

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO: 22621/11

DATE: 21 NOVEMBER 2011

5 In the matter between:

VIOLETTA MUKHAMADIVA Plaintiff

and

DIRECTOR-GENERAL DEPARTMENT OF HOME

AFFAIRS 1st Defendant

10 THE MINISTER OF HOME AFFAIRS 2nd Defendant

COURT ASSEMBLES: (at 10:11)

MR ALBERTUS: May it please you M'Lord, I appear on behalf
of Mr Hans Grobler who has been ordered by you to appear
15 before you today.

COURT: Thank you.

MR KATZ: M'Lord I appear on behalf of Ms Violetta
Mukhamadiva who was the original applicant which has given
rise to these proceedings, as it pleases the Court.

20 COURT: Mr Katz it seems to me that I think I should have Mr
Eisenberg go on record, to tell us what had happened in order
that the matter can be – also give Mr Albertus an opportunity
to see what it was that occurred, just on record.

MR KATZ: Just on two aspects M'Lord, together with Mr
25 Eisenberg, sitting next to him is Ms Stephanie Maria Desada,

who is a candidate attorney at his firm, she was with him on the day in question and at the event in question.

COURT: Well if necessary we can call her as well.

MR KATZ: That's the one issue, I also have two further
5 statements or affidavits which I have given to my learned
colleague this morning, it only came into my possession this
morning. The one is an affidavit by Mr Cheslyn Daniels who
works for the Airports Company of South Africa, who
accompanied Mr Eisenberg and Ms Desada into the area of
10 contention, if I can call it that, and the other is from the
applicant herself who makes a statement, I don't know if Mr
Albertus will accept, I haven't spoken to him about it, but it's a
sworn translation of a statement that she made in Russia into
the English language, now I don't know whether Your Lordship
15 would want me to hand it in through Mr Eisenberg, perhaps
that's related ...(intervention).

COURT: Well let's just get Mr Eisenberg's – and if there's a
necessity corroborate that with his candidate attorney I would
be quite happy to accept that.

20 MR KATZ: I think Mr Daniels affidavit is I would submit quite
useful for purposes ...(intervention).

COURT: Well in which case we will have a look at that too.
Okay, you can call Mr Eisenberg.

MR KATZ: Yes as it pleases the Court.

25 MR ALBERTUS: M'Lord before Mr Eisenberg is called into the

witness stand, I have some reservations about the procedure that is being followed.

COURT: Why is that?

MR ALBERTUS: Well normally there would be, if it is a *contem*
5 *in facie curiae* then the person who the judge or the presiding
officer alleges has committed *contem* can deal with the matter
ex tempore.

COURT: Well I'm giving him a better opportunity because then
he gets a version that in fact on the other side, because
10 bearing in mind this is a somewhat unusual situation because
the judge himself here is involved in this. Since I was the
judge who gave the order and therefore part knowledge of
what has gone on, I need a record from somebody who is
going to tell what happened. I'm actually trying to be fair to
15 your client.

MR ALBERTUS: Yes, but I am going to address that particular
procedure ...(intervention).

COURT: Well you can.

MR ALBERTUS: I'm seeking to do so, I first dealt with the –
20 with what would be the normal kind of situation, the situation
we're dealing with her now is quite distinct from that, other
than a *contem in facie curiae* you would have normally an
application to court with a charge against a particular person
so that he knows what it is that ...(intervention).

25 COURT: There is a charge, there's a charge that he is in

contempt of court, that's the charge. There's an order which was duly issued by this Court, and the allegation is he refused to comply with it, that's the charge, perfectly clear.

MR ALBERTUS: I'm still just on my way to explain what my
5 reservations are M'Lord.

COURT: Okay.

MR ALBERTUS: So there would be a charge, and in addition to the charge, the charge would be buttressed at least by allegations as to three things, number 1 that there was a court
10 order, number 2 ...(intervention).

COURT: Well that's in the affidavit of Mr Eisenberg, have you not read that?

MR ALBERTUS: If you just will allow me ...(intervention).

COURT: I am just telling you, it's here.

15 MR ALBERTUS: M'Lord I am trying to explain to Your Lordship the difficulties that I have.

COURT: Alright, you carry on. Yes, but I am just telling you that those difficulties are matched by documents which are in the file and which you have access to.

20 MR ALBERTUS: M'Lord I am not with the greatest respect ...(intervention).

COURT: Well you don't have this, you don't have Mr Eisenberg's affidavit?

MR ALBERTUS: M'Lord three things, number 1 as I was
25 seeking to explain to Your Lordship there has to be a court

order, number 2, the order has to be served, and number 3 there must be evidence of disobedience, now ...(intervention).

COURT: Well that's what I'm seeking from Eisenberg to give me, because in this particular case the facts are quite obvious,
5 the facts are there was a court order, the facts are that it was given to Mr Eisenberg; the fact is Mr Eisenberg saw to deliver it to your client, but I need that on record before we can pursue the matter further.

MR ALBERTUS: Yes, but I – the real problem that I've got is
10 the following, that is this, the affidavit of Mr Eisenberg, and his candidate attorney, those documents were given to us shortly before we commenced. Now I haven't had an opportunity, and this is the way ...(intervention).

COURT: That's fine. If you want another hour to have a look
15 at this and consult your client we will give that to you.

MR ALBERTUS: I'm explaining to Your Lordship the difficulty
...(intervention).

COURT: I am giving – I seek to accommodate your difficulty, if you want the matter to be heard later this afternoon we will
20 accommodate that too. This is not going away. I am not going to countenance people behaving badly, and if he did behave badly then I am not going countenance it.

MR ALBERTUS: M'Lord I rest my case, I voiced my reservations, I have explained to Your Lordship what my
25 reservations are, I will there it M'Lord then I will deal with it as

the matter progresses.

COURT: You can take as the matter goes further, absolutely.

MR ALBERTUS: Because the difficulty that I have is that I have not had an opportunity of discussing beforehand, which I should have had, with my witness what in fact is (inaudible) but you must understand and appreciate the difficulty that I have as counsel for the – for Mr ...(intervention).

COURT: Well then do you want some time?

MR ALBERTUS: No well we will proceed, but that is what I wanted to place on record.

COURT: I am just putting on the record you are entitled to have some time, if you want it, you can have it.

MR ALBERTUS: I appreciate that I should be afforded that time.

COURT: Well would you like that time?

MR ALBERTUS: Well we will wait for Mr Eisenberg's evidence M'Lord, I can discuss this ...(intervention).

COURT: Fine and then you can have time. Yes, but you may – let me say this, let's put Mr Eisenberg in the box, he can give his evidence in chief, you are then welcome to consult your client because you may want to put some questions to Mr Eisenberg which you would be constrained to do unless you have an opportunity.

MR ALBERTUS: Absolutely.

COURT: Fine.

EVIDENCE FOR THE PLAINTIFF

GARY SIMON EISENBERG: (d.s.s.)

EXAMINATION BY MR KATZ: Mr Eisenberg you and I have known each other for some time, can you just explain to the
5 Court what is your profession and tell us about your practice etcetera. --- I am an immigration lawyer, that's all I do. My law firm was establish in 1997 and my exclusive field of practice is South African immigration and Nationality Law.

And where do you practice? --- I practice at 2304, ABSA
10 Centre, 2 Riebeeck Street, Cape Town.

And do you have any partners? --- I have no partners, I practice as a solo practitioner and I have a candidate attorney and six members of staff.

And the name of the candidate attorney
15 is? --- Stephanie Maria Desada

And is she in court today? --- She is.

Now on a particular day in the recent past you had occasion to call me on a Sunday afternoon with instructions, could you perhaps explain to the Court the developments of
20 that afternoon and the date and what happened that day. --- Yes, indeed. During the afternoon of Sunday the 6th of November I received a call from Mr Shane Harrison, who is the proprietor of Mavericks Revue Bar in Cape Town, and he very hurriedly told me that there was a lady, he couldn't think
25 of the name, he just said Violetta if I remember correctly, stuck

at the airport, that Mr Harrison's representative at the airport, Adrienne Foster, had been waiting there since earlier in the day for her, and as far as she understood the immigration authority was not allowing Violetta to pass through immigration
5 control.

