.

MR MNISI: Yes. In hindsight, they are separate events, but when I looked at this matter at that point in time, it was
10 one event and us closing the loophole indefinitely on the matter. So I do agree with both yourself and with Commissioner Khumalo.

ADV BALOYI SC: What is there for you to discuss with General Dhlamini and why, when his superior, Spies, has written this kind of letter, you say there was a committee meeting, you were party to that, Spies was in that meeting, so the executive has met some level of senior management, has met and made a collective decision. Spies, Commissioner Spies writes that letter to Gubis. What
20 business do you have talking to his junior, General Dhlamini, about this matter, to close whatever loop you say you are closing, when the Head has communicated to a service provider? What are you discussing that you should be discussing with Spies, in fact?

MR MNISI: Okay. Firstly, Commissioner, it is not his

junior, they are equal. They are both Deputy Chiefs. They are both Deputy Chiefs and they are equals with separate responsibilities.

ADV BALOYI SC: Okay, so I accept that, ja.

MR MNISI: The responsibilities of Deputy Chief Spies is APSS. The responsibilities of DC Dhlamini is Support Services and Finance matters. So me communicating with him as be aware of this, ensure that you guard against this, so that if anything of this nature comes up, you know how to
10 deal with it. You cannot entertain this moving forward. There cannot be confusion that we have seen. We have seen earlier on, there was confusion where individuals will say, Mfowethu will deal with this, he has committed. So I needed to engage him directly to make that matter certain.

ADV BALOYI SC: Was it not for Spies to communicate that with him? I mean, the matter is now with Commissioner Spies, according to you, you tell us that he was delegated now to deal with the matter. Why are you inserting yourself on the termination issue, which is not anything you have
20 discussed with Dhlamini previously? It is coming up for the first time with this letter, where Spies has been delegated to deal with this matter and you are aware that Commissioner Spies is the one that is dealing with the matter. Why are you inserting yourself to discuss this with General Dhlamini?

MR MNISI: So this is part of my roles. I need to ensure that all parties understand fully. Previously, there was complete misunderstanding between APSS, as well as payables or Finance services within TMPD. That is why we had an issue of that nature. So I am involved, Commissioner, by view of ensuring that all parties are on the same state of mind. There is no confusion from anyone. And DC ...[intervenes].

ADV BALOYI SC: So ...[intervenes].

10 **MR MNISI:** And DC Dhlamini, who is responsible for Support and Finance matters, must be fully aware of that as well.

ADV BALOYI SC: So all you needed to do, you are telling us, is to tell General Dhlamini that Spies has terminated the services of Gubis.

MR MNISI: Yes.

ADV BALOYI SC: The user, because the way we have understood it, there is the client and the TMPD has got a role. I think you said it is the user. So that is all you
20 needed to tell General Dhlamini, that Spies has terminated this agreement.

MR MNISI: Yes, Commissioner, I need to ascertain myself that he is fully aware of that, yes.

ADV BALOYI SC: Okay, thank you.

ADV BALOYI SC:

ADV KHUMALO SC: Can we just, I will leave this to Mr Chaskalson. Do you remember offhand what your contract of employment says about confidentiality?

MR MNISI: Offhand?

ADV KHUMALO SC: Ja.

MR MNISI: I know there is a clause. I need to say ...[intervenes].

ADV KHUMALO SC: I do not want to force you. If you do not remember, you can just say, I cannot recite it.

10 **MR MNISI:** I cannot recite it, Commissioner.

ADV KHUMALO SC: And we do not have it in the bundles, am I correct?

MR MNISI: I have not seen it in the bundles, Commissioner.

ADV KHUMALO SC: Yes, can you please make it available? I do not even mind if you redact or black out everything, because I am only interested in the confidentiality clause.

20 **MR MNISI:** At present, I am suspended from the City, as you are aware. I have received communication that I am unable to access the system, nor am I able to communicate with any individuals. I will try and have communication with the City Manager from this request. I do not have that at my disposal.

ADV KHUMALO SC: And you do not have difficulty if we

obtain it?

MR MNISI: No, no, no.

ADV KHUMALO SC: ... own effort.

MR MNISI: That would help me even better.

ADV KHUMALO SC: And I can assure you I am only interested in that clause.

MR MNISI: Okay.

ADV KHUMALO SC: I am not interested in any other things.

10 **MR MNISI**: I have got no issues at all, Commissioner.

ADV KHUMALO SC: And the reason I am interested in that clause is I have reason to believe that you have breached the provisions of that clause when you inserted Sergeant Nkosi in operational matters of the City of Tshwane. If you want to comment on that aspect, you can comment, or you can leave it for later on.

MR MNISI: Yes, please, if I can.

20 **ADV BALOYI SC**: Maybe before you comment, let me try and help. I do not know where Commissioner Khumalo is going with this. It might be helpful, I hope, what I am saying, that you should accept that as a matter of common law, an employee, and that includes you, has an obligation to keep the affairs, information of the employer confidential and to disclose only insofar as it is required by their role in the discharge of their functions. I think I am going to ask

you to accept that as a common law principle that applies to all employees, and I think if you do comment, you should comment on the basis of what I am suggesting to you is the correct position of the law.

MR MNISI: Commissioner, firstly, on that perspective, I will need to get guidance from my legal team. I am not aware, and I cannot comment on that, and I cannot accept it. I will need to get guidance from my legal team. However, on the issues raised by Commissioner Khumalo, 10 first of all, I did concede that Sergeant Nkosi involved himself. Second of all, from my perspective, there was nothing completely sensitive or confidential within the payment process. That entire process, those general communications from me,

“Is the General winning?”

“Mfowethu, is the General winning?

Please extend my gratitude to the
General.”

There was nothing sensitive about those 20 communications. In terms of this termination letter, it had already gone out to the service provider. The service provider had that. So there was no upper hand that Sergeant Nkosi would have obtained by having view of that letter in any case. So I did accept the oversight, and that in hindsight, I should have asked for the number first.

That is why, Commissioner Baloyi, I was saying on 332, I quickly realized that, hey, maybe I should not have done that and I immediately asked for his numbers again. He sends me the General's numbers. So that is an admission on my part.

But at this time, the information that Sergeant Nkosi has is of no value. It cannot assist him for any benefit of any sort, hence, it was around the situation that we were discussing. That is my comment.

10 **ADV KHUMALO SC:** Let me tell you how it can assist him. You do know that Gubis is a competitor of Sergeant Nkosi's brother's company, right?

MR MNISI: They are not appointed on TMPD 1.

ADV KHUMALO SC: No, no, that is not what I asked you. They are competitors.

MR MNISI: Yes.

ADV CHASKALSON SC: Sorry, if I can just interrupt. They are, in fact, appointed on TMPD 1.

MR MNISI: No, no, this is TMPD 2, sorry, 2016/2017.
20 They are not appointed on this *ad hoc* services tender, Senior Counsel. Ngaphesheya is not part and parcel of TMPD 2-2016/2017.

ADV CHASKALSON SC: No, but he is bidding for TMPD 1 at this stage, and Gubis is ultimately appointed to TMPD 1, along with Ngaphesheya.

MR MNISI: Yes. Yes, SC, I agree with that. But on this particular tender, I would like us to treat them in isolation, they are competitors. They do bid, but on this particular one, they are not competitors. The other one is not, has not been appointed by the City.

ADV KHUMALO SC: I did not ask you about Tshwane tenders. All I said to you was you do know that Gubis is a competitor of Sergeant Nkosi's brother's company.

MR MNISI: I am aware.

10 **ADV KHUMALO SC:** And any document that belongs to Gubis, such as an invoice or letters of termination, will show what rates Gubis charges for its services, right?

MR MNISI: Not the termination letter.

ADV KHUMALO SC: No, no, I am talking about ...[intervenes].

MR MNISI: But any invoice, yes.

ADV KHUMALO SC: The 2024/2025 invoice we talked about.

MR MNISI: Yes.

20 **ADV KHUMALO SC:** Now, why is Sergeant Nkosi entitled to see what his brother's competitor's company is charging, because you said so yourself, they are bidding for tenders in Mpumalanga, which you said was that tender you were assisting with in April. So, really, what I am dealing with is your suggestion that Sergeant Nkosi does not stand to

benefit if you allow him access to Gubis documents, including invoices, including knowing when Gubis is going to get paid, including knowing whether or not Gubis's services have been terminated, including knowing whether or not Tshwane favoured Gubis in relation to allocation of *ad hoc* security services, because those are all the things that Sergeant Nkosi's brother can use to his benefit to the detriment of Gubis.

And it troubles me that you do not see anything
10 wrong with that, because you say by sharing all these things with Sergeant Nkosi, he will not benefit. It is of no use to him. And I am saying you are wrong, because the mere fact that his brother's company is Gubis's competitor, and you know very well that his brother's company tenders when it comes to security issues, and Sergeant Nkosi actively assists his brother in all of these matters, because that is how you get involved in assisting Ngaphesheya. So you must know that all this information is of benefit to Ngaphesheya. So I do not understand when you say he will
20 not benefit. Do you want to comment?

MR MNISI: Yes, I do, please, Commissioner, with your permission. Firstly, I need to focus on documents that I share, and I shared this termination letter. It is the only sensitive document which I am of the view that is of no value to him. Why I am saying that the termination letter

contains nothing in terms of rates, pricing, or anything that could benefit Ngaphesheya, reasons being, for the tender which these *ad hoc* services are currently operating in, they are not even appointed.

So even if it does know, there is no way or form that it could be allocated the work that was allocated to Gubis, hence, I am saying, from what I share, there is no benefit that he would have. I did not share an invoice. I did not share a payment date. I did not share a requisition
10 with Sergeant Nkosi, Commissioner.

ADV KHUMALO SC: But you allowed Lieutenant Dhlamini to share that invoice with Sergeant Nkosi, who then forwarded it to you.

MR MNISI: I did not allow him. He will explain why he shared it and what were the reasons behind it. I did not allow that.

ADV KHUMALO SC: But you did not stop it when you became aware that Mr Dhlamini shared it with Nkosi, clearly with the intention that he must forward it to you, because
20 that was the whole point of the exercise. He assists you. That is the only reason Sergeant Nkosi got involved in that dispute with Gubis. He say so, even in his evidence. It was to assist you.

MR MNISI: And I agreed to that. It was to assist me, but I did not ask him to assist me. He volunteered, and out of

his own, took it upon himself to do that. Further to that, I could not stop the invoice being shared. It was already shared. There was nothing I could do from that.

ADV KHUMALO SC: Okay, thank you. Mr Chaskalson.

ADV CHASKALSON SC: Can I ask you why you asked Sergeant Nkosi at this stage to contact Deputy Chief Dhlamini? Why did you not call Deputy Chief Dhlamini yourself?

MR MNISI: I think we can see, and that is what I was
10 trying to alert Commissioner Khumalo, I had clearly forgotten that I had his details, or I did not save them, hence, I asked for the details again on the next page. So I could not find his details when I tried to call him. That is when I reverted back to Nkosi. However, I further, on the next page, asked him for those contact details, which he sent them to me, and I communicated directly with the Deputy Chief.

ADV CHASKALSON SC: Why would you not have saved
20 the details on the 4th of April when Sergeant Nkosi gave them to you then?

MR MNISI: I have no reason why. I probably just called him from there and did not save the contact number. I should have done that, but I did not do that.

ADV CHASKALSON SC: Was it possibly because you are quite happy to use Sergeant Nkosi as your go-between in

relation to Deputy Chief Dhlamini?

MR MNISI: Not for all matters. It was convenient, as I have said, only for the matter of the payment. It got to a point in time where I wanted to communicate directly with the Deputy Chief. The reason why I am saying it was not safe it was pure oversight for myself. I probably made a direct phone call from WhatsApp without saving those contact details, and I could not trace them from there. Then I asked for them again in order to correct my own activities.

10 **ADV CHASKALSON SC**: I see. If we go down the chats, you have told Sergeant Nkosi to call the General at 9:57. You have not asked Sergeant Nkosi for the General's contact details at 9:57. Why not?

MR MNISI: I asked for them after that. I do not remember why I did not ask for them at that point.

ADV CHASKALSON SC: Why is your starting point to ask Sergeant Nkosi to be your go-between as opposed to getting the contact details so that you can deal with the General directly?

20 **MR MNISI**: So I think from my perspective, as I was stating to the Commission, that this was still a matter that I was relating to from my context to the *ad hoc* services, one. Secondly, to the issue of Gubis, hence, I asked Sergeant Nkosi to do that. But immediately, I asked for the contact details as well as an element of correcting myself because

it does click to my mind that let me engage this directly. I do not need Sergeant Nkosi to assist with this. He then sends me the contact details and I proceed with having discussions.

ADV CHASKALSON SC: It was not immediate. Let us look at the chats. You asked him to call at 9:57.

MR MNISI: Yes.

ADV CHASKALSON SC: What then happens is that at 10:12, we see on page 466 ...[intervenes].

10 **MR MNISI:** 466.

ADV CHASKALSON SC: That Sergeant Nkosi forwards the termination letter to General Dhlamini. You see that?

MR MNISI: I see that.

ADV CHASKALSON SC: So, he now has the document that you are going to need to speak to him about. At 10:13, there is a voice call from Deputy Chief Dhlamini to Sergeant Nkosi. That is chat number 4. You see that?

MR MNISI: I see that.

20 **ADV CHASKALSON SC:** At 10:21, back on page 331, foot of 331, Sergeant Nkosi having spoken to Deputy Chief Dhlamini says to you:

“I found him. What time can we meet today?”

He gets no response by 10:29, so he sends you two question marks. That is over on 332. You see that?

MR MNISI: I see that.

ADV CHASKALSON SC: You finally get back to him at 12:58 saying:

“Will confirm, Mfowethu.”

And at 12:58, you also say:

“I need to call him urgently in the meantime. Can I have his number?

This cannot wait for the meeting, bro.”

So, why by 12:58 was it urgent for you to speak to
10 General Dhlamini, but at 8:57, approximately four hours
previously, sorry, 9:57, three hours previously, it was not
urgent?

MR MNISI: I think this was me realizing that I should have
asked for his numbers in the first place. So, it was urgent
for me to have a direct discussion with the General in
reference to being on the same state of mind in terms of the
termination letter. I was, in short, correcting my own
actions of sending that to Sergeant Nkosi by saying, I need
to have this discussion with him on my own, please send me
20 his numbers, I need those numbers now.

ADV CHASKALSON SC: You are going to meet with him
later that day. That is what Sergeant Nkosi has arranged
for you.

MR MNISI: Yes.

ADV CHASKALSON SC: At your request.

MR MNISI: Yes.

ADV CHASKALSON SC: What is so urgent that cannot wait for the meeting later that day and that requires your immediate communication with Deputy Chief Dhlamini?

MR MNISI: From my perspective, there was no need for a meeting. I could address this over the phone, hence, my urgency in wanting the contact details in order to enable me to have direct communication with the Deputy Chief Dhlamini. The context of the discussion was to ensure that
10 there is, everyone is on the same page in terms of the termination of these services and he himself is aware that in the event he has received any communication of this nature, he need not entertain it. That was the urgency of that matter, and I wanted to close this and there was no need for a meeting as we ensured that this is done accordingly.

ADV CHASKALSON SC: I still do not see any urgency. I mean, you could have just said, I can resolve this with a call, send me his number. What was so urgent that you had
20 to speak to him immediately?

MR MNISI: You recall earlier on the escalations and the phone calls and the messages that were received, this was urgent for me because this needed to be resolved. I did not want a situation of this nature to reoccur. We are sitting at a stage where we are sitting almost end of the month.

Account payables from my perspective must be dealt with accordingly.

I cannot have a dispute of this nature, which will have an impact on the City's books. At this stage, Chair, it is the end of the financial year. It is the end of the financial year, I need to ensure that we commence the process of closing our books, preparing financial statements accordingly. There is no way at this stage that I can afford a dispute from a service provider who claims that, no, we
10 still had an outstanding invoice at this stage.

This was particularly, extremely important for me because we are engaging in our closing year-end, closing activities. And at this point in time, my payables must be dealt with accordingly. The City was previously qualified in this matter. I was not prepared to receive another qualification in this matter. I had resolved this in the previous financial year and I could see the materiality of the R14 million, and that would have been a significant problem. So the urgency is on the basis of the financial
20 year-end, getting our books in order to ensure that we prepare financial statements that are free from material errors.

ADV CHASKALSON SC: Financial year end is 30 June, is it not?

MR MNISI: Yes, it is 30 June.

ADV CHASKALSON SC: The letter only terminates services with effect from 1 July. The letter only terminates services with effect from 1 July.

MR MNISI: That is true.

ADV CHASKALSON SC: How on earth can it affect financial year-end if no services that are provided up to 30 July will be subject to the termination?

MR MNISI: Firstly, SC, what is essential is that outstanding invoices from this point in time must be
10 adequately reconciled and captured accordingly. If it is issued on the, can I just go to the page. You said it is page? I want to see the actual letter.

ADV CHASKALSON SC: 566.

MR MNISI: 566. I want to go to that actual letter. So 566, the letter is issued on the 24th of June, not July.

ADV CHASKALSON SC: Look at paragraph 3.