Now Mr Eisenberg when Mr Harrison telephoned you on that date, did you have any knowledge of this person Violetta, or her application for any permit or visa in this country? --- We have done a number of applications in the
10 past for Mavericks, assisting Mavericks with the paperwork for visa applications and the like, especially from those countries that are not Visa exempt such Kazakhstan, and other such countries, Russia, the Ukraine ...(intervention).

Mr Eisenberg perhaps you can just stop for a second.
15 You said for those countries which are not visa exempt, do you have a copy of the Immigration Act available? --- Yes Mr Katz I do.

M'Lord I have an extra copy for Your Lordship.

COURT: Thank you.

20 MR KATZ: Now perhaps you can explain to the Court what it means for a country to – if I recall your words correctly not be visa exempt, now that the Court has a copy of the Immigration Act and you can explain to the Court what you meant by that. --- The Department of Home Affairs publishes on its
25 website a so-called visa codes or list of countries that are

subject to visa requirements, in other words in terms of the scheme of the Act, Section 9, read with Section 10A certain countries are visa exempt.

Is that 10 capital A? --- Yes sir it is.

5 Could you just perhaps, before you get to that, can you just explain the Act, the Immigration Act and who – how the scheme works in respect of visas, rather than getting to the code which is published on the website. --- Everybody is visa restricted, that is in terms of the construct of the Act as far as
10 I understand nationals of every country are visa restricted unless they are exempt from those visa restrictions by the minister.

 And if I – and it's a point of law M'Lord, perhaps I can lead the witness, I understand that to be Section 10A(1), if you
15 can just read that into the record. --- Section 10A(1) provides:

 "That any foreigner who enters the Republic shall subject to (2) and (4) on demand produce a valid visa granted under (3) to an immigration officer."

20 So as I understand your evidence all foreigners require a visa when they are attempting to enter South Africa, is that right, subject to various exceptions which are contained in Section 10A? --- That's my understanding.

 Okay, now can you explain what you were talking about, I
25 think you mentioned Kazakhstan or some other countries, what

you were saying about that? --- Kazakhstan appears on the list of visa restricted or rather countries that are not visa exempt.

Where do you get words visa exempt from, where do you see in the Act, I'm just trying to understand, you're talking about visa exempt. --- Yes sir, Mr Katz Section 10A(4)(a):

“The Minister may exempt any person or category of persons from (1) with regard to the requirement of having to be in possession of a valid visa in order to obtain a visitors permit contemplated in Section 11 for a specified or unspecified period and either unconditionally or subject to the conditions that the minister may impose.”

Now are there any countries that you know of that its national have been, let's call it exempt by the Minister from having to obtain a visa for purposes of Section 10A(1)? --- Mr Katz a number of countries come to mind, such as the United States, and as far as I can recall from the visa code published on the Department of Home Affairs website they are entitled to enter South Africa without having a visa, having obtained a visa before arriving for a period of 90 days for an intended visit, and that applies equally to countries, most countries in the EU, countries such as the United Kingdom, Ireland and Australia as far as I can recall are visa exempt without any condition, in other words they're not subject to that 90 day restriction.

And now you can perhaps explain to the Court what you were saying about Mr Harrison and Kazakhstan and the like. --- Apparently what Mr – well let me put it to you this way, Mr Harrison didn't really understand the full details of what was confronting Violetta at the airport, he couldn't even remember her surname, but that I should make immediate contact with Adrienne Foster, who was at the airport, and I did so.

Who is Adrienne Foster? --- Adrienne Foster is the representative of Mavericks and administrator I understand who was sent to the airport to collect Ms Mukhamadiva, let me call her Violetta, just because I find the pronunciation difficult.

And so what happened thereafter? So you spoke to Mr Harrison, he said to you there's a problem, that he had understood there was a problem at the airport in respect of Violetta because of what Ms Foster states, is that correct? --- Indeed Mr Katz. I called Adrienne and she had also told me that she had been at the airport, this was approximately 1.45 now as far as I can guess, twenty to two, and she said she had been waiting, immigration authority didn't want to speak to her, she couldn't get sufficient information, but knew after speaking to Violetta by cell phone that the immigration authority had refused her entry despite, and I understood from Adrienne at that stage that she had a valid visa granted to her in Istanbul, to enable her to be

employed by Mavericks for 90 days as a cabaret dancer, although at that stage I never saw the visa, a copy of the visa that was granted to her.

So what did you then do? --- I then indicated to
5 Adrienne that I would try to find an attorney, or would try to assist, I don't remember my exact words. I then ... (intervention).

Why would you try to find her an attorney, when you are yourself an attorney? --- I was very reluctant to take this
10 brief, I wanted to spend the rest of the afternoon with my family, I was leaving for Tel Aviv the next morning early, half past four in the morning, I would be away for a week and I knew that if I was involved the day for me would go and I wouldn't have time to spend with my family, and I tried to call
15 a number of other individuals, including George de Beer, who I understood was already on brief on other matters for Mavericks, I tried to call Advocate Lorena Venter, but unfortunately none of them answered me. I then called advocate Anton Katz standing before you ... (intervention).

20 That's me. --- To ask if he was available and he picked up the phone and he said yes I am available.

Reluctantly if I remember correctly. --- And I asked him his advice on what to do in the circumstances.

And perhaps without me giving evidence I said to you
25 that I wasn't -- I also had family to attend to, which I wished to

attend to, but I suggested that if you had a problem you should
phone the High Court's urgent applications and telephone
number and I gave it to you if I remember correctly? --- Mr
Katz you gave me Ms Davids cell phone number, I called her
5 and she was out and she gave me the telephone number of the
registrar on duty, I forget his name, an African gentleman if I
recall, I phoned him, he very kindly indicated to me that he
would be available and I think that he told me that Your
Worship was on duty that day ...(intervention).

10 His Lordship. --- His Lordship was on duty that day.

COURT: If I was a Worship I wouldn't have been on duty and
none of this would have happened today. --- His Lordship.
His Lordship was on duty that day, I called advocate Katz
again, just to confer with him, I then, if I recall correctly called
15 Judge Davis, who answered the phone ...(intervention).

MR KATZ: Can I just ask you how did you get my
number? --- I was given your number by the registrar I
believe, yes.

Just to get the record straight what I understand
20 happened was that I gave you the urgent applications cell
phone number which you dialled and there's a cell phone
which rang and Ms David phoned you, I didn't have her number
I don't think, I don't have Ms David's ...(intervention).

COURT: Alright, it doesn't matter, I'm sure not much turns on
25 that. The last question something turns on for a different

reason, it's nothing to do with Mr Grobler.

MR KATZ: Yes, yes, carry on, yes. --- I recall I phoned Judge Davis, I spoke to Judge Davis, I described briefly the situation.

5 But how did you know to speak to Judge Davis and how did you know it was he that was on duty, he could have been any of 27 or ...(intervention). --- The registrar told me Judge Davis was on duty.

I see, and gave you his number as well? --- And gave
10 me his cell number, I called his cell number, spoke to Judge Davis briefly because he asked me what the matter was, I said things are extremely urgent, I think I also said to him that the plane would leave very shortly because Adrienne Foster had indicated to me telephonically that she was leaving on a return
15 journey on Turkish Airlines at ten past three, and we were already I think ten to two if I remember correctly, something along those lines in terms of time, so time was ticking by very quickly. He said he would be in chambers, this is judge Davis, would be in chambers, give him half an hour, I said fine, I
20 called Advocate Katz who said that he would be ready for me to collect him at his place of residence, which I did do, and we rushed together to this court.

Did you have any documents in your possession at that point? --- I had no – yes the one document I did have was a
25 copy of the visa that Adrienne Foster had e-mailed to me, that

is the only document that I had on me as far as this case was concerned.

Had you printed it out or was it on your laptop, or your cell phone. --- I printed this out from my computer, and that
5 was the only document I had with me, I collected advocate Katz, we arrived and we waited for Judge Davis to appear in chambers. We were let through by security, we entered judge Davis' chambers and explained the situation to him.