MR MNISI: Yes, but the letter is issued, so the point I am trying to drive is that reconciliation of invoices must occur at this stage as the Deputy Chief Responsible for Support
20 and Finance Services, it is his responsibility to ensure full alignment. I would not want to be engaged in a process after year-end of dealing with outstanding purchase orders that could not have been dealt with at this point in time. So that was extremely urgent from my perspective, SC.

ADV BALOYI SC: Was the purpose of the meeting to get

him to put in purchase orders, to ensure that purchase orders and invoices have been put in? Is that what made this urgent?

MR MNISI: No. The purpose was to ensure that the books are in order, that we do not get a surprise after year-end after financial statements have closed. At this stage, I received no complaint. It was me being proactive and say this is something we might expect. This letter stops the services from the 1st of July. What happened between then
10 and now? Were there any further deployments? How has those been dealt with? Was the budget available? Were purchase orders captured?

I would not want a repeat of what we have just faced at the close of the financial year because at this point, it is something that is outside my control and submitting financial statements to the AG with such force could result in a qualification error.

ADV BALOYI SC: Are you saying the committee that you were part of, which made the decision to terminate, did not
20 take those factors into account?

MR MNISI: So that committee took a decision that internal controls around *ad hoc* services must only be dealt with by TMPD.

ADV BALOYI SC: Yes. So what are you discussing with this, with Dhlamini?

MR MNISI: What I am discussing is that we need to ensure that before year-end, before the 30th of June, any outstanding matters in this regard have been resolved. We will not have the leisure of time to make necessary corrections.

ADV BALOYI SC: Did you know for there to be outstanding matters at this point when you are urgently seeking a meeting, in fact, seeking a discussion which cannot wait for a meeting, did you know for there to be any outstanding
10 invoices?

MR MNISI: No, I did not know at this point, but we had on previous financial years a massive scramble.

ADV BALOYI SC: No, no, I know the history. Do not, we have had enough of that, so I do not need you to go back there. I am asking a very direct question. You proactively seek out General Dhlamini and the context of it is you were in a committee, that committee made a decision that from the 1st of July, we will not be using these services. A termination letter must go out. You tell us that someone
20 was delegated to deal with the matter. Spies is dealing with the matter, right? We understand, I do understand your evidence.

Commissioner Spies was tasked to attend to this matter and bring it to order and finality. After that meeting, General Dhlamini gets a copy of the letter. You are aware

of that. You are dealing with Sergeant Nkosi about that same letter. You ask for a meeting with General Dhlamini and you are telling us you were proactively seeking to anticipate any disputes about outstanding invoices.

I must say it is very strange unless you say, yes, I was aware that there are invoices that may be an issue and I was dealing with Dhlamini so that we sort that out. If that is not your account of why you are being proactive about this in the way that you are being here, if that is not your
10 explanation, then it is quite strange to me at least that you, when someone else has been tasked to deal with the matter, you decide you are going to take it on and you are going to take it on with Dhlamini instead of leaving it to Spies to deal with.

MR MNISI: Thanks, Commissioner. I think firstly, I was not aware that DC Dhlamini had received this letter and the purposes of me having this urgent request to engage him was purely as a result of me safeguarding the adequacy and correctness of the City's books from a payables
20 perspective. Towards the end of the month, his roles and responsibility, he is Support Services and Finance matters. I had a responsibility to play in terms of ensuring that he ensures that the component that he deals with, with his colleagues, Deputy Spies, is dealt with accordingly. It was a highly problematic area. We had some issues on a

regular basis up to a point where it was even in mid-year.

So it was extremely important for me to address this matter. I needed to be proactive because I could foresee that this, if not raised, could come up at year-end or month after we submit financial statements and I would not be in a position to take on anyone. So proactively, I need to raise concerns and risk areas to respect of colleagues.

ADV BALOYI SC: Thank you.

10 **ADV KHUMALO SC**: And you could not send an email to both Spies and Dhlamini through proper channels to say, I have these concerns, please address them, make sure this does not happen come financial year. Why do you use back channels that involve Nkosi, because it raises suspicions to me that an internal matter, the letter is from Spies, you are in possession of it, what is so difficult with you sending an email to Spies and Deputy Commissioner Dhlamini and say, in the past financial year we had this issue, make sure that it does not arise in the current financial year. Why do you
20 go and fetch Nkosi and give him the letter and say he must arrange meetings with Dhlamini? He was your colleague at Tshwane.

MR MNISI: Yes. Commissioner, I had already conceded that I should have asked for his details first, and I do correct myself a few hours afterwards and I get his details.

The reason for me addressing this via telephonic mode of communication with Deputy Chief Dhlamini, it is pure responsibility. It is his responsibility at year-end to ensure that finance related matters from TMPD are dealt with and dealt with accordingly.

ADV KHUMALO SC: And it is not the normal channel. That is my issue. It is the private cellular phone numbers. I mean, this is a work issue. This is at work. You can use your email at work to send an email to him at work to say,
10 please bear in mind that we had these issues in the past financial year, make sure that they do not happen again. If you need more clarity, give me a call on my landline in the office or I call you in the landline in your office.

It is the back channels that concern me. It is the back channels where the private cellphone, the private meetings arranged by Sergeant Nkosi, the private, very urgent meetings that must happen immediately and cannot stop, those are the back channels that concern me because this is a Tshwane issue. It is an internal issue. It is an
20 issue between colleagues who can send each other emails and does not need the involvement of Nkosi at all because these are now year-end issues.

MR MNISI: Commissioner, if I can comment. Modes of communications, there is different forms which are accepted. There was nothing untowards by me requesting

his cellphone details and calling him. The area of concern is indeed that I first want or I first request Sergeant Nkosi to do that on my behalf. I concede and I do correct myself and I get his details directly. So there is nothing untowards which utilizing a cellphone mode of communication to relay a message to a colleague. It happens all the time. It happens between me and the City Manager, the Deputy Mayor all the time. It is a mode of communication that we might utilize.

10 Further to that, even utilizing a private landline number, my PA takes all my calls. I do not even have a landline number in my office. They are all redirected to my PA to handle, because that phone constantly goes off the hook. So I could not have utilized that and I preferred cellphone related communication, because it would transmit the matter faster. It would help me to clarify any concerns from the Deputy Chief immediately rather than waiting for an email communication which he might claim I did not see this, I only saw this the next day.

20 So I use the cellphone mode of communication not as a mechanism of hiding anything or doing anything illicit. It was a faster way for me to convey the message and to address any concern that might arise.

ADV KHUMALO SC: Okay. And the reason I am mentioning this so that you understand why I am mentioning

it is because of everything Sergeant Nkosi has been doing, and everything he has been doing which you conceded that by the third or fourth time it looked like he was trying to influence a tender which was being evaluated, and everything we have seen that he was doing and the conduct that even you said was suspicious.

So when I look at all of that together and knowing that even on your version you thought he had misled you or was playing you at some point, you still engage him in these
10 things and it raises to me concerns and I will not put it higher than that, that it raises concerns that you knew at least by March, end of March that he is trying to influence a tender that you are going to adjudicate. It is still being evaluated.

And you found his behaviour suspicious although he never expressly said to you I want you to rig this tender in my brother's favour. But you now know that he is doing all those things and despite that you still involve him in Tshwane matters. That is where to me the concern comes
20 from. Thank you.

CHAIRPERSON: Mr Chaskalson, just a couple of unrelated questions but still relating to the same chess. Mr Mnisi, you suggested quite a while back now in response to questions by Mr Chaskalson that you wanted to make this urgent call so as to obviate the need for the meeting. You

remember that?

MR MNISI: Yes, I needed to address this matter urgently, Commissioner.

CHAIRPERSON: Yes. So once you got the number and once you made the call there would no longer be a meeting. That is how I understood you, correct?

MR MNISI: There would not have been a need any longer.

CHAIRPERSON: Yes, yes. Okay, now let us look at page 332, the third chat on that page where you say:

10 “I need to call him urgently.”

 And here are the words that I want to emphasize.

 “In the meantime.”

 My understanding of those words is that something is to happen now but something else is to happen later. I want to call him urgently in the meantime. That is pending the happening of something else. Would you agree that that would be the ordinary reading of those words?

MR MNISI: I agree, Chairperson.

CHAIRPERSON: Yes. Yes, ja. Now, I do not get it then
20 when you say that as soon as you would have called him there would no longer be a need for a meeting if you accept my interpretation of this as you have just done. Do you want to respond?

MR MNISI: Yes, please, Chairperson.

CHAIRPERSON: Yes, yes.

MR MNISI: So, in the event that there is additional clarity seeking questions, I really requested for the meeting. I had really done that, and I am sure Sergeant Nkosi had already informed the Deputy Chief. So I am not sure whether he now moved whatever plans he had. So when I say in the meantime, I say if the need arises and if there is any additional communication or clarity that we might need to have out face-to-face. So ...[incomplete].

CHAIRPERSON: Oh, continue, continue.

10 **MR MNISI**: Yes, so it was in that context that I had already requested for a meeting, but I realized that I should have asked for the number first.

CHAIRPERSON: Yes. So, but you say in so many words that once you spoke to him there would be no need for a meeting. So I do not understand the explanation you have just given.

MR MNISI: Chairperson, I had already requested a meeting. I say in the meantime ...[intervenes].

20 **CHAIRPERSON**: That means nothing. That means nothing if you say once I called him there would be no need for a meeting. So it does not matter that you had already asked for a meeting, because all you would then have to do would be to say because I have now spoken to you, General, there is no need for a meeting and you would then tell Sergeant Nkosi that as well. You agree?

MR MNISI: I was being courteous to Sergeant Nkosi, Chair. I knew that once we have a discussion over the call we would be in a position to resolve this matter and there might not be any further need for a meeting. So when I say in the meantime, I am telling him that I will call him urgently in the meantime, and I will inform you if need be, if the meeting must still continue, but for now, let me address the matter directly with my colleague. That is ...[intervenes].

CHAIRPERSON: But you cannot say if the meeting will still
10 be necessary. You have said, you have just said in so many words now when I am engaging you and when Mr Chaskalson was engaging you that there would no longer be a need for a meeting. You said so in so many words.

MR MNISI: Chair, our communications are informal and I would not express and expand in so many words and ...[intervenes].

CHAIRPERSON: I am taking you on your word, Mr Mnisi. I am taking you on your word.

MR MNISI: That is my word and I stick to that, that I would
20 have a correct, direct communication with the Deputy Chief, clear the matter and if the need arises, we will still have a meeting. That is what I meant by that.

CHAIRPERSON: Okay, moving on to the second point. One chat down you say, because earlier you said you want to call him urgently in the meantime. The next chat is:

“This cannot wait for the meeting, my bro.”

This is totally at odds with somebody who is saying once you have spoken to him, there will no longer be a need for a meeting. Do you agree?

MR MNISI: I agree, Chair. He was taking long to send me the details. I needed the numbers now. I was trying to demonstrate urgency, that I want these contact details now, I cannot wait, if he, in his mind, thinks, no, this can wait.

CHAIRPERSON: So you accept that this, too, is an
10 indication that you were still expecting that there will be a meeting?

MR MNISI: I accept that, Commissioner.

CHAIRPERSON: Which I say is at odds with what you said in response to Mr Chaskalson and me that once you called him, there would no longer be a meeting.

MR MNISI: At this stage, I had not communicated with the Deputy Chief, but in the context of me sending this, I knew.

CHAIRPERSON: That is something else. That is something else. You knew what you wanted to talk to him
20 about, and you knew that once you did, that would kill the need for a meeting. So whether or not you had spoken to him is neither here nor there. Do you follow me?

MR MNISI: Chair, I follow you, but I tend to disagree with that notion as a result of this being related. So if I could not get hold of him for whatever reason and the meeting

must still proceed. So I am explaining it in the context of saying, I said that, firstly, to communicate that I really requested for the meeting, but I want to call this gentleman now, please send me all these details. I sent a variety of messages trying to show my urgency that I need the contact details now. But in my mind, I knew in the context of the discussion, it is just the informal nature that I do not go further to express.

CHAIRPERSON: Yes. Yes, Mr Chaskalson.

10 **ADV BALOYI SC:** Sorry. Mr Chaskalson, before you do that. The call him and you need to speak to him urgently, was that precipitated by this termination letter when you received the termination letter? Is that what triggered the request to make a call?

MR MNISI: In conjunction ...[intervenes].

ADV BALOYI SC: [Indistinct]... [cross-talking] the need to make a call.

MR MNISI: Yes, in conjunction with ensuring that all invoices and account payables are dealt accordingly.

20 **ADV BALOYI SC:** Ja, so the sequence of these texts here is you first ask for a meeting. That is where you say we need to have a discussion with him, so all three of you. I accept that the use of “we” here is not what you have told us earlier, which is it was a reference to just the other party alone. You are all going to meet, all three of you. And then

he says, I will call him. And then you get the termination letter.

So the meeting was always on schedule according to you. The meeting was going to be, to happen. Then you get the termination letter and then you then say, call him, and that follows with the urgently. I found him. What time do you want to meet? And then you say, I need to call him urgently.

So the, whatever you tell us, you have testified,
10 you are going to discuss with General Dhlamini, it appears on the sequence of these WhatsApp messages that the telephone call, this urgent telephone call was going to be a different discussion, or in addition to the meeting, in fact, because the meeting was with you, Dhlamini, and Sergeant Nkosi.

And the meeting was not precipitated by the termination letter according to the sequence of these WhatsApp messages. I say this to conclude that it seems that you were going to meet anyway. You just needed to
20 deal with something urgently with him, but you were still going to have that three-person meeting that you have asked for. Am I correct that that is what it looks like?

MR MNISI: Commissioner, I respectfully disagree with you. The purpose of me requesting this engagement from the beginning was in terms of discussing the termination letter.

The reason I send it is for General Dhlamini to be aware of what the content of the discussion will be about.

ADV BALOYI SC: Okay, so when you first said we need to meet, it is because you already had the letter.

MR MNISI: Yes.

ADV BALOYI SC: And you wanted to discuss the letter from the get-go when you said, let us meet.

MR MNISI: I agree with you.

ADV BALOYI SC: Okay. Thanks, Mr Chaskalson.

10 **ADV CHASKALSON SC:** Mr Mnisi, your version throughout has been that this urgent meeting was to deal with year-end issues.

MR MNISI: And outstanding invoices.

ADV CHASKALSON SC: And outstanding invoices. Well, the termination letter was completely irrelevant to that. How could the termination letter, which only took effect after year-end, be relevant to year-end issues and outstanding invoices?

20 **MR MNISI:** It is relevant because we need to reconcile any outstanding invoices for the current financial year, so ...[intervenes].

ADV CHASKALSON SC: But you need to do that whether or not there is termination.

MR MNISI: But there has been instances where that was not done. We had seen that previously from TMPD that

resulted in seven months' worth of invoices having been dealt with only in January. So I needed to avoid a situation of that nature to reoccur. It was common practice that was occurring.

ADV CHASKALSON SC: If there was no termination letter, you would be faced with exactly the same problem. If there was no common, if there was no termination letter, you would be faced with a problem that there is evidence, that there is no reconciliation of invoices, and you are going to
10 sit with a problem that by year-end you cannot reconcile.

MR MNISI: But the difference with that, Chair, is that this matter must be concluded. So there might have been ...[intervenes].

ADV CHASKALSON SC: Sorry, what must be concluded ...[intervenes].

MR MNISI: Cancellation ...[intervenes].

ADV CHASKALSON SC: Reconciliation by year-end or ...[intervenes].

MR MNISI: Sorry, Chair.

20 **ADV CHASKALSON SC:** Or termination?

MR MNISI: Sorry. So these events must occur concurrently with each other, whether we like it or not. In this instance, firstly ...[intervenes].

ADV CHASKALSON SC: Sorry, what events? Please be clear now. I am trying to work out what your version means

because I can make no sense of it at all.

MR MNISI: Yes. So, firstly, it is the termination and ensuring that no further accrual invoices are raised by this company. Second ...[intervenes].

ADV CHASKALSON SC: Sorry, termination only takes effect on the 1st of July. There is nothing urgent. An email, a message, you can say to him, look, here is the termination letter. In four days' time, you are not going to be able to engage these people, do not invoice them.

10 **MR MNISI**: I completely disagree with you from that point. Taking into account what had occurred in the past, this was an urgent matter for me to deal with, to address on both events. Firstly, the outstanding payables issue and reconciliations being done accordingly ...[intervenes].

ADV CHASKALSON SC: Stop at that first one. That first issue is going to be there whether or not there is a termination letter. Do you accept?

MR MNISI: I accept.

20 **ADV CHASKALSON SC**: So that, so the termination letter has nothing to do with that.

MR MNISI: No, it does because it is related. It is a related matter where it is a major issue in the service provider. The service provider could have a deployment letter that we are not aware of. So this must be dealt with accordingly and that all parties involved must work together.

ADV CHASKALSON SC: The service provider has received a letter that says you may not provide any services with effect from 1 July. Next financial year, you may not provide any services. Service provider cannot, there are no issues with deployment letters that might affect the next financial year in the face of that letter.

MR MNISI: This was extremely urgent from my perspective taking into account ...[intervenes].

ADV CHASKALSON SC: Let us take a step back. So do
10 you accept that in relation to year-end invoices, this termination letter is irrelevant? It has nothing to do with making sure that accounting matters are in relation to the 2024/25 financial year are in order?

MR MNISI: Chair, like I said, these matters are interrelated. You cannot ...[intervenes].