Yes, one of the issues that arises is had you considered
10 or had you discussed with me the question of whether you should give notice to the other side, about the fact that you were attending on a judge in these circumstances. --- With regard to notice time was ticking by very quickly, still I had it in mind that Violetta was going to be turned around in an hour
15 or so, and with regard to the further conduct of this matter I felt more comfortable being before Judge Davis in chambers together with senior counsel to determine the way forward, before I myself took any steps to give notice or anything else.

Can you recall what happened in Judge Davis
20 chambers? --- We – Judge Davis asked me in greater detail what the position was, and I explained it to him in greater detail, again that Violetta was at the airport, the immigration authority had refused her entry. I believed that she did have a valid visa, I handed Judge Davis the printout from the e-mail
25 that Adrienne Foster had sent me, containing a scanned copy

of the visa from her passport document, although Judge Davis found it quite difficult to make it out completely because it was not fantastically clear and we discussed, or Judge Davis gave his opinion as to how we should conduct this matter further we
5 deliberated as to what should take place, and of course Judge Davis seemed to be concerned about the position of the other side, that the Department may well have a case, the department may have its own position and reasons for not allowing her in.

10 You mean they might have a case as to why they wouldn't allow Violetta into the country? --- Indeed and I think there was some sensitivity during our discussion that the Department of Home Affairs, although we didn't at that time understand it's position, would have a substantive position that
15 it took, but there was no time in the circumstances because of the threatened – well not deportation but refusal of entry and return of Violetta to her country of origin on the next flight out. At that stage also I corrected myself because I got further information that Violetta was in fact leaving at ten past five.
20 Judge Davis suggested that we require – we would require more time, at least let the other side know and an opportunity to come back the next day at 10 am to understand the full merits of the matter, there was no time to make that determination on Sunday afternoon, and we then left his
25 chambers, I went back to the chambers of Advocate Katz
21.11.2011/10:11-11:17/DS /...

where we formulated a draft order firstly ordering the respondents ...(intervention).

Well let me just – we will come to that now, who typed up that draft order? --- You did.

5 And then the draft order is attached to an affidavit that you made that evening, perhaps if you want to read the draft order into the record. --- The first paragraph of the draft order provides ...(intervention).

Well if you can just read on page GSE2, it says order
10 between the tramlines, immediately below that it says? ---

“Having heard the legal representatives of the applicant it is ordered:

- 1) That the respondents shall appear before this Court at 10h00 on Monday 7 November 2011 together with
15 the applicant in order to show cause why the applicant should not be permitted to enter the Republic of South Africa on appropriate conditions;
- 2) That the respondents permit the applicant to consult with her legal representatives immediately;
- 20 3) Costs shall stand over for later determination.

By order of the Court.”

And then the words appear “by order of the Court, Court Registrar”, was there a court stamp? --- There was no court stamp.

25 Can you just explain to the court after you left my

chambers with that draft order? --- We both returned to the chambers of Judge Davis and we handed the order to him and asked if he was satisfied with the contents of the draft order which reflected the terms of our previous discussion with him, and he indicated that he was and that he signed two copies, and gave the copies back to me and bid me to go and serve the order on the immigration authority at Cape Town International Airport and at that stage we left the chambers of Judge Davis and when I was in the corridor I indicated to Advocate Katz that we did not have a registrar's stamp endorsed on the second page, and I knew that the registrar was not available, physically at the court. I then returned to Judge Davis ...(intervention).

Before you returned to Judge Davis I recall that there was a person, I think he was a security guard for the building, who had a discussion with you about the issue, you do recall? --- As far as I understand the security guard's statements to me, I didn't quite understand them, I think he said to me that he had been in communication with the registrar who was not at court, apparently according to him the registrar phoned him and said that he had a key to the office of the registrar, where he keeps his stamp and that the security guard would somehow, but I didn't quite, the discussion unravelled then, whether he was going to stamp the copy himself or whether he would be making some other

arrangements with the registrar, I was not particularly sure of where he was going with that, and that is I think thereafter I approached – no, no, no, that was after – I don't recall whether that was, the adrenaline was running heavy now, whether that
5 was before I re-entered the chambers of Judge Davis or thereafter.

That was what I remember, it was before, but anyway, the point was that you had gone back to Judge Davis and explained to judge Davis that you weren't able to get a stamp,
10 that's how I recall it, I don't know what happened after that, I wasn't with you, when you went back to Judge Davis. Could you tell us what happened thereafter? --- I recall that I mentioned that to Judge Davis, I told him that the registrar was not available and that at any rate it needs to be stamped.
15 Judge Davis immediately tried to call the registrar, and as far as I can recall it was engaged, he couldn't get through. Time was running past very quickly, I was looking at my watch continually and Judge Davis then said to me okay, if you arrive at the airport and there's going to be an issue here is my
20 telephone number, and wrote – and Judge Davis wrote his landline number down on a post-it sticker, posted it on the top of the order and told me to serve the order as soon as possible, and we left his chambers, I left advocate Katz behind who went onto other business in his own chambers, and I got
25 into my car and proceeded to the airport.

Yes, I didn't, I waited on the steps, hoping that somebody would pick me up to give me a lift home, I really couldn't come with you to the airport, although you asked me to.

COURT: Alright, that's not relevant.

5 MR KATZ: M'Lord it becomes relevant for a reason.

COURT: Okay, alright, continue.

MR KATZ: Continue. So you went to the airport alone, without me. --- I went to the airport alone, I was in continual contact with Ms Foster who was still at the airport, trying to get
10 updated information from her in case she found, or heard anything new, she had not, she had seen, she told me that Violetta was upset, that she couldn't get a great deal of information from the immigration authority. At that stage I called my candidate attorney, Ms Desada who was on some
15 family outing, I told her to please make her way to the airport as soon as possible, because I knew I was not going to be there the next day and she should be involved and understand all the facts. Then I – then Ms Foster during one of our discussions said that she tried to get the telephone number of
20 so-called immigration standby, some telephone – some cell number of the immigration authority during off hours, after hours number. Now it was a funny thing because the lady from immigration that Ms Foster put on the phone was the same lady, I don't recall her name, who had administered the entry
25 of myself and my family when we came back from Mauritius a

number of months ago, and seemed to remember me, are you
the same gentleman Mr Eisenberg, I said yes, she said okay,
you can't speak to any of us here, you can't speak to me, you
must phone the standby number. And she said that she would
5 give Ms Foster the standby number and indeed Ms Foster
sms'd me the standby number and I called the number, it was
engaged, or rather not engaged, didn't answer, and I left a
detailed message. If I recall correctly – by the way I didn't put
that into my affidavit, I probably not remembered when I
10 formulated my affidavit that evening but if anybody listens to
the standby telephone that listened to my long-winded
message that I was coming to the airport, I explained the fact
that I had an order issued by Judge Dennis Davis, that I was
coming to the airport to serve the order on the immigration
15 authority, and that was the message I left on the telephone.
Thereafter I arrived at the airport, I met Ms Foster there, at the
Stop and Drop, with my lights flashing, I tried to convince the
car minders not to clamp my wheel and I ran inside. I met Ms
Foster, she took me to the South African Police Services office
20 on the ground floor, we went in together, we explained our
position, I said I was an attorney ...(intervention).

Was it just the two of you, you and Ms Foster? --- At
that stage yes. And they understood exactly what we were
trying to do, serve an order on the immigration authority at the
25 airport, and then an inspector Wilschut said that he would

assist and we explained the position to Inspector Wilschut. We went together, at that stage the inspector knew I didn't have a permit issued by ACSA, I had just arrived.

ACSA is? The Airports Company? --- The Airports
5 Company of South Africa, because the immigration authorities office was in the arrivals hall, the international arrivals hall behind passport control.

So they were in a restricted area in other words? --- In a restricted area, and without the proper authorisation,
10 whatever that may be or mean I myself couldn't be there.

Was this, was Violetta, she was obviously arriving at international arrivals rather than domestic arrivals by definition because there was an immigration problem which doesn't exist at domestic arrivals? --- Yes Mr Katz I
15 understand that she from Taschkem had taken a flight to Istanbul, and with Turkish Airlines had flown directly to Cape Town International Airport, so she was faced with immigration authority at Cape Town ...(intervention).