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

MR MNISI: I do not ...[intervenes].

ADV CHASKALSON SC: Please, how can ...[intervenes].

CHAIRPERSON: [Indistinct]... please let him finish,
20 please, please.

MR MNISI: I do not accept that at all. These are interrelated events and I stand to what I said. The urgency of this came in two aspects. Firstly, we need to ensure that the books are reconciled accordingly. Secondly, we need to ensure that this issue desists from reoccurring, completely

moving forward. So the termination letter triggered my concern from the past events that we had seen and that were evident on board. So it was relevant for me to have a discussion on both matters to finally get this matter to rest.

ADV CHASKALSON SC: You were part of the committee that took the decision that gave rise to the termination letter.

MR MNISI: Yes.

ADV CHASKALSON SC: So you were aware of those
10 issues from months before.

MR MNISI: Hm.

ADV CHASKALSON SC: So you could have anticipated that in relation to the reconciliation of invoices for the 24/25 financial year, there may be a problem, given the track record of the department and Gubis.

MR MNISI: Hm.

ADV CHASKALSON SC: Why did it only occur to you that this might be a problem when you see a termination letter on the 26th of June?

20 **MR MNISI:** The termination letter triggered that, Chair. It was an issue that I was going to address in any matter. The termination letter triggers that so that this matter is addressed urgently at this point in time.

ADV CHASKALSON SC: So the issue would have been an issue whether or not there was a termination letter.

MR MNISI: Or might not have. But it is an issue that I was aware of and it was persistently continuing, so I needed to ensure that there were systems and safeguarding controls in place to desist that from reoccurring.

ADV CHASKALSON SC: And the existence of the termination letter had no effect on whether that would or would not have been an issue.

MR MNISI: Like I said, that is not the only reason. Moving forward, how we ...[intervenes].

10 **ADV CHASKALSON SC**: Sorry, sorry, let us get rid of the first explanation that you gave us, because I want to put to you that that first explanation, it is simply wrong.

MR MNISI: I disagree.

ADV CHASKALSON SC: The termination letter could have had nothing whatsoever to do with issues as to whether invoices had been reconciled up to the point at which termination took effect.

MR MNISI: Respectfully, SC, I disagree with you. These matters are interrelated. One matter triggers another,
20 whether we like it or not. There could have been ...[intervenes].

ADV CHASKALSON SC: You can say that again and again, but you actually need to give me some sort of rational explanation for it, because the termination letter takes place after year-end. You are talking about a process

of reconciling invoices up to year-end. The two are not related.

MR MNISI: I disagree with you, SC. They are related. That is my answer, as a result of this triggering, whether these matters have been reconciled or not, and also ensuring that we put systems in place to avoid this from reoccurring in the new year. We saw what happened in the previous financial year. Invoices from 28 of June 2024 were claimed by the service provider, which had to be dealt
10 with as an *ex post facto* invoice. So from my perspective ...[intervenes].

ADV CHASKALSON SC: Yes, but if we are talking about invoices from a year and a month previously, that is not going to be affected by termination. That is a problem that exists whether or not termination has taken place. You understand that?

MR MNISI: I understand that, and I have given my answer on the urgency of this matter and what triggered both processes. And I think from my perspective, that was an
20 urgent matter that I needed to deal with, with speed. It was also implemented by that it is year-end now. Further to that, moving forward, there must be systems to deal with this matter. It was an urgent matter from my perspective.

ADV CHASKALSON SC: So I want to put to you that your evidence is false and that one of two propositions must be

the correct state of affairs. Either the urgency had nothing to do with the termination or the urgency did have something to do with the termination but it had something that you are not telling us about.

MR MNISI: I respectfully disagree with you on that proposition. I am giving evidence from an objective perspective. I am telling the truth to the Commission. The purpose of this engagement was in reference to dealing with matters that I just raised. Firstly, year-end processes,
10 ensuring account ...[indistinct] was in place. Secondly, ensuring that this matter does not reoccur in the near future, as depicted by the sequence of events and the urgency of me actually wanting his contact details so I can further have discussion with him directly.

CHAIRPERSON: But Mr Mnisi, what is the happening or not happening of something in the future? What has it got to do with the financial year-end of 2025? What is the connection between the two? The future in the context of that financial year would obviously be something starting
20 from the next financial year onwards. So what has that got to do with the end of this financial year? I just do not understand you.

MR MNISI: Firstly, Commissioner ...[intervenes].

CHAIRPERSON: I hope you are not going to repeat the same thing you have been repeating to Mr Chaskalson. I

hope you are going to give a new explanation.

MR MNISI: I am going to give you a true explanation of what occurred from my recollection and what happened on this events. Chairperson, risk management processes have dictated that there is a failure within the internal controls around this post, so I will not repeat. We have already discussed it and we have seen the evidence towards that.

Secondly, I am a proactive individual in terms of managing risk and mitigating measures from reoccurring in
10 the near future. So I do not just look at matters
...[intervenes].

CHAIRPERSON: What is your near future? What is your near future?

MR MNISI: The new financial year.

CHAIRPERSON: Is it from 1st July onwards?

MR MNISI: It is the new financial year and to put safeguards in place from the beginning. That is my proactive thinking in terms of addressing this matter and mitigating it from reoccurring in the near future. So I had to
20 deal with it. Firstly, I assessed the risk management processes. There were severe issues that were reoccurring. It is evidence, we have seen that. Secondly, let us be proactive and stop this so that everyone is on the same state of mind. From my perspective, that was urgent.

CHAIRPERSON: What exactly would you have had to say

in your year-end report about this matter, at least in this context, with the exception of saying, this has been terminated.

MR MNISI: Chair, the first aspect ...[intervenes].

CHAIRPERSON: I know you would have had to give a history, this and that and that and that happened leading to the termination. But my understanding is that you wanted to talk to the General about the termination, correct?

MR MNISI: Yes, correct.

10 **CHAIRPERSON**: Now, what is the urgency in that in relation to the financial year-end? What is the urgency if all that you want to talk to him about is the cancellation, that is my difficulty, especially regard being had, and Mr Chaskalson has said this repeatedly, regard being had to the fact that that cancellation was only going to take effect from the 1st of July.

So telling the General that there has been a termination or discussing that termination with him, what is that got to do with you finalizing your report for purposes of
20 the financial year-end? What you have said thus far just does not make sense at all. Yes?

MR MNISI: Chairperson, with all due respect, this is what occurred, and I am giving evidence to the Commission that the purpose of me having a discussion with Deputy Chief was in relation to ensure that, firstly, account payables are

recorded accordingly to avoid ...[intervenes].

CHAIRPERSON: What, what accounts?

MR MNISI: Account payables, the creditors, that if there is any matters outstanding, reconciliations must be done accordingly so ...[intervenes].

CHAIRPERSON: Relating to which financial year-end?

MR MNISI: To the financial year that was closing, which was the 30th of June 2025. Further to that, the termination moving forward and that the matter had been closed, that
10 was urgent for me. I needed to address that. I saw that as something that is pertinent for me to have a face-to-face discussion with the General in order to avoid anyone saying anything else.

We have seen in other chats that the General, between himself, what was presented to me, there, it is something that said Mfowethu has okay'd that, which I had not. So I needed to ensure that I have a direct communication with him and I outline this in full so that this matter is closed completely.

20 **CHAIRPERSON:** And on something you consider to be that urgent, you do not get the number directly from within the system and you want it from Sergeant Nkosi.

MR MNISI: It was easier. He had it readily available.

CHAIRPERSON: And your PA could not easily have gotten it for you?

MR MNISI: I chose to ask it from Sergeant Nkosi. I could have asked it from, my PA, would have phoned his PA, would have first asked for permission. It would have been easier for me just to tell Nkosi.

CHAIRPERSON: On these chats, how long did it take him to give you the number?

MR MNISI: I am just going to page 331. So on 331, I asked for the number. Can I have his number, on 332.

CHAIRPERSON: I just want the time, how long? You can
10 look at the beginning and then right at the tail end and just give me how long it took. How long did it take?

MR MNISI: Okay, that is where I am going. It was at 11:58. He sent it to me at 11:03. So it looks like it was about five minutes.

CHAIRPERSON: Five minutes, okay, all right. Mr Chaskalson?

ADV BALOYI SC: Before you do, can I please? Sorry, Mr Chaskalson. Mr Nnisi, you say urgency for two reasons. One is for the future, the new financial year. But this
20 termination letter is on the 26th, and in fact, you say it cannot wait for the meeting. I need to do this on a call and I need to do it now. But the termination letter is on the 26th of June, and so even if one accepts that there is an urgency to deal with what not to do in the future, you actually have a good four days, good four or five days before the new

financial year starts. So it does not make sense that you have a meeting that you are scheduling and then you say I have to speak to him now so that I can talk about the future that is only starting on the 1st of July. So it does not make sense at all as an explanation for why it is urgent to have a call.

Similarly, the reconciling of the previous years or the ending year payments, invoices and purchase orders, it does not make sense because you have four days before
10 the year closes. But we also, but the close of the year does not mean come the 30th all your documents and everything are in. It is a process that continues to run as you prepare your documents. I see you nodding. I think you agree with me.

MR MNISI: I agree with you.

ADV BALOYI SC: That it is a process in itself. So your explanation that I needed to speak to him now before the meeting that we are scheduling and that is what made it urgent is not a satisfactory explanation because you had
20 time on both sides. I would like you to comment on that if you have got a comment.

But the second thing is you are speaking to Sergeant Nkosi about having this meeting and having a discussion with General Dhlamini. So it must be that it is just about Gubis and we know it is about Gubis because it

is about the letter that was sent to Gubis. But Gubis is not the only service provider who is implicated by termination of these *ad hoc* services.

It is not the only service provider that likely has financial accounting and reconciliations and purchase orders issues. You have the whole lot of your service providers who are similarly situated and you are not, obviously not going to be addressing them with Nkosi because he has nothing to do with them. So that again is to
10 me, to me suggests that in fact your telephone discussion and your meeting that you are asking for had nothing to do with what you are telling us that they were about.

It was going to be a completely different discussion other than what you are saying about the future and the reconciliations that you want to be done before financial end because that explanation does not make sense at all for the urgency that you have put into this process.

MR MNISI: Commissioner, I respectfully disagree with you on the grounds that we had four days left and we do provide
20 additional 10 days. TMPD is a big spending department. For them to reconcile all the status of accounts they might need way more than four days, taking into account that there must be confirmation and engagements with the service provider, have an agreement in terms of what is outstanding.

From that point they need to undertake the process of ensuring that invoices are certified, purchase orders are created. So that is something that takes a bit of time in some instances, particularly on the verification component. So from my perspective this was essential and I needed to give him a heads up so that we do not face an issue of this nature when time is up.

ADV BALOYI SC: Sorry to interrupt you, but that is what happens every year-end. It is not unique here. Every year-end that is exactly what the processes of closing the year entail. So you have to explain why this is different that you are rushing things in this way and specifically relating to Gubis.

MR MNISI: So every year end the department was getting this wrong. The previous year I had to make restatements on the financial statements as a correction of findings that were picked up by the Auditor General. We had to accept that indeed these are ...[indistinct] that are outstanding. So it was something that was not occurring correctly in the past, hence this time around we needed to ensure that this finding does not repeat itself and there is no need to make a correction on the submitted financial statements.

ADV KHUMALO SC: Gubis' June invoice was only going to come in, in late July anyway.

MR MNISI: So within this process we also request the

service provider to submit a suspended process of closing our books. All service providers are send letters to ensure that you submit your invoice that is due for the year-end financial year before 10 working days. That is the last invoice.

ADV KHUMALO SC: So that was going to happen in July and all the recon would happen in July. There was no urgency on the 26th of June.

MR MNISI: But invoices that might not have been dealt
10 with subsequent to either the period of May, April and March. We took note that we resolved an issue of Gubis outstanding payments in March for all invoices that were due up until February. So what happened to March invoices, what happened to April invoices, May invoices and June. So there was four months that needed to be dealt with accordingly.

ADV KHUMALO SC: But you said at this point you were not aware of any outstanding invoices.

MR MNISI: Yes, but there was a perception that they need,
20 I need to get confirmation. So the Deputy Chief Dhlamini must ensure that that has been dealt with accordingly.

ADV KHUMALO SC: Yes.

MR MNISI: I might not have been personally aware but it is a process that must be undertaken.

ADV KHUMALO SC: Okay, Mr Mnisi.

ADV CHASKALSON SC: Can I try and spell this out in very simple steps so that you and I can actually find ourselves on the same page?

CHAIRPERSON: May I? I am very, very sorry to interrupt you, Mr Chaskalson. Did the Counsel discuss the end time today?

ADV CHASKALSON SC: We ...[intervenes].

CHAIRPERSON: For today rather.

ADV CHASKALSON SC: We were aiming at 4 but we, I
10 mean, unless the witness is going to come back tomorrow morning.

CHAIRPERSON: Let us, perhaps let us take a short, short adjournment. I will not indicate the time. May Counsel have that discussion and come to us outside once you have done that. Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: Thanks, Chair. Mr Mnisi, I was
20 hoping to close off the subject of the relevance of the termination letter by postulating three different steps, three different scenarios. The first scenario is a scenario, extremely unlikely, but a scenario where the TMPD is presented with an invoice from before the 24/25 financial year, a scenario that you faced earlier that month in relation

to the one outstanding Gubis invoice.

Now, you will accept that that scenario, how to deal with an invoice from the 23/24 financial year, would be completely unaffected by the fact of termination. It would be a problem whether termination took place or not. You accept that?

MR MNISI: I accept that and I accept that this is a highly unlikely event.

ADV CHASKALSON SC: Highly unlikely. So now we deal
10 with a much more likely scenario, the scenario that there are a series of invoices for the 24/25 financial year, invoices before the 30th of June, in respect of which there are disputes. Payment has not been made. That is an issue in relation to year-end that will be an issue whether termination has taken place or not. Any financial year, if there are disputes on invoices in relation to that financial year, that will be an issue whether or not the contract is going to survive the end of the financial year. You accept that?

20 **MR MNISI:** I accept that, which justifies my urgency in terms of dealing with the matter as well.

ADV CHASKALSON SC: Yes. And anticipating that issue is something that should not be left to the 26th of June in any financial year because it is something that will be an issue in any financial year. It is something that you can

anticipate months in advance. You can have in place procedures for dealing with year-end that will ensure that if there are any disputes in relation to invoices for that year, they are resolved speedily enough to meet your reporting requirements. You accept that?

MR MNISI: I disagree with that, SC. The environment that we are working in is not the perfect environment. In the perfect environment, all of these issues must be dealt with on a monthly basis. These are some of the issues that we
10 are still struggling with in the City and we are still trying to ensure that the systems that we put on board deal with that. At present, we still have issues where we are experiencing concerns of this nature, hence, I disagree with that notion. We are addressing these internal controls. This was a relevant, urgent matter for me to address.

ADV CHASKALSON SC: But you are addressing those issues in relation to contracts other than contracts that end at the end of the financial year, are you not?

MR MNISI: All contracts.

20 **ADV CHASKALSON SC**: All contracts. So it is an issue that arises in all contracts, whether they terminate on the 30th of June or whether they run into the next financial year.

MR MNISI: Agreed.

ADV CHASKALSON SC: So the termination of this particular contract would not make it a special situation.

MR MNISI: I disagree with that. I was being proactive. I needed to ensure that this matter does not persist in the future.

ADV CHASKALSON SC: But you would have had to have been proactive whether or not the contract was continuing past 30 June.

MR MNISI: Especially at year end, which is a major concern for me, to get the books in order, one, and to ensure that in the future this matter does not repeat itself.

10 **ADV CHASKALSON SC:** Yes, but that is an issue that you face not just in relation to this contract, but in relation to all other contracts of the City.

MR MNISI: No, it is predominantly within TMPD Security Services.

ADV CHASKALSON SC: Yes. Well, let us not take it outside of TMPD. In relation to all other TMPD contracts, whether or not they are terminating on 30 June.

MR MNISI: Other TMPD contracts are smaller in nature. They do not find themselves having complexities of this
20 nature. Watchman Services 1 is where the biggest budget and expenditure is. They have got too many stakeholders and too many sites where they deploy service providers to do their work, hence, this is a particular case.

ADV CHASKALSON SC: Well, let us change the counterfactual. Let us assume there had been no

termination letter. That is an issue that you would still have faced in relation to this contract. You would have needed year-end books to be, and year-end procedures to be in order in relation to this contract, even though it was going to roll over into the next financial year.

MR MNISI: I agree with you, SC.

ADV CHASKALSON SC: So the termination *per se*, it did not make that issue a different issue for this contract.

MR MNISI: I disagree with you, SC. This was an urgent
10 matter for myself. I analysed, knowing the context of this issue, looking at the risk that we faced in the past. For me, this was an urgent matter that had to be addressed.

ADV CHASKALSON SC: Well, look, I do not know if I can take it further in relation to the current financial year. Let us talk about the next financial year, the 25/26 financial year. If Gubis, if Gubis had received a letter saying you may not provide any services with effect from 1 July, you were aware of that?

MR MNISI: Yes, I am aware of that.

20 **ADV CHASKALSON SC**: So if Gubis provided services with effect in August 2025 or on the 5th of July 2025, they knew they were doing something that the City had expressly informed them that they may not do.

MR MNISI: Agreed.

ADV CHASKALSON SC: And the City would be under no

obligation to honour any invoice furnished for those services.

MR MNISI: Yes.

ADV CHASKALSON SC: So the termination letter could not have created any difficulties for the City in relation to what might happen in the 25/26 financial year. The City would just ignore an invoice that Gubis submitted for the 25/26 financial year.

MR MNISI: I agree with that.

10 **ADV CHASKALSON SC**: What I want to put to you is if we look at those three scenarios, the fact of the termination letter could not have had any effect on the urgency of a need to meet with General Dhlamini. And I think you have given your answer in that respect, but what I want to put to you is that having regard to the situations with respect to the 23/24 financial year, the 24/25 financial year and the 25/26 financial year, the termination letter, the fact of the termination letter, did not make any difference to the urgency relating to year-end procedures.

20 **MR MNISI**: SC, I respectfully disagree with you. From my dealing with this matter, it was urgent and it was necessary for me to deal with.

ADV CHASKALSON SC: Well, let us leave it there. We may just have to agree to disagree. Can I deal with one last issue in relation to what happened on, between you and

Sergeant Nkosi on the 26th of June. If we ...[intervenes].

MR MNISI: Page numbers, apologies, SC.

ADV CHASKALSON SC: So, we were at page 332 and the last exchange between you and Sergeant Nkosi in relation to the meeting or the non-meeting with Deputy Chief Dhlamini is at the foot of 332 where you said, please let him know, I will give him a call and Sergeant Nkosi says he is expecting it and that is at 1:49 pm.

MR MNISI: Yes.

10 **ADV CHASKALSON SC**: That evening, over the page on 333, Sergeant Nkosi sends you a screenshot of a chat that he has had with the MMC, Ms Morodi, and saying at the bottom of the, well, towards the foot of page 334 where it says “today”, which would be 26 June:

20 “Appointment booked and confirmed 11 o'clock at Pretoria North Verozky Spa. Let me know when you leave home. Please bring your car so I can take it to valet while you are busy on your massage.”

That is from Sergeant Nkosi and the MMC responds:

“Thank you so much, I will do so.”

And Sergeant Nkosi forwards you that screenshot with a little message at the bottom, “Mfowethu”. Why did he

forward you that message? What did you understand him to be saying in that regard?

MR MNISI: Well, I knew he knew and had an association with MMC Morodi. He was just informing me. I cannot confirm further than that. From my perspective, he was just informing me.

ADV CHASKALSON SC: He was informing you that he had arranged a spa booking for MMC Morodi and was going to arrange for her car to be taken for a valet service while she
10 was at the spa.

MR MNISI: Yes, as per the message that he sent to me.

ADV CHASKALSON SC: Can I take you, why would that be relevant to you?

MR MNISI: Well, I cannot comment on that. I had no interest in it as well.

ADV CHASKALSON SC: You had no interest in it.

MR MNISI: I just took note.

ADV CHASKALSON SC: You had no interest in Sergeant Nkosi's steps to get into the good books of MMC Morodi.

20 **MR MNISI:** Absolutely, SC, no interest.

ADV CHASKALSON SC: Let us go to page 388. That is the next screenshot that Sergeant Nkosi sends you of a chat with MMC Morodi. And there you will see there is a screenshot, it is from the 7th of October of that year. Again, it is a chat with MMC Morodi, and Sergeant Nkosi sends,

top of it is a picture of some sound equipment at a meeting venue and then a response from the MMC saying:

“Thank you so much.”

With four hearts. And then a picture, another picture of the sound equipment. And then underneath Sergeant Nkosi says she asked for assistance. Your response to that message is:

“Thanks for helping her, Mfowethu. She must brief us of any developments.”

10 Now, why were you thanking Sergeant Nkosi for helping MMC Morodi?

MR MNISI: It was just a courtesy from me saying, oh, she asked you for help and you helped her, that is very nice of you.

ADV CHASKALSON SC: And what developments did you want MMC Morodi to brief you on?

MR MNISI: If there were any service delivery matters that occurred from the meeting that she was in, she needs to raise it so that we are able to deal with these issues
20 accordingly.

ADV CHASKALSON SC: Did you know what that meeting was?

MR MNISI: I was not unaware, but it is clear to me, but I do not recall now, but I probably think it was a community meeting that all counsellors have. She was a chairperson

of a region where they discuss urgent service delivery matters. Within that context, billing issues are raised as well. So if she encounters any issues of that nature, I would like to assist in terms of resolving the concerns raised by the residents.

ADV CHASKALSON SC: But you did not say she must brief us in relation to any issues or in relation to any concerns. You said brief us of any developments. What did you mean by development?

10 **MR MNISI:** I meant if there are any issues that come above from the meeting that she has with the community from a service delivery perspective, and if there are finance-related issues, kindly brief me of any of those developments so that I can address them. That is what I meant.

ADV CHASKALSON SC: I want to put to you that that is not the ordinary meaning of briefing someone on developments. When you ask for someone to brief you on developments, you are talking about an ongoing process
20 that may change.

MR MNISI: I disagree with you, SC, respectfully. Myself and Sergeant Nkosi have informal discussions. We do not look deep into meanings of words. The purpose of this, like I said, was any service delivery issues or finance matters that are raised by the community so that I can assist in

resolving them.

ADV CHASKALSON SC: And when you said she must brief us, did you mean Sergeant Nkosi and Ngaphesheya, or did you mean you and Sergeant Nkosi?

MR MNISI: No, I meant me. When I said us, it is a similar way of speaking with the “ours” and the “we” that I had previously seen under circumstances like we see when the number one issue came out, I said, should we be concerned? It was in that context. I meant me.

10 **ADV CHASKALSON SC:** So you meant you?

MR MNISI: Yes.

ADV CHASKALSON SC: So when you, in relation to number one, when you said should we be concerned, you were asking should you be concerned about Sergeant Nkosi's meeting with Mr Sibanyoni?

MR MNISI: He, not me. I referenced he. So we were using the words of we, ours interchangeably as a result of us being close. Here I was saying he must let me know of any issues that might have occurred so that I am able to
20 assist the residents.

ADV CHASKALSON SC: So when you say she must brief us of any developments, you mean she must brief me of any developments?

MR MNISI: Yes.

ADV CHASKALSON SC: Not me and Sergeant Nkosi?

MR MNISI: No.

ADV CHASKALSON SC: And when you say should we be concerned about the meeting with Mr Sibanyoni, you mean should Sergeant Nkosi be concerned about the meeting with Mr Sibanyoni?

MR MNISI: That is exactly what I said as well.

ADV CHASKALSON SC: Yes, so you are using me in two completely contradictory ways in those two meetings. You will accept?

10 **MR MNISI**: In short, this meant, when I say we, is your problems are my problem, my brother, so should we be concerned, please can she brief us on the developments? It was our way of speaking.

ADV CHASKALSON SC: So brief us of developments is brief me of developments. Should we be concerned is should you be concerned?

MR MNISI: Yes.

ADV CHASKALSON SC: So we is serving as a multi-purpose pronoun that can mean any singular or plural
20 pronoun that you want, is that what you are saying?

MR MNISI: We had an informal discussion. We did not ensure that English grammar is up to scratch when we had discussions, SC.

ADV CHASKALSON SC: I see. Can I put to you ...[intervenes].

ADV BALOYI SC: Sorry. You are still on the same topic?

ADV CHASKALSON SC: No, it is ...[intervenes].

ADV BALOYI SC: Okay, maybe then let me ask my question anyway. This event, this assistance that is offered by, or that was provided by Sergeant Nkosi to the MMC, what did you know about it?

MR MNISI: I do not recall exactly, Commissioner, what was it about.

ADV BALOYI SC: So you say you do not recall.

10 **MR MNISI:** It was a service delivery meeting that she normally has. It looks like here she requested him for assistance with additional sound systems. So I said, oh, in that meeting that you are in, if there are any issues that are raised, please let me know so I can assist the communities that you are meeting.

ADV BALOYI SC: Okay. So, and you say when you, firstly, you do not remember what it was about.

MR MNISI: I do not remember the exact meeting where it was. I do remember the context around. She was
20 ...[intervenes].

ADV BALOYI SC: And you say the context of what?

MR MNISI: Commissioner, I am saying that she was in a service delivery meeting. In that service delivery meeting, it is clear that she had requested Sergeant Nkosi, from what he had sent to me, I said, no, thank you for assisting her. I

was not even involved. I did not even know this was going to take place. From that point of view, I offer, I say if she encounters any issues, please, she must let me know so I am able to address the developments or the issues emanating from that meeting.

ADV BALOYI SC: Okay, so when you say she must brief us of any developments, you are saying if there are any issues that she must tell you?

MR MNISI: Yes, yes, Commissioner.

10 **ADV BALOYI SC:** For service delivery.

MR MNISI: Yes, Commissioner.

ADV BALOYI SC: She must tell you and Sergeant Nkosi?

MR MNISI: No, she must tell me.

ADV BALOYI SC: Well, he seems to think that she must tell both of you because he responds:

“Yes, indeed, my brother.”

So according to Sergeant Nkosi, whatever developments means in this preceding WhatsApp message must be briefed to both of you.

20 **MR MNISI:** I cannot comment on how he understood it, but when he responded, I am fully aware that he knows how we speak because we do not have issues previously and our understanding is clear. So my assumption was he understood exactly what I meant when I said that.

ADV BALOYI SC: Yes, well, I am looking at your text and

his text and I do not know what he was thinking, but I am working with the text and your text as well. Your text is she must brief us of any developments. Mr Chaskalson have had, has told you what his understanding of that is, and I agree. I concur with him. It is similar. I understand it the same way. But importantly for me, Sergeant Nkosi says, yes, indeed, my brother. So he agrees with you that the MMC must brief you of developments. That is his text, and on the plain reading and understanding of the text, it is not
10 you. It does not refer to you in the singular. It refers to both of you, that you both must get that briefing. I have heard your response to it. I am just putting to you that I share Mr Chaskalson's view of what is here. You may comment. I do not mean to stop you if you want to comment.

MR MNISI: Thank you, Commissioner. I would rather not comment on that message from Sergeant Nkosi's perspective, but on my understanding I will stick to what I said earlier on, that he knew how we speak and he knew
20 exactly what the “us” would have meant, as did on previous occasions.

ADV BALOYI SC: Thank you.

ADV CHASKALSON SC: So when we look at these conversations between yourself and, well, Deputy Chief Dhlamini, intermediated through Sergeant Nkosi, we see a

pattern where messages get sent, I mean a repeated pattern, not just through the Gubis email, WhatsApp's that we have looked at, but also through the TMPD1 emails, WhatsApp's that we have looked at. We see a repeated pattern where messages from Deputy Chief Dhlamini get sent to you through Sergeant Nkosi, and where messages from you get sent to Deputy Chief Dhlamini through Sergeant Nkosi. So you and Deputy Chief Dhlamini are in effect exchanging messages through Sergeant Nkosi. You
10 will accept that we see, well, probably more than 100 of those instances.

MR MNISI: I accept that we saw instances of that nature occurring, but my discussions in terms of the relevant matters that were discussed, in terms of TMPD1, in terms of the outstanding Gubis payments, which was only instances where we had those indirect communications, as well as the termination, which I tried to stop. But my explanation on those matters and the reasoning behind, without going back, is still relevant and stands as well. But I do accept
20 what you say, with the provision of my explanations being taken into account.

ADV CHASKALSON SC: No, absolutely. We have heard your explanations. What I want to put to you is there is a possible other explanation and in order to do that, I need to draw to your attention that in the WhatsApp's of Sergeant

Nkosi, we see the same mode in his WhatsApp's with General Sibiya, and his WhatsApp's with Mr Vusimuzi Cat Matlala, and in his WhatsApp's with Mr Steven Motsumi.

So we see that Sergeant Nkosi, that General Sibiya and Mr Matlala, never communicate directly on WhatsApp, that, or that we are aware of. General Sibiya and Mr Motsumi never communicate directly on WhatsApp that we are aware of. But we do see messages being passed from General Sibiya to Sergeant Nkosi and on to Mr Matlala, and
10 then back from Mr Matlala through Sergeant Nkosi to General Sibiya. And similarly in relation to Mr Motsumi, messages from General Sibiya going to Mr Motsumi through Sergeant Nkosi, and messages from Mr Motsumi coming back to General Sibiya through Sergeant Nkosi.

And in those cases, we understand that mode of communication as serving a very obvious function, that General Sibiya does not want to leave a trace of direct communications with Mr Matlala, so he communicates with Mr Matlala through Sergeant Nkosi, and similarly in relation
20 to Mr Motsumi. That is the appearance at any rate.

And this mode of communication that we see between yourself and Deputy Chief Dhlamini in relation to TMPD1 and in relation to the Gubis issues about invoicing and termination, has the same hallmarks, that you are actually having very extensive communications, but there is

no sign of them on either of your phones. All that one sees is your communications with Sergeant Nkosi and General Dhlamini's communications with Sergeant Nkosi.

And what I want to put to you is that why you are using this mode of communication with General Dhlamini through Sergeant Nkosi, is that you are engaged in activities that are irregular activities, and you do not want to leave a trace of direct communication with Sergeant, with Deputy Chief Dhlamini in relation to those activities. What
10 is your comment on that?

MR MNISI: Thank you, SC. I think firstly, I must respectfully strongly disagree with you. I am not going to comment on other issues that you might have seen through other discussions with, discussions that only involve me. I am going to focus on the matters at hand, and as stipulated earlier on, it was an issue of convenience. I did mention that.

Also, an equally important point is that the channel is broken. I request for his contact details and I start
20 dealing with him directly as a mechanism of avoiding the hindsight agreement that I said. I did agree that in hindsight, I should have asked for the contact details immediately. I agree to that. However, I strongly disagree with the notion that we are engaged in illicit or illegal activities that are unlawful, and the major difference is that

there is trace of communication directly between myself and Deputy Chief Dhlamini.

There is significant evidence to that. We did break the chain because I did realise the hindsight error of allowing Sergeant Nkosi to involve himself initially. So I strongly disagree with you with respect, SC.

ADV CHASKALSON SC: Well, you broke the chain when it was urgent and you needed to speak to the General. That leaves no trace of what you said to the General. Are you
10 suggesting that you have WhatsApp's that you sent to the General in relation to TMPD1 or in relation to the Gubis invoicing?

MR MNISI: What I am suggesting is that I requested for his contact details in order to deal with the matters moving forward, particularly on the matter that we have just discussed now, on the accounts payables matter, as well as the termination letter. I did request that.

ADV CHASKALSON SC: Are there any WhatsApp's that you and General Dhlamini exchanged in relation to either
20 TMPD1 or any of these Gubis-related issues?

MR MNISI: No, there are none because I did not have his contact details from the Gubis invoices and I was not interested. And he would not send me any WhatsApp messages for TMPD1. There are no WhatsApp messages.

ADV CHASKALSON SC: So the only WhatsApp messages,

we see extensive WhatsApp messages in relation to TMPD1 and Gubis where you are communicating with the General, but they all go through Sergeant Nkosi.

MR MNISI: Gubis in relation to the payments have been resolved. TMPD1, I did not at one point agree to have those communications. I did not at one point request any of those messages to be sent to me. So I am going to distance myself from that completely. I am not going to respond to those because those were not WhatsApp
10 messages for myself. I did not even trigger any of those.

ADV CHASKALSON SC: So you understood that Sergeant Nkosi were sending you messages from General Dhlamini in relation to TMPD1. Let us take that last message, that last set of messages, the fourth case, where on the 25th of March you ...[intervenes].

ADV BALOYI SC: It is at page?

ADV CHASKALSON SC: I am looking for my page now. It is page 177. Let us look at that text at message time, 7:08:18 pm, 9:08 pm on the 25th of March. You get a
20 message from Sergeant Nkosi, which says:

“Captain, find below our vehicles for land to be given ku Mfowethu in order of priority. Elshadai and Ngaphesheya ...”

And on it goes. So you look at that message and

you know it is coming from Deputy Chief Dhlamini. You are nodding. Is that a yes?

MR MNISI: I confirm, SC.

ADV CHASKALSON SC: You answer it.

“Thanks, Mfowethu. I am on top of this.”

So you follow up.

“This is ours, Mfowethu. This is the final list, right?”

10 And he responds:

“Yes, it is our final list.”

And follows up with another screenshot of an exchange from General Dhlamini. Did you not expect that he would send your messages back to Deputy Chief Dhlamini?

MR MNISI: From my perspective, I was clear. In this instance, I was huffing and puffing as a result of me realising ...[intervenes].

ADV CHASKALSON SC: We dealt with huffing and puffing.

20 **MR MNISI**: Okay.

ADV CHASKALSON SC: I am dealing with a separate issue. You said you never authorised any communication with General ...[intervenes].

MR MNISI: Yes.

ADV CHASKALSON SC: General Dhlamini through

Sergeant Nkosi in relation to TMPD1. You did in relation to Gubis, but not in relation to TMPD1. So I am asking, did you not expect that Sergeant Nkosi would return those messages to General Dhlamini?

MR MNISI: I did not expect that. I did not request that.

ADV CHASKALSON SC: What would the purpose of the huffing and puffing be if the originator of the person you wanted to stop sending you messages did not receive your message of huffing and puffing?