What was your interaction with Inspector Wilschut
20 thereafter, what happened? --- I told Inspector Wilschut I mean there was very little time to take his number, to take his full name, we were all muttering to each other now, but he said he would take the order and he would lead us into the restricted area, Ms Foster, myself and inspector Wilschut and
25 we traipsed through on the ground floor right through to the

entrance or the arrivals area where international passages come through after customs. There is a gateway, a portal for staff members, manned by perhaps members of ACSA but South African Police, and they refused me entry, they said this is a restricted area, you are not licensed to, we won't allow you to come through, I showed them the order, at any rate I didn't make much of that at that stage because inspector Wilschut said he as an officer of the court would go and try and serve the order himself at immigration control. I didn't have his contact number, I was not able to understand the progress that Inspector Wilschut had made, in fact to this day I don't know what happened between Inspector Wilschut, the detail of the transaction between and immigration control, and we let him go through, I stood there, I waited for my candidate attorney, Ms Desada who had arrived, I was with Ms Foster, and then we decided to run around like headless chickens looking for a way to get through, I had the other order signed by Judge Davis with me, and we tried to raise someone at Turkish Airlines counter upstairs.

20 Before we get there, what made you go to Turkish Airlines? --- Because we thought that might well be the path of least resistance whereby they would look at the order and perhaps if the plane did not get departed, try and stop the plane, I don't know if that idea was misconceived, but at least someone to help us.

Did you speak to me at this time at all? --- I spoke to you and I can't recall whether you called me or I called you, but you told me at one stage, and again I don't remember who called who, is that you made yourself contact with ACSA, you
5 had called ACSA and that a person by the name of Cheslyn would be available from ACSA to meet me at information.

Yes, my recall is we had a number of conversations and I was the person who suggested that you go to Turkish Airlines and you phone me from Turkish Airlines to say -- there was
10 nobody there I think, and I then went on, I was at home by this stage and I then phoned the telephone number of the Airports Company of South Africa, Cape Town International Airport, and managed to speak to somebody called Cheslyn who eventually got hold of you if I understand it correctly. --- A lot had
15 happened prior to that, to the first mention of Cheslyn. Ms Desada and I went to the first departure gate, on the second floor on the same level as the stop and drop, to the departure, the security departure gate to international departures, to go right was domestic, to go left was through passport control,
20 international, and the first lady I saw there was a security lady from Coin Security who said under no circumstances, you cannot come through, even with a court order, she wasn't interested in looking at the court order, and a lady by the name of Miriam appeared, she presented herself as a member of
25 ACSA, I introduced myself, Gary Eisenberg, I'm an attorney, I
21.11.2011/10:11-11:17/DS /...

showed her my Law Society membership card, it meant nothing to her, I said look you know this is a court order, I've come to serve it on immigration control, please allow me through. Her reaction was I'm not allowing you through, I don't care about any court order and at that stage remembering Judge Davis said if there's a problem with the registrar's stamp you can call me, I was reluctant to call him and disturb him for no good reason, but I thought this was very, very peculiar. It said that the respondents permit the applicant to consult with her legal representatives immediately, I know that a member of ACSA was not a respondent, but at any rate this was extremely serious, and at that stage I saw the Turkish Airline or at least a Turkish Airline plane taxiing past the window and I thought okay well this seems that the game is over.

15 While you're talking about the respondents, there are two respondents in the order that the Court had made, that's the Director-General of Department of Home Affairs and the Minister of Home Affairs, is that right? --- Yes Mr Katz.

20 And do you know anything about delegated authority as far as the Immigration Act is concerned and particularly delegation from the Director-General? --- Yes, as far as I understand the Act – it's been a long time since I've looked at the ...(intervention).

25 The reason I ask is that there will be a witness later this morning, whose name doesn't appear on the court order, that

might be suggested that he is not contempt for whatever reason, but particularly because his name doesn't appear on the court order, and I just want to try and have your view ...(intervention).

5 COURT: I think the Court can take judicial cognisance of what's in the Act and what I presume that officers of the Department have a similar idea that they don't have the (indistinct).

MR KATZ: As it pleases the court. Mr Eisenberg so Miriam
10 couldn't help you? --- Miriam couldn't help me, didn't want to help me, and at that stage that was the first time I called Judge Davis. I explained the situation to Judge Davis that we really have a serious problem, I can't seem to get through the starting blocks as it were, past security control on my way to
15 the immigration authority, and Judge Davis asked me what was the matter and I said well this lady is just not allowing me through, Judge Davis then said that he wished to speak to the lady. I then said to Miriam Judge Davis is on the phone, he issued this order, he wants to speak to you, she said no, I
20 can't speak to no judges ...(intervention).

(Inaudible). --- She said that a number of times.

Okay. --- And I remember what she said. And I said well you may well be held in contempt by Judge Davis, she said I am not cared about contempt or nothing, I won't allow
25 you through, because that's my job, that's my duty. At any

rate I told that to Judge Davis and I said goodbye to him and we then struggled somehow, running around and that's when we went to Turkish Airlines and I received your call, if I remember the timing. I received advocate Katz' call and I then
5 went to the information counter. Cheslyn met me at the information counter, I was with Ms Desada and with Ms Foster and Cheslyn, I didn't know his name was Daniels at that stage, he introduced himself as Cheslyn he read the order and he understood exactly, he said okay follow me. And on the way
10 another gentleman joined him, in my affidavit I said his name is O'Sheldon or O'Shelton, it's come to light that his name is Mr Oswald Sheldon, a security officer from ACSA, and the two of them led us through ...(intervention).

Us, that's being? --- Ms Desada and myself, not Ms
15 Foster if I recall, through the same portal, we went through the back of passport control where we met up with a Mr Pitsana, again if I remember his name correctly who I understood to be the man, the supervisor of immigration control for those passengers departing on international and he let us through
20 and on the way we met up with a Turkish representative who said to us no, it's no good, the plane has already left, in fact no longer taxiing the plane is in the sky, but that it would be landing in Johannesburg, and that sort of gave us a little bit of a reprieve because my understanding was that if I had
25 successfully served the order of Judge Davis on the
21.11.2011/10:11-11:17/DS /...

immigration authority they would set the wheels in motion to have Violetta removed from her flight in Johannesburg, before the aeroplane took off for Istanbul so that she together with the respondents could practically abide by the order, and that
5 when they appeared before Judge Davis on the following day the matter could be settled in one way or another, and we went down through the – to the arrivals hall and in front of me standing at the entrance to his office was a gentleman who introduced himself to me as Mr Hans Grobler. In fact it's that
10 gentleman sitting over there, the gentleman sitting with his back to the wall.

COURT: Oh, there's Mr Grobler. --- And I put up my hand and I shook his hand and I introduced myself as Gary Eisenberg, and he was shaking his head before I approached him, I didn't
15 know why, I can only reflect, but reflections may well be worthless at this stage, but he had already seen the order, perhaps Inspector Wilschut had already showed him the order.

MR KATZ: But you don't know that. --- I don't know that.

MR ALBERTUS: With respect, that's inadmissible, he says he
20 didn't speak to Mr Wilschut and now he's putting on record what he thinks.

COURT: Okay, okay. You've got a point.

MR KATZ: Mr Eisenberg try to contain the evidence that you give to the facts, that are within your personal
25 knowledge. --- Well I said that and I won't traverse that

ground at all, was that it appeared to me that Mr Grobler was waiting for me, and he was shaking his head, before I showed him the order.

Shaking his head, side to side? --- Side to side.

5 M'Lord the witness indicates it's as if a no, a child would look at a shake like that as being no. --- I showed him the order and I said I've come to serve the order on you, for – and I showed him the order, for Ms Violetta Mukhamadiva and he said he can't take the order from me, I said why can't you take
10 the order from me, this is an order from Judge Dennis Davis of the High Court, he said no, he can't take the order because he has been instructed not to accept the order.

Did he say he can't or he won't, you used the word can't in your evidence, can you remember specifically or are you
15 just trying to ...(intervention). --- I do not remember whether he used the words I can't or I won't, I don't remember the words. But the upshot of what he told me was that he refused to take it, whether he wouldn't of his own volition or he was instructed not to, but he said he was instructed not to, and I
20 asked him who instructed him, he said Mr Mellet instructed me not to. I said Mr Mellet instructed you not to, I think I repeated my question once or twice, he said no ...(intervention).

How do you spell Mellet? --- M-e-l-l-e-t.

I see. --- He said no, regulations are – according to
25 regulations I can't take the order, and he made reference to a

charter, he said no we've got a charter in terms of which I can't take the order. I have been practicing law since I opened up my law firm on my own account, since 1997 as I have said and I have never been in this predicament before where I have
5 a court order, I'm an officer of the court, I've come all the way, it's been highly traumatic, the woman has already left, I have very little margin available to me for negotiations and discussion and the immigration authority would not accept the order, and I quite frankly did not know what to do. So
10 ...(intervention).

COURT: Can I just ask you one question, did he know you were an attorney? --- He seemed to mention my name before I introduced myself, so he seemed to know who I was.

MR KATZ: What was he wearing? --- He was wearing a
15 uniform.

And how were you dressed? Can you remember? --- Sure, I was dressed with a pair of pinstripe trousers and a white shirt. And I told him that I am representing Violetta.

20 So now you're an attorney for all these years, and you have never been confronted by this situation, so what did you do? --- I didn't know what to do except to again, not wanting to disturb the judge who I had already called in the first instance, I called him again, and I told Judge Davis that I am
25 standing right before Mr Hans Grobler.

Did you know his name, did you know Mr Grobler's name? --- Yes, he introduced himself to me as Hans Grobler.

And who was in your vicinity when this was happening? --- My candidate attorney, Ms Desada, Cheslyn Daniels, who is an information officer at ACSA and Mr Oswald Sheldon, a security officer of ACSA were standing in my vicinity. I don't know there were a number of immigration officers, or people I thought were immigration officers, who were walking away, and then returned, but I didn't know who they were, I didn't know their names.

Alright, so you phoned – did you phone Judge Davis? --- I phoned Judge Davis again on the same number, he answered the phone, he said what now, if I recall correctly, I said okay well I'm standing before Mr Grobler and Mr Grobler will not accept the order, I don't know what to do. Judge Davis seemed quite angry, and he asked me to please let me speak to Mr Grobler and I said fine, and I gave my phone to Mr Grobler, Judge Davis is on the line he wants to speak to you. Mr Grobler moved back and said no I am not going to speak to the judge. And I said why won't you speak to the judge, he's on the phone, he said no – I don't remember whether he gave a reason, he just said he's not speaking to the judge. So there I was with Judge Davis on the phone, standing with the order in my hand, the lady had already left, Violetta had already left, and there was really nothing for me to do, except to say

goodbye to the judge and told the judge that's the situation I'm
in, goodbye, and I wished Mr Grobler well, I said goodbye,
have a nice day, and he told me Mr Eisenberg have a nice day,
and we left. And really that was the end of the saga as far as
5 that was concerned.

That evening you came to prepare an affidavit, how did –
why did you draft that affidavit, how did that happen that you
drafted an affidavit which I picked up the next morning,
because at that stage of course I was briefed to attend on
10 Judge Davis court the next morning, to listen to the debate as
to whether Violetta had been refused entry lawfully or not, and
what – how did things develop after you phone call with Judge
Davis? --- I thought my car had been clamped, or the wheel
had been clamped so I found myself with Ms Desada trying to
15 work out the parking situation, in fact my wheel had not been
clamped but I called Judge Davis a third time ...(intervention).

Poor Judge Davis. --- Who seemed at that stage quite
exacerbated with me, and I asked him well what must I do, do
you want me to come to your chambers to brief you as to what
20 happened, he said no, that's inappropriate, you need to
depose to an affidavit, quite separately, and get Katz to get
that affidavit to me, I said Judge Davis I will do that, and that's
exactly what I did.

So Judge Davis knew that you wouldn't be available the
25 next day? --- He did, I told him when we were in chambers

the very first time that I was going to be leaving and that I would not be there for the next week and I went to my own house with Ms Desada, she sat at my computer and I dictated the – my affidavit, and that evening I went to the police station
5 and I had it commissioned, and left it, after speaking to Advocate Katz, who would collect it the next morning in my absence and to deliver it to Judge Davis.

There's certain aspects in your affidavit which you have not mentioned in your evidence today, I don't wish to
10 necessarily take you to the parts, but do you confirm that what is in your affidavit is true and correct? --- Yes Mr Katz I do, except for those elements of speaking to Mr Pitsana and leaving a message on the cell phone of immigration standby which I by accident forgot to incorporate into my affidavit.

15 Yes, and I'm referring specifically to paragraph 15 where you talk about your relationship with Mr Miller etcetera, is it of any relevance to today's proceedings? --- No, I don't think it's of relevance, in relation to my attempted serving the order on Mr Grobler.

20 Right, now to this day do you know why Violetta was refused entry into South Africa? --- I don't know the reason for her refusal by immigration control to enable her entry, I understand from her affidavit ...(intervention).

Well let's just leave aside her affidavit I just want to
25 come to attached to your affidavit is GSE1, if you can – can

you see that? I don't know M'Lord whether Your Lordship has
...(intervention).

COURT: Yes, I have.

MR KATZ: Do you have a coloured copy?

5 COURT: I have a coloured copy.

MR KATZ: Yes, now the copy that you have Mr Eisenberg is
not at all clear but I don't know whether you're in a position to
explain to the Court how you understand the – let's call it the
visa stamp or sticker whatever it is in that (indistinct) that you
10 see there. --- I remember taking a look at a more legible copy
that I gave to the judge, Judge Davis, a colour copy, which I
don't have in front of me, and I can't make out which is in front
of me, it's ...(intervention).

M'Lord do you have two copies perhaps?

15 COURT: I have, well I've got this one which the witness is very
welcome ...(intervention).

MR KATZ: There is another one which Mr Eisenberg is now
referring to, what happened was if I recall correctly he gave
you just a single piece of paper.

20 COURT: Well I've got two, I've got one which is a photocopy
and then I've got the green one, the blue one.

MR KATZ: The green one. --- The green one is more legible
than any of the others.

MR ALBERTUS: M'Lord may I just raise an objection here, I
25 don't think this is relevant and I think it's a wastage of the

Court's time ...(intervention).

COURT: Alright, but I don't know what he is going to ask.

MR ALBERTUS: No, I think what he is asking Mr Eisenberg was what was the basis for the refusal to allow Violetta to
5 enter South Africa and if that is where my learned friend is going I don't Your Lordship wanted to adjudicate that particular issue here.

COURT: No, I certainly don't want to, obviously not, that's probably – he's right.

10 MR KATZ: No, absolutely not M'Lord, and let me explain why, Mr Eisenberg says in his affidavit, he is going to say or he says in the affidavit that the refusal to accept the court order, the contempt issue was all part and parcel of a strategy if I can call it that, and (inaudible – no sound on channel) and not
15 only that M'Lord we have brought an application, Your Lordship made an order in respect of that application and the order says that the respondent shall come to court to explain why they are refusing to allow her in. My client I represent that applicant. To this day I still don't know, there has been
20 correspondence subsequent to this order, subsequent to Mr Eisenberg leaving ...(intervention).

COURT: Alright, carry on, but on a restricted basis.

MR KATZ: Yes, Mr Eisenberg do you know to this day why Violetta was refused entry? --- I do not know.

25 Well having regard to what you see as GSE1, the visa,

together with the Immigration Act, is there any reason that you can think of why she should not be allowed, why she should not have been allowed entry? Perhaps you can just read it into the record what the visa says. --- The visitor visa, by the way I was incorrect, I made a statement just now that Violetta had obtained a visa in Istanbul, I am incorrect, it was issued in Turkey, in Ankara, the South African Embassy, and it says on the visa it says visitor's visa:

“Authority to proceed to the Republic to report to an immigration officer at a port of entry has been granted by the Minister of Home Affairs issued at Ankara on the 24th of October 2011, number of entries multiple, subject to the following conditions;

To be admitted for a period of 90 days to take up employment at Mavericks Revue Bar and Restaurant in terms of Section 11(2) of the Immigration Act as amended.”