10 **MR MNISI**: Like I said, the purpose was to stop this from persisting any further. I had realised that they were taking me for a fool. I did the same thing.

ADV CHASKALSON SC: So the only way that that purpose could be achieved was if General Dhlamini, who was the originator of the message that said find below our vehicles for land to be given ku Mfowethu in order of priority, received your huffing and puffing response?

MR MNISI: I cannot comment on that. I did not authorise him to send. If he were to send, he would have sent it on
20 his own. But from my perspective, there was no expectation I was addressing him.

ADV CHASKALSON SC: You wanted both Sergeant Nkosi and the person who was sending messages through him, Deputy Chief Dhlamini, to stop sending these messages in the mistaken belief that you had now accepted their

invitation to interfere with the tender. Is that not what your intention was?

MR MNISI: I wanted the person who was sending me these messages to stop, and that person was Sergeant Nkosi.

ADV CHASKALSON SC: But you knew that Sergeant Nkosi was forwarding you messages that he got from Deputy Chief Dhlamini.

MR MNISI: I knew that.

ADV CHASKALSON SC: And so the flow of the messages
10 would only stop if what you said to Sergeant Nkosi in your huffing and puffing exercise also made its way to Deputy Chief Dhlamini.

MR MNISI: It was up to him, SC, as to whether he sent it or not. I was not interested in that. My pure interest was getting this matter off my table and ensuring that I close it indefinitely.

ADV CHASKALSON SC: How would it get off your table if
Sergeant Nkosi did not communicate to Deputy Chief Dhlamini that, you know, the CFO is on board, he is
20 understood that this is our final list, and he is going to ensure that our final list gets the tender?

MR MNISI: As long as I have sent the message clearly to the individual who was sending it to me, I was completely happy. I was not interested whether he sends it to whichever third party. I did not authorise it, I did not

sanction it, and I did not request it at all. I was interested in the individual that was sending me these things.

ADV CHASKALSON SC: Well, I will leave it there. I want to turn to one brief topic before I get to the final topic and it relates to paragraph 25 of your statement on page 6 of your statement, where you dealt with the problem with Mr Lekukela, or your conflict with Mr Lekukela, and how you reached out to Siphwe Mashile to approach Sergeant Nkosi to try and facilitate a meeting between you.

10 **MR MNISI**: I am on page 6.

ADV CHASKALSON SC: On page 6.

MR MNISI: Yes.

ADV CHASKALSON SC: Sergeant Nkosi explained, also testified about what we assume is the same meeting, and if you can go to page 665 of file 4, I think it is your bundle 3.

MR MNISI: 665.

ADV CHASKALSON SC: 665.

MR MNISI: Bundle 3.

ADV CHASKALSON SC: There you will see chats
20 ...[intervenes].

MR MNISI: SC, apologies. My bundle 3 ends at 664.

ADV CHASKALSON SC: Those are documents that we gave to your legal team.

MR MNISI: Okay, I have got a printout.

ADV CHASKALSON SC: You have got hard copies, great.

MR MNISI: Yes.

ADV CHASKALSON SC: And are they paginated, 665?

MR MNISI: Yes ...[indistinct] yes.

ADV CHASKALSON SC: So there you will see Sergeant Nklosi's, an extract from Sergeant Nkosi's chats with Mr Mashile, who he saves as Comrade Didi Mabuza Deputy President. And you will see that he sent two screen, that Mr Mashile sent two screenshots to Sergeant Nkosi at 5:36 pm on the 17th of January, 2024. And the first screenshot is
10 a screenshot which appears to be a screenshot of a chat between Mr Mashile and yourself, whom he describes, whom he saves as Garry Cuzzie. Does that, if you look at that screenshot on page 666, do you confirm that that is a screenshot of an exchange between yourself and Mr Mashile?

MR MNISI: Yes, I confirm.

ADV CHASKALSON SC: And there the message goes:

“Okay, Cuzzie, from you I have got an
issue.”

20 And then there is a voice note and a voice call and then you send an extract from your diary saying:

“I have got an urgent special Exco now
at 6.”

He says:

“You will indicate.”

And you say:

“Let us meet 007 tonight after my meeting, it is urgent.”

Now is this the meeting that you set up in relation to Sergeant Nkosi and Mpho Lekukela?

MR MNISI: I can confirm that, SC.

ADV CHASKALSON SC: And you refer to Sergeant Nkosi as 007?

MR MNISI: On our first encounter he was introduced to me
10 as 007.

ADV CHASKALSON SC: As 007. Did you ever ask why he was introduced as 007?

MR MNISI: No, I was not interested. He even saves me as Mpumalanga CFO. If you look at Mr Mashile, he saves me as Jerry Cuzzie. I was not interested.

ADV CHASKALSON SC: You did not think he might have ambitions of being James Bond?

MR MNISI: No, I was not interested at all.

ADV CHASKALSON SC: Okay, we had that conversation
20 with him. So then the exchange continues, and, in fact, if we go back to page 665, you will see that a venue is given, the Pivot, please, next to Palazzo. And, but at 667, there is another screenshot that gets sent to Sergeant Nkosi, which has essentially the same picture, except now Mr Mashile has said to you:

“Sorted and confirmed.”

And you have said:

“Thanks Cuzzie, sevenish is right.”

Now, who was present at that meeting?

MR MNISI: Myself, Sergeant Nkosi, Mr Mashile, as well as Mr Lekukela.

ADV CHASKALSON SC: It was just the four of you?

MR MNISI: Just the four of us.

ADV CHASKALSON SC: You see, the one strange thing
10 that we saw in relation to this screenshot is that shortly
after he received the first screenshot asking for the
meeting, Sergeant Nkosi forwarded that screenshot to Mr
Steve Motsumi. That is page 668. Have you ever met Mr
Motsumi?

MR MNISI: No, I have never met him and I do not know
who that is.

ADV CHASKALSON SC: You do not know who he is?

MR MNISI: I do not.

ADV CHASKALSON SC: So you cannot comment on why
20 Sergeant Nkosi would have told Mr Motsumi about a
meeting he had been asked to attend to broker peace
between yourself and Mr Lekukela?

MR MNISI: No, SC, I cannot confirm at all. I do not know
who that is.

ADV CHASKALSON SC: The very last topic you will be

glad to hear. We do not have in the papers the declaration of interest forms that you signed as a member of the BAC, to the best of my knowledge. But I think they are generic and maybe you can correct me. If you go, for instance, to file 5, page 109, there is one for the BEC, and I think that these forms, we know that the BSC also has the same form.

MR MNISI: It is page 109.

ADV CHASKALSON SC: 109.

MR MNISI: In my pack it is the fourth pack.

10 **ADV CHASKALSON SC**: Yes, your fourth bundle.

MR MNISI: 109.

ADV CHASKALSON SC: In fact, it is right through, it is 104 onwards to the whole series of them.

MR MNISI: Yes.

ADV CHASKALSON SC: Do you see it?

MR MNISI: I am on page 109, SC.

ADV CHASKALSON SC: Now is this the same, I am not, obviously it says Bid Evaluation Committee at the top of it, but does the BAC have to sign a form in the same terms?

20 **MR MNISI**: Yes, I agree with you.

ADV CHASKALSON SC: And those forms are in content identical even though the title at the top will be different?

MR MNISI: I think they would be similar, extremely similar.

ADV CHASKALSON SC: So the paragraph I am interested in is the paragraph under the first box or table and it says:

“Is there anything else or the perception by others that could affect your objectivity and independence in this meeting? If your answer is yes, please supply details.”

Now is that in the form that you sign at BAC?

MR MNISI: Yes.

ADV CHASKALSON SC: And it refers to the perception by others. You see, or the perception by others.

10 **MR MNISI**: Yes.

ADV CHASKALSON SC: Now, and you presumably signed this form at your BAC meetings?

MR MNISI: Yes.

ADV CHASKALSON SC: And did you disclose anything under this form?

MR MNISI: I had no interest to declare.

ADV CHASKALSON SC: You had nothing to disclose?

MR MNISI: I had nothing to declare because I had no interest with any of the bidders.

20 **ADV CHASKALSON SC**: Well, let me put to you certain facts which I think are now common cause. The first is that Bheki Nkosi is the owner of Ngaphesheya. That is accepted, is it not?

MR MNISI: Accepted.

ADV CHASKALSON SC: And Ngaphesheya was one of the

bidders in the bid that you were, that your BAC was adjudicating in relation to TMPD1.

MR MNISI: Accepted.

ADV CHASKALSON SC: Accepted. His brother, Sergeant Nkosi, is a close friend of yours and someone who you regard as your brother for life.

MR MNISI: Accepted.

ADV CHASKALSON SC: By the time the BAC sat, Sergeant Nkosi, your brother for life, had been approaching
10 you, trying to get you to rig the bid in favour of Bheki Nkosi's company, Ngaphesheya.

MR MNISI: He did not expressly state that, but yes.

ADV CHASKALSON SC: That is what you understood it to be.

MR MNISI: That is what I understood it at, yes.

ADV CHASKALSON SC: And he had made four different approaches in that regard.

MR MNISI: Yes.

ADV CHASKALSON SC: While the TMPD1 bid was
20 pending before the Tshwane Council, you had also been assisting Sergeant Nkosi in relation to another bid of Ngaphesheya that you say was for a different organ of state.

MR MNISI: From a general perspective, I have never not once interacted with any of the returnable documents.

ADV CHASKALSON SC: Yes, but you say that you were offering advice in relation, your version is you were offering advice in relation to the abstract tender document and what Ngaphesheya had to do to put itself in a position where it might comply.

MR MNISI: Yes, SC.

ADV CHASKALSON SC: During the period in which that TMPD1 bid was pending before the City, you were also in direct communication with Bheki Nkosi and invited him to
10 submit a bid for a different tender to the City, the City of Tshwane. Do you recall that? I think it was the refuse bags ...[indistinct].

MR MNISI: Yes, and also to add, I did not know that he had bidden at that point.

ADV CHASKALSON SC: No, but we are now looking at objective facts that were true, from which others might draw an inference. Others might think your objectivity and independence was ...[intervenes].

MR MNISI: Yes.

20 **ADV CHASKALSON SC:** In relation to that other tender, you had written to Sergeant Nkosi saying:

“I have sent the above to Bheki, we need to regroup on it.”

Do you recall that?

MR MNISI: I recall that, and I did explain what the

regrouping meant. That if needs be, if they do not understand the mandatory administrative and evaluation criteria, I am available to help clarify from a general perspective.

ADV CHASKALSON SC: You had also been involving, while this TMPD1 bid was pending, you had been involving Sergeant Nkosi in a range of matters relating to the affairs of the client department, the TMPD, including processes relating to the payment and termination of private service
10 providers contracted by the City through that department.

MR MNISI: Chair, involved himself. Like I previously said, I did not actively involve him. I did, however, on the second instance in terms of the termination, send him that communication, which I have agreed that it is a perception that I involved him in that instance, but I further did try to clarify that as well when I requested the direct contact details of the user department.

ADV CHASKALSON SC: Whoever started that process, you continued with it, and you continued to communicate in
20 relation to those Gubis matters with Chief Dhlamini through Sergeant Nkosi.

MR MNISI: I accept that, for the Gubis payment, SC.

ADV CHASKALSON SC: In the process of involving Sergeant Nkosi in Gubis-related matters, you put Sergeant Nkosi in a position where he gained access to documents

exchanged between the City and one of the competing bidders in TMPD1, namely Gubis, including an invoice that showed the pricing used by Gubis in its dealings with the City.

MR MNISI: I disagree with that respectfully, SC. I did not share an invoice with Sergeant Nkosi.

ADV CHASKALSON SC: You did not share an invoice with Sergeant Nkosi, but if you had not involved Sergeant Nkosi in the Gubis process, he would never have received that
10 invoice.

MR MNISI: I also respectfully disagree with that notion. The General or whoever sent him that invoice took a decision on their own, and they will explain for themselves. I cannot account for that.

ADV CHASKALSON SC: But the General only got involved with Sergeant Nkosi in relation to Gubis because Sergeant Nkosi had set himself up as your intermediary with the General in relation to Gubis.

MR MNISI: I agree to that. However, at no point did I
20 authorise any sharing of confidential information in terms of the Gubis payment, and at no point did I personally share any confidential and sensitive information on the Gubis payment.

ADV CHASKALSON SC: So, we have looked at eight different facts. Did it not occur to you that if competing

bidders in TMPD1 were aware of these eight facts, they would have thought that you were not a person who could objectively preside over the adjudication of TMPD1?

MR MNISI: At that particular point in time, I am going to cover this question, at this point in time, Chair, I did not perceive that as an interest, purely based on the fact that, firstly, my bias or my objectivity was not impaired. I did not know Bheki. He is not an associate of mine. I agree, the brother is an associate of mine, but Bheki is not an
10 associate of mine whatsoever. I only have engagements with Sergeant Nkosi.

So, I knew from that perspective that, firstly, my bias was not going to be, my objectivity, apologies, was not going to be impaired whatsoever. Second to that, the BAC is a panel-based decision-making body. It is not one individual. There are a number of subject matter experts who sit throughout that process, meaning objectivity is further enhanced. Chairperson, I also want to confirm on the TMPD1 matter which we are raising, there are
20 scoresheets that were provided to me as part of the bundle. Within this bundle, I think it is the fourth bundle, independent members scored all bidders accordingly, which gives an indication that these bidders were compliant. By the 11th of April, that is when the scoresheets were signed and that is an essential date for us to consider.

Lastly, Chair, on the basis of my objectivity not being impaired, because I do not know Bheki, I am not Bheki's friend. Yes, I am his brother's friend, I can concur, and I have admitted that. At that point in time, I saw that my objectivity would not be impaired whatsoever, and I signed the declaration.

Further to that, a panel-based decision-making process where there are a number of subject matter experts within BAC, including legal services, also assurances that
10 my objectivity would not have been affected. However, Chair, in hindsight, when we are discussing all of these matters, I need to agree that now when we are discussing these matters, there is a perception of conflict, that it is clear and it is apparent and I cannot avoid it. However, what I am certain on is that when I signed this declaration form, from my perspective, my objectivity was not impaired whatsoever.

It remains not impaired at this point in time. It was a panel-based decision-making process with a number of
20 subject matter experts who would have equally made their views and objectives to this matter.

ADV CHASKALSON SC: Let us deal with two separate issues. The issue in relation to the BAC being a panel, that cannot affect issues relating to the declaration of interest, because the purpose of the declaration of interest relates to

the bias or appearance of bias of any individual member of the panel. You will accept that?

MR MNISI: I accept that. However, the decisions that are taken are not solely mine. In the event, for argument's sake, which I do not agree to and it was not the case, my bias was not objective and it was impaired. Based on this, panel-based decision-making process it would have been a further safeguard. However, what is essential from my perspective is that initially, from the onset, and now as we
10 speak, my objectivity is not, was not and is not impaired.

However, I am seeing the perception that is being created around this when you are raising the sequence of events of what occurred and we have discussed the merits of those issues in a separate discussion.

ADV CHASKALSON SC: The purpose of these declaration of interest forms relates to individual cases, do not relate to the Committee. Each individual needs to sign them. So the fact that the Committee acts as a safeguard is irrelevant to these individual interest forms.

20 **MR MNISI**: SC, at the time when we were evaluating or adjudicating over this process, my bias, my objectivity was not impaired, and I still agree to that. I am just adding a further factor to give you comfort that in the event it was, which it was not, it was not at all and I confirmed that there is a panel-based decision-making and in light of that, it is a

further safeguarding process that I on my own would never be able to take a decision of this nature on my own.

I also further agree that in hindsight, through the revelations that are coming out of this Commission, it could be perceived, there might be perceived conflict of interest, but from my perspective, at the point of signing this, I was not conflicted at all and my objectivity would not have been impaired.

ADV BALOYI SC: Mr Mnisi, on your logic, and the logic
10 that the BAC is a committee and a decision that comes out
of that is a committee decision, and therefore an individual
could not impact the outcome, on that logic then, then there
is no point to this safeguard, that people who have an
interest or potentially have an interest should not, should
declare it, and in fact go so far as not sit through that
process, because on your logic, it is a committee decision,
so it should not matter. And so you could change the facts
here and say, even if Bheki were your brother, or he was
your friend, your direct friend, that would not disqualify you
20 or require you to make a declaration because the BAC is a
committee decision. So even your bias would not matter,
because others would overrule you by votes. That cannot
be, that is not correct and I think, maybe I must say I
expect that as CFO and custodian of your procurement
processes, you are not proposing that the way you are

reasoning it is correct. It cannot be correct.

MR MNISI: Commissioner, Bheki is not my friend.

ADV BALOYI SC: No, that is why I say you could change the facts for purpose of my discussion with you. Following your logic, remember your logic is, your logic is BAC is a committee, so no one individual can sway the decision or can determine in fact the outcome of a BAC, because it is a committee which comprises other people, effectively meaning, it really should not matter that you may or may not
10 have had an interest and not declared it because it is a committee.

That is the effect of what you are saying, and I am saying, but it cannot be correct that that is so, because then if you are correct, then there is no point to these declarations, to these committees, because it is a committee of people, which, and the decision is not a decision of a single person.