That's what the visa says. My understanding, if I follow your question Mr Katz is that this is an authorisation granted, or a pre-authorisation granted to the applicant, Violetta, in Ankara on the basis of an application which she made for permission to enter South Africa, from a country I believe she's from Kazakhstan, which is one of those countries that is not visa exempt, please excuse me it's Uzbekistan, to enter South Africa for a period of 90 days to be employed by

Mavericks.

So yes, I understand, now you went, perhaps you can give the document back to the Court, just very quickly, just one question ...(intervention).

5 COURT: Do you want to see this?

MR ALBERTUS: No, I have a copy of it.

MR KATZ: I want one answer, and then we're going to move onto the next part of your evidence. How do you interpret what you've just read in as regards the passport?

10 COURT: Well I think I can do that as well as he can.

MR KATZ: As it pleases the Court. Now Mr Eisenberg you then went to Israel and you came back a week later if I understand it correctly, had there been any developments, affidavits or anything filed, or could you just tell the Court
15 briefly. --- As far as I understand from ...(intervention).

Have you had any contact with any of the – have you spoken to Mr Grobler, have you spoken to Cheslyn, what has happened, if you can just briefly tell the court what's happened? --- I haven't spoken to the respondents in this
20 matter, in relation to this matter, I have spoken to Cheslyn Daniels on two occasions and I asked him whether he was prepared to depose to an affidavit to corroborate what actually happened in relation to the attempted service of the order on Mr Grobler.

25 And has he made such an affidavit? --- He has made an

affidavit.

M'Lord I have a copy of that affidavit, I don't know whether it would serve any purpose but I have given a copy to my learned friend.

5 COURT: Give me a copy as well.

MR KATZ: Perhaps you would want to read it into the record and if necessary the court can call Mr Daniels to confirm that which is contained, perhaps if you want to read the affidavit Mr Eisenberg into the record. --- Judge Davis may I read it?

10 COURT: Yes, please. ---

"I, the undersigned, Cheslyn Daniels, do hereby make oath and state as follows; I am an adult male employed by the Airports Company South Africa, ACSA, as a senior information assistant at Cape Town International Airport.

15 The contents of this affidavit are within my personal knowledge and are true, save where the context indicates otherwise. I have received from Mr Gary Simon Eisenberg his affidavit which he deposed to on 6 November 2011 in this matter. I have read Eisenberg's
20 affidavit thoroughly, understand it's contents and agree therewith as it pertains to myself and what transpired in my presence. I have also read a newspaper article which appeared in the Sunday Argus on 13 November 2011, I attach hereto a copy of such newspaper article as
25 annexure CD1. I note from the newspaper article that the

Department of Home Affairs has alleged that Eisenberg broke the law by entering a zone restricted to authorised personnel, and that he forcefully pushed his cell phone into the officials face. I disagree completely with these
5 allegations. I, together with my colleague, Oswald Sheldon, who is employed by ACSA as a security supervisor, both escorted Eisenberg through the first international departure portal and then threw the passageway behind passport control, manned this time
10 by Mr Pitsana, and all the way to the international arrivals hall to meet Mr Hans Grobler. Eisenberg was in the restricted area because both I and Sheldon paid due respect to Judge Davis' court order and understood the importance of having Eisenberg serve that order on the
15 immigration authority as soon as possible in the circumstances. Eisenberg would never have been able in that short period of time to enter the restricted area without me and my colleague leading him there. Because Mr Grobler did not wish to accept the order Eisenberg
20 wished to serve on him, and I understand on the instructions of a Mr Mellet Eisenberg immediately communicated with Judge Davis on Eisenberg's cell phone. When Eisenberg got through to Judge Davis he asked Mr Grobler to speak to the judge and Grobler
25 simply refused to do so, moving himself away from

Eisenberg. At no time did I witness Eisenberg pushing his cell phone into the face of Mr Grobler, in fact I found Eisenberg extremely polite to Mr Grobler, and to myself and my colleague.”

5 And then Mr Eisenberg on the next page is an attachment, perhaps if you could take the Court through what the attachment is, there’s no date on the attachment but from the affidavit it appears that the attachment, CD1, was published in the Argus on 13 November 2011, perhaps if you
10 can take the Court through that attachment.

COURT: Well we can read that I think, ja.

MR KATZ: As it pleases. My concern though is that Mr Grobler would have any opportunity to know exactly what it is, but if he’s happy to ...(intervention).

15 COURT: No, we will have to listen to what Mr Grobler has to say to us in due course.

MR KATZ: And Mr Eisenberg are there any other affidavits that may be of use to the Court in deciding this matter that you know of? --- Yes Advocate Katz I understand that Ms Foster,
20 Maverick’s representative, has managed to obtain a written statement from the applicant, from Uzbekistan.

If it becomes necessary ...(intervention).

COURT: I have some doubts about the relevance of that.

MR KATZ: Yes, yes, well – as it pleases the Court. Mr
25 Eisenberg is there anything else that you wish to add as far as

today's proceedings are concerned before I sit down and ask no further questions of you, is there anything that you want to explain to the Court? --- No Mr Katz.

COURT: Thank you. Would you like some time Mr Albertus?

5 MR ALBERTUS: Yes, I may be kicking for touch more than once M'Lord because I suppose I would like a short adjournment now, and I see it's tea time already, Your Lordship might want to take tea and maybe we can deal with certain aspects of the evidence and perhaps I can carry on and
10 see how far that takes us because Your Lordship might ...(intervention).

COURT: In my usual way I will probably be running another case, that's why these other people came, and not because they were fascinated by you and Mr Katz's dispute, but if you
15 want to – would you just like to – I mean up to you, you want a short adjournment, it's fine, and then would you like to take it to a certain position and then consult with your client or would you like to do it at a longer adjournment, I am in your hands here, I have to give you time, I accept that.

20 MR ALBERTUS: Yes, maybe just a short adjournment now, perhaps a ten/fifteen minutes, and then ...(intervention).

COURT: Alright, I'll take a quick adjournment and we will see where we go, alright.

COURT ADJOURNS: (at 11:17)

25 **COURT RESUMES: (at 11:34)**

EVIDENCE FOR THE PLAINTIFF (CONTINUED)

GARY SIMON EISENBERG: (s.u.o.)

CROSS-EXAMINATION BY MR ALBERTUS: Thank you
M'Lord. Mr Eisenberg you told the Court that already on the
5 evening of the 6th of November you prepared and deposed to
an affidavit regarding the incident that occurred early on in the
day at the airport. Is that correct? --- Yes sir.

And do you I understand you correctly also to have said
that you have made arrangements for that affidavit to be given
10 to His Lordship Mr Justice Davis? --- Yes sir.

And when was that so given? --- When were the
arrangements made?

No, when was it handed over? --- I left my affidavit in a
plastic sleeve in my home and by expectation after speaking to
15 Advocate Katz was that in the morning he would collect the
affidavit from my home and he would deliver it to the judge.

I take it that the entire purpose behind preparing the
affidavit and having it delivered to Judge Davis was that you
were concerned that Mr Grobler had violated or rather not
20 violated but that he had refused to carry out the order, I just
want to understand what was the purpose behind this
affidavit? --- No sir when I spoke to Judge Davis in the last
instance from the airport he said that he didn't want me to
come to chambers to debrief him but he wished me to depose
25 to an affidavit and that's exactly what I did, because I was not

going to be available to give evidence the next day.

But was the contents of the affidavit designed to address a concern from Mr Justice Davis or was it calculated to serve some kind of interest that you wanted addressed, that's what
5 I'm trying to find out from you. --- Mr Albertus I had no personal interest in the matter at all, I'm an officer of the court, I was in the judge's chambers earlier that day, the judge issued an order and told me to go and serve the order and I took that responsibility very seriously.

10 Look I will get back to that, I'm just trying to short circuit what would a very long and a very arduous process, because there's certain, let me put it to you up front, aspects of your evidence that Mr Grobler disagrees with, for me to take you through that it's going to take a long time, I'm just trying to see
15 if there's a short way that I can get through it by addressing the concerns of His Lordship that this was a disobedience on the part of an officer that should have carried out a court order and one can understand ...(intervention).