MR MNISI: Commissioner, I feel there is a point, because in terms of these declarations, you need to declare if your
20 family members, your close friends, are directors within these companies. So it is still a relevant matter that must be considered. The fact of this matter is that Bheki is not my friend. Sergeant Nkosi is not a director of Ngaphesheya. On the signing of this declaration, my objectivity was not impaired. I still maintain that till now.

However, in hindsight, I am agreeing that with the sequence of events, there is a perception of conflict. But at the point of signing, I had no conflict whatsoever. I still have no conflict whatsoever, but the perception, it looks like there is something that is there.

ADV BALOYI SC: Okay, I have heard you. Thank you.

ADV CHASKALSON SC: Are you aware of what the administrative law in relation to perceptions of conflict is? Do you know that if there is an objective perception of conflict, that the administrative decision can be reviewed and set aside?

MR MNISI: I am not aware of that.

ADV CHASKALSON SC: So in administrative review cases, you do not need to show actual bias or actual conflict. You only have to show a reasonable appearance of conflict or a reasonable appearance of bias. That is the law.

MR MNISI: I do not know the law and I think I will have to engage that with my legal team, but I cannot comment on that. But what I do know is that there have been cases that we have seen out, particularly in reference to perception of compliance and how those are ruled against. There is many cases that we could refer here to. I think the first one that comes to the top of my mind is the previous Chief Justice, Mogoeng-Mogoeng, and I think his wife serving as State

Attorney presenting a matter to him, that was a matter that was deliberated on.

There is another matter that I am aware of, which involves yourself, Senior Counsel Chaskalson, where your dad at one point in time was a President. You had been an Advocate in a specific matter, and a panel-based decision-making process was also considered. I am aware of the general matters around that in terms of the perception of conflict, but like I am saying, I will address the matter
10 further with my legal team for any further clarity.

ADV CHASKALSON SC: Look, in relation to my personal position, the issue of panel was utterly irrelevant, and there is certainly no suggestion in any of these matters, including the decided judgment that because it is a panel issue, it is different. It has nothing to do with being a panel court. But what I want to put to you is, well, let us just establish, you accept now that those facts that are common cause give rise to a reasonable apprehension that you may not have been objective. You say you were objective, did not impair
20 your objectivity, but a third-party competing bidder would have had a reasonable apprehension that you could not objectively assess this, be part of the adjudication of this tender.

MR MNISI: No, I do not agree with you, and I have stated the reasons why I do not agree with you. I am only saying

that in hindsight, there is a perception of conflict, which must further be assessed on its own merits. I do not agree with you. I was objective in terms of handling this matter. I have no interest in the company Ngaphesheya whatsoever, and my reason behind that, I signed this declaration with my knowledge of objectivity, not being impaired. I do not agree with you on that perspective.

ADV CHASKALSON SC: Let us put it this way. A reasonable competing bidder, a reasonable competing
10 bidder could have had a perception that you were conflicted, could have had a perception that you were conflicted. I am not saying that you were conflicted for now. I am putting to you that a reasonable competing bidder, now in possession of all of these facts, could have had a perception that you were conflicted.

MR MNISI: I do not agree with you, SC. These facts have its own merits, and we have discussed that in general. If we present these as facts, it is as if we are not taking into consideration the critical discussion that we had around
20 those, hence, I am saying I agree to the fact of there being a perception in general. I am not saying any bidder would have seen this and said, yes, there was a perception, but in general, there seemed to have been a perception. But I maintain that during me signing this declaration, my objectivity was not impaired. Further to that, the panel-

based decision-making process was an essential step of concurring the process.

ADV CHASKALSON SC: So what is this, so there would have been a perception, or there could have been a perception, that you were conflicted. Do you accept that?

MR MNISI: In hindsight, I accept that.

ADV CHASKALSON SC: In hindsight, you accept it.

MR MNISI: Yes.

ADV CHASKALSON SC: Based on the object of facts. Not
10 that you were conflicted, but the facts that we have been through might have created a perception that you were conflicted.

MR MNISI: I have agreed to that.

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

MR MNISI: Taking into account the explanations that we had on each items. It is important for me to raise that, so the record is clear.

ADV CHASKALSON SC: And just looking at those facts, would it have been reasonable to have had that perception,
20 just looking at those facts?

MR MNISI: I do not know. I cannot comment on that, hence, I am saying this matter must be adjudicated on separately. I cannot comment on that fact. I am just saying, from my reviewing of this, a perception seems to have been created, in hindsight.

ADV CHASKALSON SC: You see, Mr Mnisi, what I want to put to you is that, quite aside from the true facts of whether or not you were biased, and you were involved in Sergeant Nkosi's attempts to rig this tender, your conduct in continuing to sit on the BAC as a matter of law renders this bit capable of being reviewed and set aside by any losing bidder. And what you have done is you have put the City in a situation where this bid is capable of being set aside by any losing bidder because of your inability to see that the
10 objective facts relating to your relationship to Ngaphesheya disqualified you from sitting on this bid.

MR MNISI: SC, I completely disagree with you. A thorough Supply Chain Management process was followed in terms of the evaluation and the appointment of this bid. Further to that, an external legal firm played a significant oversight in terms of validating the contents and the facts around the award. In terms of the declaration, I was clear, I have got no interest in Ngaphesheya. I still have no interest in Ngaphesheya. I am not an associate of the
20 director whatsoever. I am an associate of the brother, but that does not make me an associate of the director of Ngaphesheya.

I also confirm that on signing this declaration, my objectivity was not affected at all and it is also key to add that the panel-based decision-making process is essential

in order to add additional weight to that. So I respectfully disagree with you on that notion.

ADV CHASKALSON SC: Did you disclose any of the facts that we have gone through to the independent legal firm?

MR MNISI: Which facts?

ADV CHASKALSON SC: Bheki's brother, Sergeant Nkosi, is a close friend and someone who you regard as a brother for life. Sergeant Nkosi had been approaching you, trying to get you to rig the bid in favour of his brother's company.

10 While the present bid was pending before the Tshwane Council, you had also been assisting Sergeant Nkosi in relation to a bid that Ngaphesheya had submitted to another organ of state. During the period in which the present bid was pending before the City, you were in direct communication with Bheki Nkosi, the director of Ngaphesheya, inviting him to submit bids for a different tender. In relation to that other different tender of the City, you had written to Sergeant Nkosi saying:

20 “Have sent the above to Bheki. We
 need to regroup on it.”

You had also been involving Sergeant Nkosi in a range of matters relating to the affairs of the client department, the TMPD, including processes relating to the payment and termination of private service providers contracting with the department and in the process, you had

given Sergeant Nkosi access to documents between the City and one of the competing bidders in TMPD1, including an invoice that showed the pricing used by that bidder in respect of the City. Did you disclose any one of those eight facts to the law firm?

MR MNISI: Yes, thank you so much.

ADV CHASKALSON SC: Sorry, well, the answer, the question is, did you disclose any one of those facts to the law firm, whose rubber stamp you now want to rely on?

10 **MR MNISI**: These are not facts, SC, and I cannot agree to that as being facts, because I did not share, first I did not share any sensitive information with Sergeant Nkosi in terms of invoicing ...[intervenes].

ADV CHASKALSON SC: Sorry ...[intervenes].

MR MNISI: [Indistinct]... now.

ADV CHASKALSON SC: I thought we had agreed that these were facts, but let us take them one by one so we can actually address them one by one. Bheki's brother, Sergeant Nkosi is a close friend and someone who you
20 regard as your brother for life. Is that a fact?

MR MNISI: That is a fact.

ADV CHASKALSON SC: Did you disclose it to the law firm?

MR MNISI: There was no need to disclose that to the law firm.

ADV CHASKALSON SC: Yes or no? You can give explanations and theories as to whether there was a need or not. Did you disclose it?

MR MNISI: The first answer to that is no.

ADV CHASKALSON SC: Okay. We will ...[intervenes].

MR MNISI: Can I explain?

ADV CHASKALSON SC: You can give your explanations later. Let us just clarify the position in relation to the facts first. You can come back, take each one and give your
10 explanation. I just want to establish the facts because you were not willing to say, when I asked you, did you disclose any of these facts to the lawyer?

MR MNISI: My profuse apologies, SC. We are going to get lost in discussion if you are unable to allow me to please expand.

ADV CHASKALSON SC: No, no. I want to establish the facts in answer to my question. I just want an answer to the question. I do not want your explanation yet. You can give your explanation later. Let us get the ground facts ready.

20 **MR MNISI:** SC ...[indistinct] ...[intervenes].

CHAIRPERSON: Mr Mnisi, you have just said what Mr Chaskalson put to you were not facts. Can we just establish the facts? You can, if you then want to explain and you can take notes on all of them, but let us just establish the facts, please. If at the end of it you want to

say, although I say A, B, C, D are facts, here is an explanation I want to give. Let us just get a move on, on what is fact and what is not, please.

ADV CHASKALSON SC: The next fact. Sergeant Nkosi had made approaches to you, which you understood as approaches that were trying to get you to rig the bid in favour of his brother's company. Is that a fact?

MR MNISI: That is what I understood.

ADV CHASKALSON SC: So it is a fact that you
10 understood that Sergeant Nkosi had been approaching you in an attempt to persuade you to rig the bid in favour of his brother's company.

MR MNISI: Okay.

ADV CHASKALSON SC: It is a fact. Did you disclose it to the attorneys? Yes or no?

MR MNISI: Right now, no.

ADV CHASKALSON SC: No.

MR MNISI: There was no need, but I will explain it ...[intervenes].

20 **ADV CHASKALSON SC**: You can talk about need later. He had made four different approaches to you in this regard. Is that a fact?

MR MNISI: Yes.

ADV CHASKALSON SC: Did you disclose it to the attorneys?

MR MNISI: No.

ADV CHASKALSON SC: Now, while the present bid was pending before the Tshwane Council, you had also been assisting Sergeant Nkosi in relation to a bid that Ngaphesheya had submitted to another organ of state. Is that a fact?

MR MNISI: Yes.

ADV CHASKALSON SC: Did you disclose it to the attorneys?

10 **MR MNISI**: No.

ADV CHASKALSON SC: During the period in which the present bid was pending before the Tshwane Council, you were in direct communication with Bheki Nkosi, the director of Ngaphesheya, inviting him to submit a bid for a different tender from the Tshwane Council.

MR MNISI: Yes.

ADV CHASKALSON SC: Is that a fact?

MR MNISI: Yes.

ADV CHASKALSON SC: Is it a fact?

20 **MR MNISI**: Yes.

ADV CHASKALSON SC: Did you disclose it to the attorneys? No. In relation to that tender, you had written to Sergeant Nkosi saying, have sent the above to Bheki, we need to regroup on that, on it. Is that a fact?

MR MNISI: Yes.

CHAIRPERSON: You spoke at the same time.

MR MNISI: Yes, Commissioner. Apologies, yes.

ADV CHASKALSON SC: And you did not disclose this to any attorneys?

MR MNISI: No. No, SC.

ADV CHASKALSON SC: You had involved Sergeant Nkosi in a range of matters relating to the affairs of the client department, the TMPD, and these processes included processes relating to the payment and termination of private
10 service providers contracted by the TMPD. Is that a fact?

MR MNISI: It is not a fact.

ADV CHASKALSON SC: What is factually incorrect in relation to that?

MR MNISI: Sorry, SC, you are factually incorrect, it is about payment. I involved him in terms of the purchase orders. No involvement whatsoever on payment aspects.

ADV CHASKALSON SC: Okay. So if I were to say, including processes relating to purchase orders and the termination of private, you would be happy with this?

20 **MR MNISI:** Yes.

ADV CHASKALSON SC: And you did not disclose that to any attorneys?

MR MNISI: No.

ADV CHASKALSON SC: And in those processes, through involving Sergeant Nkosi, you put him in a position where

he got access to documents between the City and one of the competing bidders, including an invoice that shows the pricing used by that competing bidder in relation to the City. Is that a ...[intervenes].

MR MNISI: It is not a fact. I did not give him any information, nor did I put him in a position to receive that.

ADV CHASKALSON SC: So you are suggesting that if you had not consented to Sergeant Nkosi intermediating your relationship with Deputy Chief Dlamini, he would still have
10 got the invoice that Gubis issued to the City?

MR MNISI: What I am suggesting is that I did not give him authority at any stage in time to obtain any sensitive information. I am sure Deputy Dlamini will have to answer himself. From my perspective, this is not a fact.

ADV CHASKALSON SC: If you had said to Sergeant Nkosi at the outset, Sergeant Nkosi, you have no business getting involved in any TMPD matters, I will speak to General Dlamini myself, please do not approach him, would he have
20 got access to that invoice which discloses Gubis' pricing to the City?

MR MNISI: Chair, I cannot comment on what would have happened. The matter that you are putting towards me is that is this a fact that I enabled him or I gave him information, sensitive information of bidders, and that is not a fact. I am not going to speculate on what would have

happened.

ADV CHASKALSON SC: You were aware that Sergeant Nkosi had got access to that document?

MR MNISI: Afterwards, I was aware and there is nothing I could do to stop that. He already had that.

ADV CHASKALSON SC: Yes, but at the time that you sat in the committee, you knew that Sergeant Nkosi, the brother of the Ngaphesheya director, had got access through the City to the pricing of a competitor in relation to the City.

10 **MR MNISI:** Nine months down the line, I was aware of that.

ADV CHASKALSON SC: You were aware of that, yes. Now, you disclosed none of this to any attorney who was expressing a view on the probity of the process. That is common cause.

MR MNISI: I have said yes to those issues except for the last issue that you are saying.

ADV CHASKALSON SC: Well, you did not disclose that to any attorney. Did you say to someone, I did not facilitate it
20 but Sergeant Nkosi actually got access to a Gubis' invoice to the City?

MR MNISI: Okay. No, I did not disclose that. I did not see the need.

ADV CHASKALSON SC: I see, yes. Now, if you want to explain any of that, please feel free.

MR MNISI: Okay. I can explain now. Okay.

ADV CHASKALSON SC: Yes.

MR MNISI: Thank you. The first one is, did I disclose a relationship with Sergeant Nkosi, my friend? Sergeant Nkosi is neither a director of Ngaphesheya nor is he a shareholder of the entity. As per the declaration form that is in front of us, it is clear on what is disclosed again. Any friends that I have that have no interest or any association in the firm, there is no need to disclose that. I saw that
10 irrelevant and there was no need for me to disclose that to the probability teams.

Secondly, further to that, the exercise that was undertaken, there was no request for me to disclose that. I had disclosed information of the directors as per the declaration of form interest that the City has. The second matter, you say, Sergeant Nkosi made approaches to me and I did clarify on the approaches that were there.

Firstly, I had insufficient evidence to disclose this to any party because it was clear that he was asking for
20 compliance. I did suspect, I can agree, that at one point due to the persistence, it is now resulting to an individual persisting that I go further than that. I had no conscious of evidence. There was nothing for me to declare to any of the probability teams.

Item number three, you raised the same issue but

on four different occasions. Equally, I had no conclusive evidence. There was nothing for me to declare. This was an individual constantly saying, may you please assist with compliance? Hence, there was nothing for me to declare to the probity team.

The fourth one is on an assistance on another bidder. I have explained this matter. Assistance that I provided was on a general perspective. Did not interact with any of the returnable documents of the company at
10 hand. Hence, further to that, I expected no financial gain. I had no interest in that. It was just me providing guidance to a friend in general terms to a bid that was open at the time. I did not see the need to disclose that because it does not affect any objectivity that might be there on a bid that is currently in question.

You referred to direct communications on another bid. That bid was open. And in reference to discussion that had with Sergeant Nkosi, the regrouping clearly meant, if needs be, I will explain to you the contents of administrative
20 requirements, the mandatory requirements, as well as the definition criteria.

There is nothing wrong with that. I have given evidence on why that is allowed if individuals do ask you to clarify for that. That ultimately did not happen. Secondly, they were not even awarded. I still maintain that I have no

interest as a result of that factor, which I bring to conclude that there was nothing necessary for me to declare.

The third one is on the Gubis payment. On the Gubis payment, I was clear. Sergeant Nkosi involved himself. I did not actively say, may you please assist me with mediating this? A phone call was given to me and had a discussion. Hence, from that perspective, I did not actively encourage him to assist me in terms of dealing with that matter at hand.

10 I did, however, admit, Chair, that in hindsight, on this matter, I should have requested for a number. And on this, I should have requested for a number so that I am able to deal directly with the Deputy Chief Dlamini.

On the second aspect you have raised on the Gubis payment on termination. This was clear. I asked for his number afterwards, and I subsequently took the matter with the General directly. There was no further interaction with Sergeant Nkosi in reference to the termination letter. In hindsight, I also agreed that this is an issue that could have
20 resulted in a problem for me, and I should have quoted details directly, and I subsequently received those. Hence, from my perspective, there was nothing to declare. I still have no interest and my objectivity could not have been impaired whatsoever.

The last one that you had raised in terms of giving

him access to information, I disagreed with this. It is not a fact. There is no single instance from my perspective where I shared any sensitive documentation with him. The termination letter, like I said, was general. We have seen that. There is nothing sensitive about that. The service provider had already received it, and from my perspective, it would have got no advantage.

10 Firstly, nor would his brother's company would have gotten advantage, purely taking into account that they are not even a bidder who would be eligible to be allocated any ad hoc related services work. Thanks, SC.

ADV CHASKALSON SC: So, Mr Mnisi, if this whole process is repeated next year in another bid and all of these facts were to happen again, would you still sit on the BAC and not make any disclosure on your interest form?

MR MNISI: In hindsight, I did agree that there is a perception of conflict having existed. Firstly, during this exercise, I have learnt a lot and have identified my mistakes and errors, can assure you errors of this nature will never
20 reoccur in the near future.

However, if they do reoccur, a perception is there, and I would not sit in that committee. Like I said, this is a perception issue that would still have been evaluated because I am saying, as I speak at that point in time, I have got no interest and my objectivity would not have been

impaired. I still maintain that. However, I have seen a lot of shortcomings and shortfalls and gaps within the conduct, and I would put systems in place to improve that moving forward.

ADV CHASKALSON SC: Well, my question was first, would you sit on the BAC again? Yes or no?

MR MNISI: Okay.

ADV CHASKALSON SC: If all of these facts are repeated and you now are called to a BAC meeting against that
10 background, would you sit on the BAC? Yes or no? Yes or no? Simple yes or no?

MR MNISI: Okay, no.

ADV CHASKALSON SC: No, okay.

MR MNISI: Me expanding further on that, SC, is that this would never happen again. So if we speculate what would happen in the future, it is a bit difficult for me to concur with. I cannot explain what happened, but in the future ...[intervenes].

ADV CHASKALSON SC: I am satisfied with your answer.
20 No, you would not. I appreciate that. Mr Mnisi, you will be relieved, as I am, to hear that I have no further questions.

MR MNISI: Thank you, SC.

CHAIRPERSON: Mr Mnisi.

MR MNISI: Chair?

CHAIRPERSON: When Mr Chaskalson engaged you on the

grounds for cancelling TMPD-3, you dealt with what you called an irregularity that related to the bid specification requirement of firearm licences. Is that correct?

MR MNISI: It was one of the issues that ...[intervenes].

CHAIRPERSON: No, no, no. I am just focussing on this one, not the rest.

MR MNISI: Yes.

CHAIRPERSON: Yes, thank you. And do you accept that the effect of the BAC's resolution in relation to this ground
10 of cancellation was to undo a stage as early as the bid specification? Because you are effectively saying the bid specification ought not to have been framed like this and therefore the tender document itself ought not to have been framed in this manner. So do you agree that your resolution as the BAC was effectively to undo a stage as early as the bid specification?

MR MNISI: I agree. It was one of those reasons, Commissioner.

CHAIRPERSON: Yes. Now, can you show us where the
20 BAC derives the power from to invalidate an entire tender process based on its view of shortcomings in the bid specification?

MR MNISI: Chair, this particular matter was not invalidated by the BAC. The BEC brought a report with these resolutions already there that the tender must be cancelled.

The BAC assessed and found additional matters which were added and it is the three requirements that you just made ...[intervenes].

CHAIRPERSON: I am asking you about the power. Can you just say, I may be wrong as you seem to be suggesting that it was the BAC that effectively – in fact, you have already agreed that it was the BAC that effectively upended the process going back to the bid specification. So what I am saying is show us where the power the BAC has to do
10 that.

MR MNISI: The BAC has power to recommend, the counting of – the BAC does not have power to cancel, they have the power to recommend, and the accounting officer has the power to cancel. He has the authority not to agree to the recommendation that the BAC has. So they do not have that power.

CHAIRPERSON: Okay, where does the BAC, because the BAC can only make a recommendation that is based on a power that exists. So whether the power lay with the BAC
20 or the accounting officer, show us where that power is.

MR MNISI: Within this pack it is not here.

CHAIRPERSON: A power, it does not need to be in this pack. Where does the power come from for an entire tender process to be undone from a stage as early as the bid specification? Where does that power come from?

MR MNISI: The City Manager delegates that in the form of appointment letters when he is delegating his powers to the BAC.

CHAIRPERSON: No, the Municipal Manager can only delegate powers that she herself has. So if you say that this is a power that rests on the accounting officer, the Municipal Manager, show me where that power comes from.

MR MNISI: I do not have that information with me at present of hands. I will have to come back to you on that,
10 But I can confirm to you that that power is by law rests with the City Manager. He delegates that to the BAC.

CHAIRPERSON: You would not know, you would not be in a position to say by law that power vests in if, as you have just said, you do not know where this comes from, would you?

MR MNISI: Chair, maybe I am misunderstanding you. Maybe I am not ...[intervenenes].

CHAIRPERSON: So are you saying – okay, let me ask the question differently. Are you saying as a matter of fact, if
20 not law, the Municipal Manager does have the power to undo a tender process right from the start, the bids specification stage, based on shortcomings at that stage, undo it right at the tail end. Are you saying the MM, the Municipal Manager, has that power?

MR MNISI: He has the powers, Chair.

CHAIRPERSON: Based on shortcomings in the bid specification?

MR MNISI: Chair, he does have the powers.

CHAIRPERSON: I am specific, I am specific.

MR MNISI: Yes, he does have those powers. If he picks up this is an anomaly that would lead to irregularities, he does have those powers.

CHAIRPERSON: I am just thinking the bid process is a very expensive process for the tenderers. I would imagine
10 there is a lot of expense, in fact, even for the municipality itself, not only in mandatory terms, but also in terms of the person hours that have to be used to run this entire process from the beginning all the way to the end. So are you saying the Municipal Manager can just sit by and say, right at the tail end, I may undo all of this based on the fact that the bid specification ought not to have provided in this manner?

MR MNISI: He is the accounting officer. He has those powers. As long as it satisfies him, so he has got a duty to
20 satisfy himself as well with the reason behind it, and he can take a decision on that. So by virtue of being an accounting officer, he does have those powers.

CHAIRPERSON: Do you agree, though, that a sensible way would be for the Municipal Manager to be in the know right from the beginning as to what the tender entails?

Because if that were to be the position, this strange process would be obviated. The Municipal Manager would be able to pronounce right at the beginning and say, no, no, no, we cannot have a tender process along these lines because there is everything wrong with a bid specification.

MR MNISI: Chair, you will remember an advert is signed off by the accounting officer. Before an advert goes out, that is the specification. At that point in time, if he wants, he could request a specific document and say I want to see
10 the contents of this specification. He has that authority, and he can see that at that point.

CHAIRPERSON: Thank you. Thank you very much for that response. Then this, surely, the accounting officer cannot, having approved the bid specification which finds its way into the tender document itself, cannot, having approved it at the tail end, say, oh, by the way, I have changed my mind, and now I am saying there was everything wrong with the bid specification. Surely, that cannot be, because, as you say, the Municipal Manager will already have signed off
20 on that document. They cannot change their mind. Surely not.

MR MNISI: Chair, I respectfully disagree with you. He is the accounting officer. We have to analyse the cost of compliance. In those terms, compliance is key, and if any irregularities amount, if there is irregular expenditure

matching the tender and the accounting officer would have been alarmed that there is an issue on the specifications. He will be held accountable. So the powers are with him, he can decide.

CHAIRPERSON: Signing off on that document right at the beginning, even before entities begin to put in bids, is an indication that the accounting officer is saying there is nothing wrong with this document. So the accounting officer is already happy that there are no irregularities.

10 Otherwise, what is the point of the accounting officer signing off at the beginning? It would be pointless. So there is already a pronouncement on the existence or otherwise of irregularities. And in this instance, by signing off, the accounting officer is saying there are no irregularities. Surely, surely, Mr Mnisi.

MR MNISI: Chair, I agree with you on that perspective. He would sign it off. He might not have picked up any irregularities. And just to add practically how it happens, these are delegated functions. So we rely on the work that

20 the Bid Specification Committee would have done. In practice, he does not request to review each terms of reference of the tender document, nor do I request that. We rely on the work of the BSC, the Bid Specification Committee.

CHAIRPERSON: Yes, but it goes beyond the Bid

Specification Committee. It goes to the person who actually takes the final decisions on these matters and that person takes a decision right at the beginning and says everything is in order here. That is the last point on that one, but you may comment. I will move on.

MR MNISI: Chair, the accounting officer is ultimately responsible for the procurement environment in the City. He is ultimately responsible for ensuring that bid specifications are in place. The functions are delegated.

10 He trusts the work of the BSC as a result of them being constituted by members of the department, especially within supply chain management.

I rely on their work as well. At the tail end of their process, if we identify an irregularity, we cannot ignore that, even though we had signed on it previously. So the accounting officer on the recommendations of BAC then takes that decision after analysing that. It is a sore point to experience, Chair, but it is necessary in order to avoid irregular expenditure.

20 I would not want irregular expenditure to be recovered for me as a result of overlooking a matter of this nature. I can recommend to the accounting officer, he still has the duty to evaluate those reasons, concur or refer them back. In this instance, he concurred the reasons and he approved ...[intervenes].

CHAIRPERSON: Just one. There is a fancy Latin term, Mr Mnisi, that says that an organ of state cannot revisit their decision if they are *functus officio*, which means basically that once an organ of state has taken, which would be the accounting officer here, once an organ of state has taken a decision on something, they do not have the power to revisit that decision.

They would have to go elsewhere. Court, to be specific, to say, oh, by the way, I made a mistake by signing
10 off on that document. Court, can you please set it aside? On what you are saying, which is the accounting officer is assisted by all the actors at these various stages and can then take a decision at the tail end, surely that has nothing to do with what the accounting officer has already signed off on.

It will be whatever happens in accordance with what the accounting officer has already signed off on. He cannot revisit the decision on that aspect. Do you want to comment?

20 **MR MNISI:** With your permission, yes, please, Chair. Firstly, in terms of the difficult legal terms that you had raised, I am not aware of them. And of course, I will request my legal team to help me clarify that it needs be. However, the second aspect I can confirm, I can comment on that, that the...

CHAIRPERSON: Yes, yes, yes.

MR MNISI: Chairperson is looked at holistically. Even if you pick up an error from the beginning of the process, you have a duty to raise that. If it is an error that is valid, that might lead to a regularity, you cannot ignore that. We do take a decision to cancel that bid.

We then leave that onus on any supplier who says, no, but you should not have cancelled this bid because we make that public as well. But just ask us what happened on
10 this and we will inform them that this was cancelled because of these reasons. If a bidder chooses to take the City to court, we will then deal with it at that stage. That is the process that we follow at the City from a practical perspective.

CHAIRPERSON: I asked my question about an empowering prescript without the knowledge of what you later told us, which is that the accounting officer signs off right at the beginning. Let me repeat my question, but adding to it what you told us.

20 Is there any prescript that entitles the Municipal Manager to revisit and alter a decision on the bid specification? Can the municipality in law undo that decision? Is there a specific prescript that you can show us in that regard?

MR MNISI: I think I can refer you to the City Supply Chain

Management Policy.

CHAIRPERSON: Yes.

MR MNISI: On that policy, it is Clause 11, in which terms evaluation of bids, Clause 7.

CHAIRPERSON: Which says what? Because the very reference to evaluation does not seem to have anything to do with the Municipal Manager undoing the bid specification.

MR MNISI: That clause ...[intervenes].

10 **CHAIRPERSON**: You are talking evaluation.

MR MNISI: That clause guides the cancellation of bids, in terms of cancellation of bids.

CHAIRPERSON: That still says nothing about the power of the Municipal Manager to undo a bid specification.

MR MNISI: Chair, like I said, the accounting officer is responsible for managing the City in all respects. He has the power to ensure that that is ...[intervenes].

CHAIRPERSON: Let us leave it. I am not done, but Commissioner Baloyi wants to engage you on this.

20 **ADV BALOYI SC**: Yes. The City's SCM policy will tell us what the functions of the various committees are.

MR MNISI: Yes.

ADV BALOYI SC: Including the role of the City Manager, right?

MR MNISI: Yes.

ADV BALOYI SC: If I want to know what the powers of the City Manager are, I will have to go and look at the SCM policy when it comes to procurement matters.

MR MNISI: Yes.

ADV BALOYI SC: Okay. And unless it is in the policy, that power, unless it is prescribed by the policy, the City Manager does not have it. Can we accept that as a proposition? That the powers of the City Manager, they derive from the SCM policy, linked into matters of
10 procurement.

MR MNISI: SC, Commissioner, I cannot accept that. What I can put to you is that the accounting officer is accountable for all aspects of the City.

ADV BALOYI SC: Okay. Let me ask my question anyway. Are you saying to the Chairperson and to us that the City Manager plays a part in defining the specifications of a bid? And I am asking you because my understanding from other evidence, including yours, is that the client, the user of that service that is being procured is the one that defines the
20 specifications.

There is a committee, and it is that committee that takes into account what the user requires to specify the specifications. Now, your evidence suggests that the City Manager is part of that process.

MR MNISI: That is incorrect. That is not my evidence.

What ...[intervenes].

ADV BALOYI SC: What is incorrect?

MR MNISI: That is not my evidence. I did not say the City Manager has a role in defining specifications. I said those are delegated functions which rest with the Bid Specification Committee.

ADV BALOYI SC: Yes.

MR MNISI: The user department prepares terms of reference and presents those to the Bid Specification
10 Committee. The Bid Specification Committee analyses and assesses the contents of that and approves it accordingly.

ADV BALOYI SC: Yes, but you see, you say the City Manager, and I am taking into account the other evidence you gave, in fact, the reason that the BAC recommended the cancellation of TMPD-3, one of the reasons is the specification does not say anything about PSiRA guidelines, and you say that was a valid reason for cancellation.

Now, therefore, it must mean that should have been in the specification. You are saying to us that the City
20 Manager is entitled to refuse to approve on the basis that the specification did not include the PSiRA guidelines. That must mean that the City Manager has a say into what goes into the Bid Specification.

It means that, logically, it means that. It means the City Manager has a role in what goes into the specification.

In your case, right at the end, when the recommendation is made, the City Manager would say I do not like the fact that the specification did not include the PSiRA guidelines, but that is to have a say in the bid specification.

And unless it is in your Supply Chain Management Policy, which is not before us, but we will verify it for ourselves, unless it is in the SCM policy that I want to suggest to you or to put to you that the City Manager will be acting outside of his powers if he tries to exercise a power
10 that goes back to the specification and then say, that was not included and I do not like that fact, and therefore, I am not approving.

In short, what I am saying to you, Mr Mnisi, is you are not correct to say the City Manager has any say whatsoever in the specifications.

MR MNISI: May I please comment?

ADV BALOYI SC: Yes.

MR MNISI: Thank you, Chair. Commissioner, I think firstly, the reasons for cancelling TMPD-3 is not only the three
20 reasons that are recorded in the report and I have raised that. And for the record, I just want to be clear. The primary reasons are contained in the probity report. There would be ...[intervenes].

ADV BALOYI SC: Ja, no, let us not discuss that. Let us not discuss that. I have mentioned to you one of the

grounds. One of the grounds, because you are mentioning the other things that I am not referring to, ends up obfuscating, in fact. I am very specific. You have given three reasons why that tender was cancelled and you have conversed this with Mr Chaskalson at length, so we do not need to go there.

I have given you just one reason that you have given, you have said the specification did not include the PSiRA guidelines and that is one of the reasons we
10 recommend it to the City Manager that the tender should not be approved or should not be awarded.

From those facts which we have established from your evidence, that is the facts, I am saying to you if the City Manager says I do not like the fact that the PSiRA guidelines were not included in the specification, that is to have a say in the specification. And the City Manager, I will be surprised if your Supply Chain Management Policy empowers the City Manager to have a say in the specification of the bid.

20 I am simply putting that to you, and if you say to me it does, the SCM policy does allow him to do that, I am putting to you that we will look it up. We will look it up and I am happy to, I am brave enough to say to you there is no such provision in the policy.

MR MNISI: Maybe to comment on that, I firstly indicated

that specifications are delegated. The City Manager does not have time to look at every single tender specification that go out. We literally take out hundreds if not thousands of documents that are advertised.

The City Manager will not have time to look at each and every single specification where he is happy with from the beginning. Practically that is not possible, and practically that does not happen, and that is not my evidence.

10 My evidence is that the work of the bid specification is delegated. The department initiates the compilation of the terms of reference. They present that to an independent committee called the Bid Specification Committee. The Bid Specification Committee interacts with the terms of reference and the key conditions that have been set within that process.

They could either approve or disapprove that for whatever reason that they have. They then approve that accordingly. Once that is approved, an advert is issued,
20 which is endorsed by myself as well as endorsed by the City Manager. We rely on the work that was done by the BSC that indeed the terms of reference are compliant.

However, at the tail end, if there are issues that emanates in relation to this bid as a result of issues in the bid specification, the accounting officer does have the

power to cancel that.

ADV BALOYI SC: And you say that includes, the exercise of that power includes that the specification did not include the requirement of PSiRA guidelines. It did not include that and that the City Manager has the power to rely on as a basis to refuse to approve the tender.

MR MNISI: It would include any shortcomings which ...[intervenes].

ADV BALOYI SC: No, no, no, no, Mr Mnisi. Let us not do
10 that. I am asking you a very specific question. If I wanted to ask you a general question, I would have done so. I am asking you a very specific question, and please answer my question. My question is, are you saying that the City Manager has the power, deriving from the Supply Chain Management Policy, that when eventually the BAC presents to him its recommendation to approve a tender, he can say the specification did not include the PSiRA guidelines, I therefore am not going to approve because the PSiRA guidelines were not included in the specification? You can
20 say yes or no, and this does not require an explanation. I just want to know yes or no.