COURT: I can short circuit that by saying the following, quite
20 obviously the – from what I gathered, and I think it seems common cause, the order was not complied, for whatever reason, as a judge it seems to me it is out job to be custodians, which is why we are here, and all I'm interested in is well why wasn't it complied with and frankly I'm not
25 interested in anything more. And Mr Eisenberg phoned me, as

he told you, and of course it seemed to be completely proper to say put the matter in an affidavit to see what should be done, as a result of which, it's quite correct, a summons has been caused to be served, a subpoena served on your client,
5 that's exactly what happened, I can short circuit that for you.

MR ALBERTUS: Yes, no – I am not too sure any summons was served upon my client ...(intervention).

COURT: Well there's a direct – the registrar of the court was instructed by me to serve papers upon your client.

10 MR ALBERTUS: No, that I accept, but ...(intervention).

COURT: And that's all I was – and I gave the instruction to the registrar. So I don't know what your client's got, your client is obviously here, he must have got something.

MR ALBERTUS: Well that's what I'm seeking to address and at
15 the end of the day ...(intervention).

COURT: Well let me put it to you this way, I have a letter here which was served, I mean I hope we're not going to go through further problems, but I have a letter here which is a subpoena in contempt of court proceedings, which is re Hans Jurie
20 Grobler, which is dated it looks – it's stamped the 15th of the 11th, have you not got this?

MR ALBERTUS: No, I don't M'Lord.

COURT: How come then this seems to have been served? You can see – you don't have this copy?

25 MR ALBERTUS: Oh no he's handed it to me now M'Lord

because when I last consulted with him he didn't but
...(intervention).

COURT: But he got it?

MR ALBERTUS: He's got it now yes.

5 MR KATZ: May I say something M'Lord, which
...(intervention).

COURT: Besides which, let me say the following, let's place on
record, you came to my chambers on – before you did – no Mr
Schippers did before then, so I mean you know I really need to
10 say Mr Schippers came with Ms Pillay acting on behalf of the
department, the suggestion that this has all been hurried is
nonsense, you then came, a timetable was agreed, the day on
which it was going to be heard was agreed, so I'm not quite
sure what it is that you're angling at.

15 MR KATZ: May I just place on record, it didn't come from the
witness and the witness won't know this, Mr Eisenberg won't
know this, I on that Monday morning, the 7th of November I
wasn't sure what to do, because Mr Eisenberg had told me that
I was to pick up his affidavit from his house in a plastic sleeve,
20 which I did, I arrived in my chambers at let's say nine o'clock,
I had an appointment prior to that, I arrived in my chambers
and I continually tried to get hold of Your Lordship by
telephone, eventually I worked out that because Your Lordship
wasn't answering and Your Lordship's registrar wasn't
25 answering, you must be in court, so I came to court not

gowned, but in a suit.

COURT: You did, it was the day I was giving judgment and we saw each other afterwards, and Mr Schippers came at some point.

5 MR KATZ: To court, he came to court.

COURT: Yes, yes, I know.

MR KATZ: And he – and I gave if I remember correctly a copy of Mr Eisenberg’s affidavit to Mr Schippers and one of the things that really intrigued me, and I’m still intrigued about it is
10 how did Mr Schippers know to come to court, I certainly didn’t tell him, I didn’t tell Ms Pillay.

COURT: And I hadn’t issued any proceedings. I will tell you why, because of the order which had said come at ten o’clock in the morning.

15 MR KATZ: So how did he know about the order.

COURT: Well somebody must have given it to him.

MR KATZ: Well who, not me, that’s the point.

COURT: Well I know that, don’t worry I’ve got lots of questions to ask Mr Grobler. He’s not going to escape answering lots of
20 questions, but that’s another matter. Carry on Mr Albertus.

MR ALBERTUS: Yes.

COURT: It’s a simple point, if you’re saying he didn’t get this in time and you need further time to consult with him the offer has been made to you, and you are welcome to take it up at
25 this moment, or any other moment that you so choose.

MR ALBERTUS: Mr Eisenberg the State Attorney wrote a letter to you on the 8th of November and it was marked for your attention, the reference is Violetta Mukhamadiva/Department of Home Affairs and it reads as follows:

“Your letter dated 8 November 2011 refers.”

You had written a letter to the State Attorney regarding this matter, is that correct? --- Yes sir.

Now he says in the second paragraph, and I quote:

- 10 “1. We note that the papers in this matter has as yet not served at our offices;
2. We kindly request that the complete application together with the order which you attempted to serve on our client’s officials on Sunday 6
- 15 November 2011 be served at our offices;
3. We do not deem it necessary at this stage to give reasons for your client being refused entry in the country.”

Because you had asked him a number of questions, not so? You had asked the State Attorney a number of questions, not so, in your letter of 18 November? --- Can I please have a copy of that letter?

MR KATZ: Yes M’Lord it’s totally unfair to read one letter, which is in response to another letter without giving the witness the contents of the first letter, it’s got nothing to do

with these proceedings anyway, as it pleases the Court.

COURT: I am about to say that, but I am going to leave – give Mr Albertus some latitude.

MR ALBERTUS: Your letter if you want to have a look at it
5 then is over here, it's dated 8 November. --- Mr Albertus I was ...(intervention).

Yes? --- I was – may I respond?

Yes. --- I was in the City of Tel Aviv, State of Israel when this letter was written on the 8th of November 2011, it
10 was issued on my letterhead and it was pp'd and I understand that this was done on the advice of our counsel, Mr Katz.

Yes, all I'm wanting to understand is that you wrote a letter on the 8th of November, and that the State Attorney was responding to it, so you did write a letter on the 8th? --- Yes
15 sir, my office issued the letter.

Now all I'm saying to you is then that in paragraph 3 he says we do not deem it necessary at this stage to give reasons for your client being refused entry in the country. --- Paragraph 3 of which letter Mr Albertus?

20 Of the State Attorney's letter. --- I don't have that.

Yes, I only have one copy because he has only given it to me now, you see the ...(intervention).

COURT: What is the relevance of all this?

MR ALBERTUS: Let me get to the point. You know I am
25 getting to the point, with the greatest respect, the point is this

you're sitting with an affidavit, and if you want to hear it and we get and cut to the chase to put it colloquially, you're sitting with an affidavit that you deposed to on the 8th of November ...(intervention). --- No, on the 6th of November.

5 Sorry, on the 6th of November, I am trying to elicit from you the purpose behind it, I left it for a moment, now I'm seeking to find out from you when you know that there was at least at some stage you became aware of the fact that there were moves afoot in order to get whatever official it was that
10 refused to carry out the court order before the court will face a contempt charge, you must have known that at some stage, not so? --- Are you asking me if I knew that?

 Yes, that's what I'm asking you. --- I knew from my discussions with Judge Davis on the telephone that he was
15 serious considering a contempt application when I was speaking to him at the airport.

 Good, now this affidavit that you gave us this morning you agree with me that you could have given it to the State Attorney some time ago in order to apprise the State
20 ...(intervention).

MR KATZ: M'Lord ...(intervention).

MR ALBERTUS: I am still – M'lord with the greatest respect
...(intervention).

MR KATZ: M'Lord (inaudible) counsel to counsel on the day,
25 on the 7th of November I gave a copy, I don't know if Mr

Manuel was there, I don't recall him being there, but I gave a copy or I tendered a copy, I think I had an extra couple of copies which I made for that purpose, I gave Your Lordship the original, and if I remember correctly in Your Lordship's
5 chambers I might have given a copy.

MR ALBERTUS: To whom?

COURT: I'm afraid you did.

MR KATZ: Your predecessor.

COURT: Your predecessor in title.

10 MR ALBERTUS: You say the affidavit?

MR KATZ: The affidavit, there is only one affidavit by Mr Eisenberg with the confirmatory ...(intervention).

COURT: I'm afraid so, and that's why this line of enquiry is getting us nowhere. There's only one line of enquiry that's
15 required, let me be quite blunt, it's what were the reasons why the order which was issued by me were not complied with. Now if they meet the test which you know well, then it's contempt, if they don't meet the test it's not contempt, and frankly I would like to get there.

20 MR ALBERTUS: Yes but M'Lord with the greatest respect, any person facing a serious charge as contempt of court is entitled at least insofar as the background is concerned to traverse that with ...(intervention).