MR MNISI: In that case, the answer is yes.

ADV BALOYI SC: Okay, thank you. Let us continue, Mr Mnisi, to a different point. Earlier, I think it was this morning, you said in response to a question by

Commissioner Baloyi, you did not consider the tender process to have been corrupted by the fact that Sergeant Nkosi had accessed the draft admin report. Is that correct?

MR MNISI: That is correct.

CHAIRPERSON: Yes. If Sergeant Nkosi had access to the BEC draft admin report, which starts at page 158, the possibility exists that he could access any other bid documents. Do you accept that?

MR MNISI: I cannot accept that because I would not know.

10 **CHAIRPERSON**: But you cannot deny it as well.

MR MNISI: I cannot accept it and I cannot deny it.

CHAIRPERSON: So you cannot discount the possibility that he could. Is that so?

MR MNISI: Yes, yes.

CHAIRPERSON: Yes. At the very least, it is not speculation, please. I am testing the witness. This has nothing to do with speculation. At the very least, the known fact of Sergeant Nkosi having access to a BEC document must have raised alarm bells. Correct?

20 **MR MNISI**: No, not correct, Chair. There was no sensitive information, as I have stated earlier on. There is nothing confidential that is there or sensitive information in that leaked report that I confirmed is a leaked report.

CHAIRPERSON: What I am saying is the fact that he could access an internal document, it does not matter what

nature, it does not matter what effect it actually had or could not have had. What I am focussing on is the fact of him being able to source an internal document and what I am saying is surely that must have raised alarm bells.

MR MNISI: From my perspective, my answer was no.

CHAIRPERSON: Is that purely because of the nature of the document?

MR MNISI: Chair, the nature of that document was not sensitive, it only contained ...[intervenes].

10 **CHAIRPERSON**: No, I am asking, are you saying in your case it did not? Are you saying that because of the nature of the document or not?

MR MNISI: Yes.

CHAIRPERSON: So if he has sourced a fairly innocuous document, it basically means nothing. It does not matter to you that the very fact that he has accessed an innocuous document shows that he could very well access documents that are not innocuous at all. Is that not?

MR MNISI: I have agreed to that. I said I am concerned.

20 **CHAIRPERSON**: Yes. So that possibility, the possibility of other documents which may not be innocuous must surely raise alarm bells.

MR MNISI: I agree to that.

CHAIRPERSON: Yes. So I must go back to Commissioner Baloyi's question then. If the possibility of Mr Sergeant

Nkosi not only accessing the one document but the possibility of even accessing others, surely it must tell you that that may well be an indication that the process has been corrupted. As you sit there, you do not know whether he had actually accessed other documents, but you had seen that at the very least he had accessed one. So on what basis can you say as you sit there that the process could not possibly have been corrupted?

MR MNISI: Chair, I have agreed to you in terms of my
10 concerns of him obtaining the document. I have also agreed with you in terms of his perspective ability to obtain further documentation. He could have. I have agreed to that. I did not deny that.

CHAIRPERSON: With the possibility of corrupting the process, my focus is on Commissioner Baloyi's question. So with the possibility of the entire process being corrupted, yes or no?

MR MNISI: I have agreed to that.

CHAIRPERSON: Thank you very much.

20 **ADV KHUMALO SC**: Mr Mnisi, just one from me. Please go to page 52 of Bundle 3.

MR MNISI: Yes.

ADV KHUMALO SC: Are you there?

MR MNISI: I am there.

ADV KHUMALO SC: So this is the letter from the Hawks.

MR MNISI: Yes.

ADV KHUMALO SC: DPCI.

MR MNISI: Yes.

ADV KHUMALO SC: Addressed to the Office of the CFO.

MR MNISI: Yes.

ADV KHUMALO SC: City of Tshwane Municipality. That would be your office. Correct?

MR MNISI: Correct.

ADV KHUMALO SC: And they say the Hawks are
10 investigating alleged case of corruption against the City of
Tshwane Municipality officials attached to the SCM
department together with finance, together with other
finance officials. Do you see that?

MR MNISI: I see that.

ADV KHUMALO SC: And then they ask for various
documents relating to certain companies.

MR MNISI: Yes.

ADV KHUMALO SC: And certain officials.

MR MNISI: Yes.

20 **ADV KHUMALO SC**: So this is a document that the Hawks
have addressed to the City of Tshwane. Correct?

MR MNISI: Correct.

ADV KHUMALO SC: And you have shared this document
with Sergeant Nkosi. Correct?

MR MNISI: Correct.

ADV KHUMALO SC: And then all the communication with the investigating officers in this case, you have also shared that with Sergeant Nkosi. Correct?

MR MNISI: Correct.

ADV KHUMALO SC: And the City of Tshwane's response to the Hawks, you have also shared it with Sergeant Nkosi to review before the response is sent to the Hawks. Correct?

MR MNISI: Correct.

10 **ADV KHUMALO SC**: And that is on page 65. If you want to satisfy yourself, you can have a look at it, but it is there. And it goes to my issue which I raised with you earlier today and again yesterday. Your propensity to share with Sergeant Nkosi documents that are confidential to the City of Tshwane. What business does Sergeant Nkosi have with the Hawks investigating tender irregularities in the City of Tshwane?

MR MNISI: Chair, first of all, the sort of fake and fraudulent letter that was sent by imposters, I am going to
20 put it that way, imposters purporting to be from the DPCI. We have got a process that is validated and tested in terms of how we deal with investigations, organs of state, Chapter 9 institution.

The protocol that is followed, firstly, any communications must be addressed to the City Manager. It

is a standard protocol. We deal with these issues on a daily basis. We have seen a number of these communications daily. Secondly, there must be sufficient communication and reference information in the document.

If you look at this document firstly, it does not even have a tender number. Nor does it have any official communication instruments to communicate with the purported investigation. I will give you a sequence of events of how this emanates. You see ...[intervenes].

10 **ADV KHUMALO SC**: I allowed you to answer and you did not even answer my question, but I was patient because I wanted to give you a chance. Let us assume that this letter is fake. The first time you get it, you do not know that it is fake. Correct?

MR MNISI: No, I know, because I analysed the letter. And if you look at the letter, I analysed the process that followed. I pick up anomalies. I know immediately.

ADV KHUMALO SC: Where was it sent to, this letter?

MR MNISI: It was left at reception.

20 **ADV KHUMALO SC**: At reception where?

MR MNISI: At the City.

ADV KHUMALO SC: At the City of Tshwane?

MR MNISI: Yes, at the City of Tshwane.

ADV KHUMALO SC: So, it is a letter left at the reception at the City of Tshwane. What business does Sergeant Nkosi

have?

MR MNISI: It was a test of legitimacy. I needed him to give me advice on how I can take this matter up further. I needed to ensure that these individuals are tracked so that the behaviour of this nature does not carry on any further.

ADV KHUMALO SC: Did you report it to the police station?

MR MNISI: I was waiting for advice from Sergeant Nkosi in terms of how we deal with this. Even if you look at the communication that you refer to on I think page 64, I commit
10 to submitting these documents to the purported individuals, CC the supply chain management officials. The plan was to test legitimacy and to trap these individuals.

ADV KHUMALO SC: So two years later, have you reported it to the police, to SAPS?

MR MNISI: No, I have not reported it to SAPS. But ...[intervenes].

ADV KHUMALO SC: You, in a City of Tshwane letterhead, sent a draft response to Sergeant Nkosi to review.

MR MNISI: I was asking for advice on how to trap these
20 individuals.

ADV KHUMALO SC: In a City of Tshwane letterhead, you sent a draft response to Sergeant Nkosi to review. Is that correct?

MR MNISI: It is not, it is an email with my signature. It is not a letter. That is my signature that is appearing there.

So I was saying, did I cover the contents correctly? Will this help me catch these individuals in order to enable me to report this case?

In short, this was an unlawful letter and there is no unlawful conduct for myself because this is not an official document for the City. You will be aware, Chair, that these individuals disappeared from here. We sent a team to go there 10AM to deliver documentation. When they were being contacted, they completely disappeared. That
10 number stopped working as well.

ADV KHUMALO SC: You see, you are telling me about the facts and I am not asking you about the facts, but I accept that that is your answer. My question is really why you involved Sergeant Nkosi in matters that relate to a letter sent to City of Tshwane. Forget about it is fraudulent. You are aware that it is fraudulent. You have already said yourself, it is sent to the City of Tshwane, it is left at the offices. My question is, why do you involve Sergeant Nkosi in City of Tshwane matters?

20 **MR MNISI:** It is not a City of Tshwane matter. It is an unlawful event. I needed to trap these individuals so that I can open the case against them. He is a member of Hawks. He should be aware of the process on how I can escalate any irregularities of this nature. I was asking for advice on how to escalate the matter further.

ADV KHUMALO SC: So if a fraud happens at the City of Tshwane's offices because it is a fraud, you are at liberty to involve Sergeant Nkosi? Not internal fraud people, but Sergeant Nkosi? He is the one who must advise you on what to do, he is the one that must comment on your draft responses on letters that are dropped off at the City of Tshwane's offices?

MR MNISI: Unlawful letters. They are not official documentation. The procedures are not followed up. I will
10 even give an example. We had a matter of this nature where I had my first encounter with the Senior Counsel Chaskalson. They had a matter where he was dealing with another organ of state. The protocols that were followed, him and the representatives that I was working with communicated to the City Manager.

This is a matter that was now delegated to me officially by the City Manager that we have received an enquiry of this nature. CFO, you need to deal with this accordingly. I then action it accordingly. Protocol is not
20 followed. This is not a unlawful letter ...[intervenes].

ADV KHUMALO SC: So if there is a fraudulent enquiry made at the City of Tshwane, the court of call is Sergeant Nkosi to advise on how to respond to that fraudulent letter sent to the City of Tshwane. That is your answer as I understand it.

MR MNISI: No, that is not my answer.

ADV KHUMALO SC: What is your answer?

MR MNISI: My answer is I asked for advice because he is a member of the Hawks and he should know the escalation process.

ADV KHUMALO SC: A member of?

MR MNISI: He is a member of DPCI. He is a SAPS official. He should know the process of escalating these matters. From my perspective, this was a good deed. This
10 was in good faith. I needed advice on how to deal with the situation moving forward.

ADV KHUMALO SC: And was it reported to the police? I think that was my last question. You said you were waiting for advice from him, but that was in 2024. So what has happened in the last 18 months?

MR MNISI: Since the disappearance of these individuals, I guess I was overtaken by events because they never ever came up. They never ever called, nor did they ever respond to this formal correspondence.

20 **ADV KHUMALO SC**: You never ever reported this attempted fraud?

MR MNISI: Officially, no. I was overtaken by events. The individuals disappeared. When I tried to contact them to say I am here, the number just did not work. Did not go through any longer.

ADV BALOYI SC: You are resorting to Sergeant Nkosi on something like this. Does it mean that the City of Tshwane does not have its own internal investigations department or people that could have investigated this for you?

MR MNISI: It does have that, but ...[intervenes].

ADV BALOYI SC: Why did you decide to go to Sergeant Nkosi instead?

MR MNISI: It investigates internal matters. The matters are for issues that occur within the City. They are not
10 authorised to investigate other organs of state.

ADV BALOYI SC: No, but this is a matter that is occurring within the City. You have been addressed in your official capacity as the Chief Financial Officer. So it is a city business. It is not a personal matter. It is a CFO, City of Tshwane. So it is a City matter and you do not refer it to the legal department.

You do not refer it to your internal investigators. You do not refer it to the City Manager. You say there is protocol, it should have gone to the City Manager. You do
20 not say, City Manager, I received this, I am giving it to you because that is our protocol that these kind of things should be coming to you.

You go to, and then you do not lay a complaint with the SAPS. And if I am not mistaken, they will correct me. Sergeant Nkosi is not a member of the Hawks. You do not

lay a complaint with the SAPS. You go to your friend to help you solve a City of Tshwane matter.

Even if it is a fraud, it is a City of Tshwane matter. Can you just explain why? Why you choose not to follow protocol? You say we have a protocol. You do not follow protocol. Why?

MR MNISI: Chair, I do follow protocol.

ADV BALOYI SC: No, you did not follow protocol. Your protocol does not include Sergeant Nkosi. Can we settle
10 that? Nkosi is a member of the public. It is no different from me. So you going to him is not to follow protocol. And I have said to you, and I have indicated to you bodies internally that you could have gone to.

Your internal investigation, people whom you say you have, you have a legal department, and you have the City Manager that you tell us correspondence is addressed to the City Manager if there are issues. But you do not escalate this to the City Manager to decide what to do with it. You instead go to your friend.

20 **MR MNISI**: Okay. Chair, firstly, Group Audit and Risk And Legal investigate internal matters. They cannot investigate external institutions. That was my understanding. That is to my understanding now. I could not have referred this matter to them.

Firstly, I needed to ensure that I find processes in

place to escalate this accordingly within the SAPS structures. This was me asking for advice on what process I need to undertake to raise this matter accordingly to the relevant officials within SAPS. It was a SAPS-related issue where an unlawful ...[intervenes].

ADV BALOYI SC: Did you formally, when you spoke, when you gave this to Sergeant Nkosi, are you saying that is you reporting to the SAPS? And if your answer is yes, then I leave it at that. I will not ask you any further questions.

10 Are you saying that when you handed this over, that is you escalating it to the SAPS?

MR MNISI: I cannot find an easy way out. And the answer is no. Me sending this to Sergeant Nkosi, I needed to understand the escalation processes. If I receive an issue of this nature, which I have ascertained myself it is a fake letter. It is unlawful. What steps do I need to follow to raise this accordingly within the SAPS?

ADV BALOYI SC: Okay.

20 **MR MNISI:** That was the reason I sent Sergeant Nkosi under the advice and guidance, which he provided me.

ADV BALOYI SC: But you did more than getting the steps. You actually, as Commissioner Khumalo says, prepared a draft response on a Tshwane communication record, which is your email with a signature. So you prepare a response to which Sergeant Nkosi makes an input. So you did more

than.

In fact, it is not correct to say you were asking and he provided you with how to escalate this. You actually, with him started dealing with the matter, responding until these people disappeared. I mean, there are WhatsApp messages here where people are being asked, who are you? Where can I come and deliver documents? That is more than. In fact, there is nothing to do with escalating.

MR MNISI: Chair, from my perspective, there was nothing
10 wrong asking for guidance from a subject matter expert. He seemed like a subject matter expert. He knew the process to be followed. He guided me accordingly. There was nothing wrong with it.

ADV BALOYI SC: That is your answer. Thank you.

CHAIRPERSON: Ms Van Den Heever, I think we have reached that stage where you should indicate whether you will be re-examining. And our practice is to ask up front what you will be re-examining on. I know the evidence has ended just now and I do not know if you have applied your
20 mind to it.

ADV VAN DEN HEEVER: At this point, our indication is that we do want to re-examine.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: And we would like to have an opportunity to do so. But in the lateness of the hour, I

assume we were going to have to arrange for a date.

CHAIRPERSON: We certainly cannot say no to that. And what did you say? I am very sorry. I was whispering to Commissioner Baloyi. What did you say about the lateness of the hour?

ADV VAN DEN HEEVER: I said I assume we will have to arrange for a date for the re-examination.

CHAIRPERSON: For that, ja. I think we cannot avoid that. Let us just adjourn without – this will actually afford, an
10 adjournment will actually afford you an opportunity to put together beforehand the questions. Not so much the questions, rather the aspects or issues that you will be re-examining on. And must we give a timeline, maybe?

ADV VAN DEN HEEVER: Chairperson, may I be so bold as to request that I discuss it with my learned friend on availability of dates? As I said to him earlier today, we have accommodated – well, we have had to for a number of days rearrange our diary, so we would really like to be able to have a say in when we do that. Both Mr Mathopo and
20 myself had to...

CHAIRPERSON: By all means, and I would not suggest otherwise. Mr Chaskalson, do you want to make a suggestion with regard to the timeline on the issues that the re-examination will deal with? And perhaps before Mr Chaskalson's response, let me just alert you, Ms Van Den

Heever, that our – is it the rules? I think our rules, our regulations, the regulations provide that after your re-examination, the evidence leader may again examine the witness. You are away. Thank you. Thank you very much. Thank you. Mr Chaskalson?

ADV CHASKALSON SC: Chair, certainly, if we could get an indication. I need to have a sense of the topics just so I have a sense of how long the process is going to be to be able to schedule it. So if we could get that indication by the
10 end of the week, then we could, Ms Van Den Heever and I could just then arrange, look for a date that works for both of us.

CHAIRPERSON: So perhaps let us just leave it at counsel coming back to us on the timeline.

ADV VAN DEN HEEVER: We would be indebted, Chairperson and Commissioners.

CHAIRPERSON: All right, then. The timeline is agreed, end of the week. The date, that will be resolved between counsel.

20 **ADV CHASKALSON SC**: Thank you, Chair. We will do that.

CHAIRPERSON: Yes. Is there anything else? Nothing else.

ADV VAN DEN HEEVER: Not on my side, no.

CHAIRPERSON: All right. Let us adjourn and resume at

09:30 tomorrow. Mr Mnisi, you will come back on a date to be advised. Thank you.

INQUIRY POSTPONED TO 22 APRIL 2026

INQUIRY ADJOURNS