COURT: Yes, but I am now having a great deal of difficulty that
25 things that happened in my chambers with your predecessor in

title are now being denied, and I'm afraid that's getting me into very serious difficulty here about this case. I wish you wouldn't deny things that happened.

MR ALBERTUS: I'm not denying it.

5 COURT: Well it happened, your predecessor in title came, everybody knew this was going to occur, and I made it perfectly clear it was I who was considering initiating these proceedings, because as the custodian of this court, and I hope you recognise that, we have got to make sure that our
10 orders are complied with, now there may well be good reasons why they weren't complied with which I would love to hear Mr Grobler tell me, and if he's (indistinct) then there's not a problem, if it is there is a problem, it's a simple question.

MR ALBERTUS: Yes M'Lord you will have to grant me some
15 indulgence here ...(intervention).

COURT: I am granting you as much indulgence as you like, I am just trying to tell you that if you narrowed it we could actually get the thing finished quite quickly.

MR ALBERTUS: But M'Lord that's what I'm trying to get at,
20 and if you bear with me I was trying to sketch just a little bit of background in order to get to the core of the matter, and I just wanted to know about the affidavit.

COURT: Yes, but you see some of the background – sorry to interrupt you – but some of the background that you – is so
25 contrary to what happened that I'm having difficulty, you

weren't part of that, I don't – I'm not blaming you, I am simply saying I was there on Monday when documents were exchanged.

MR ALBERTUS: I accept that now M'Lord, but
5 ...(intervention).

COURT: The problem – and your attorney wasn't there either.

MR ALBERTUS: Well I accept that M'Lord but you must also understand if it was given me it was given me, I beg then pardon for the fact that it wasn't given me I would like to, and I
10 am going to enquire into it why it wasn't given me because it's quite important because in consulting ...(intervention).

COURT: That's your problem, not mine, but I want to – I've got to finish this and you know we've got other things to do.

MR ALBERTUS: Well in consulting my client obviously I would
15 have traversed the contents of the affidavit with him. I find myself in a most invidious position today where I have to cross-examine ...(intervention).

COURT: I will tell you why, because I have offered you already, I said you don't have to even begin your cross-
20 examination, you can take the affidavit, you can take all the evidence that Mr Eisenberg has given, you can consult your client at your leisure, and you can come back to court and cross-examine Mr Eisenberg informed by all that on a simple issue as the issue what actually happened on that day, it's the
25 only thing I am interested in.

MR ALBERTUS: Yes, no M'Lord with the greatest respect as a cross-examiner I am not confined to the directions of the court insofar as how I deal with my witness ...(intervention).

COURT: You are, but I can tell you this and it's about
5 ...(intervention).

MR ALBERTUS: So I would ask at this point in time M'Lord that ...(intervention).

COURT: You can, but you don't have to be given latitude by me to ask irrelevant questions, I can say they are irrelevant,
10 and I am saying there is one issue here, why was the order not complied with, now Mr Grobler may have, Mr Eisenberg has given a version as to what happened, Mr Grobler may have an entirely different version. You may want to put that version to him and you may want to say Mr Eisenberg is telling things
15 that are not entirely correct, all of that is up for grabs. Primarily a capital case here about the Department and Mavericks, I am dealing with one concern.

MR ALBERTUS: I think Your Lordship is misunderstanding me, I want to get there and that's why I said right at the outset I
20 wanted to put as it were an aspect behind us so that I can get to the core.

COURT: Okay, alright, carry on.

MR ALBERTUS: And I just wanted to find out why was the affidavit not sent on – I got an answer on that.

25 COURT: Carry on, and what got me into difficulty here Mr

Albertus, because I know it was given, and I know that counsel on behalf of the department pitched up in my chambers on the Monday morning, and I know that I told Mr Schippers what I was planning to do and I know that we had a further
5 consultation with you and I told what I planned to do, none of this has come by surprise, it was initiated by the court, not by Mr Eisenberg, and I will tell you why, because courts have got to basically safeguard the integrity of their process. I am amazed that even the State Attorney, or the Department of
10 State don't understand that.

MR ALBERTUS: I will try M'Lord in the line of questioning that I will now follow in order to elicit ...(intervention).

COURT: Very good, you carry on, I've had no my say, you carry on.

15 MR ALBERTUS: To elicit facts *appropo* the relevant consideration.

COURT: No sure, carry on.

MR ALBERTUS: Mr Eisenberg there are basically three elements here that need to be addressed. We accept there
20 was an order of court, and it is granted by His Lordship in the course of the afternoon on Sunday the 6th of November, and we've heard from you already, I will not enter into any cross-examination on the why's and the wherefore's but we also know the court order was not stamped by the registrar,
25 correct? --- Yes sir.

Now we also know that when you came to the airport you had had after having gone to the SAPS you had met with inspector Wilschut and you said you told His Lordship you were armed with two copies of the order and the one you had
5 given to inspector Wilschut, correct? --- Yes sir.

And with that then he went away obviously with the view to serving it on the necessary authorities in order to give effect thereto, correct? --- Yes sir.

Now you also told His Lordship you didn't get any
10 feedback from him as to what transpired, is that correct? --- That's correct sir.

Now Mr Hans Grobler can explain to His Lordship what happened, I don't think I need to put that to you, you will not be able to confirm or deny anything that happened to you. But
15 insofar as you yourself are concerned you also thought it expedient to serve the court order yourself, correct? --- Yes sir.

And it's common cause that you met up with Mr Hans Grobler? --- Yes sir.

20 Now again I do not want to make a long song and dance about this, about the introductions and whether or not he knew that you were coming, the long and short of it is that before you presented him with the order you never spoke to him, you did not speak to him about the order before you actually met
25 up with him on that day, is that correct? --- I don't understand

your question.

You didn't forewarn Mr Grobler that you were going to come there with an order, when you met him for the first time it was the first time as far as you were concerned that he knew
5 of your coming there? --- When I entered into his presence, the ambit of where he was standing, yes but as I had said Mr Albertus I called the number, the immigration standby number and left a message.

Yes, no that I know, I just want to know what from your
10 personal knowledge you can testify to, because that's all I'm interested in, you didn't speak to him personally before you actually presented him with the order. --- That's correct.

But I have to also tell you that in terms of just pure chronology Mr Wilschut had already been there with the order
15 to Mr Grobler. You can't obviously confirm or deny that? --- May I respond in part?

Yes, yes. --- That we received from Inspector Wilschut the same order, we got it back from him, with a little note posted on – a yellow post-it note on the order, on the first copy
20 that I had originally given him with the telephone number or some telephone number. I don't know who's number it was, but we got that order back and after the fact I understood that that order was not served on anybody either.

Yes, but all I wanted to address with you, and it's
25 pertinent the question that His Lordship will have to

ultimately decide, as to whether or not it was deliberately refused at least as far as Mr Hans Grobler is concerned that he deliberately refused to carry it out, I just want to deal with the chronology of events, that's why I'm saying to you, you
5 accept that Mr Wilschut would have gone to – if it was Mr Grobler, and Mr Grobler says it was him, he would have been there before you came there to Mr Grobler, that you must accept. --- I can't comment on what inspector Wilschut did with that order.

10 I'm not asking what he did, I'm saying in terms of time he would have been with Mr Wilschut before you arrived there. --- I can't confirm that, I don't know what inspector Wilschut did.

Alright, no fine, then let's just get back to what you saw.
15 You saw at one stage, and this was before you came to Mr Hans Grobler you had seen from a certain area or vantage point within the airport precincts, and I think you said it was at the departure lounge or wall you had seen the aircraft, the Turkish Airlines aircraft taxiing out. --- I didn't know which
20 aircraft that was, all I said was it was a Turkish airliner, a large Turkish airliner and my guess or my fear was that the applicant was on that plane and the plane was going to be taking off shortly.

Yes, right, the plane was going to be taking off, it was
25 going to take off, Mr Grobler will say that that aircraft in terms

of the schedules for when aircraft were going to depart on that particular day was destined to be in the air at ten past five, you can't deny that? --- I don't know what was in the mind of Mr Grobler, all I understood was that Violetta would be
5 returned on a Turkish Airline flight departing at ten past five.

I'm not talking about what was in his mind, I'm asking you about a fact, whether or not – because you also made your enquiries on that day and *expose facto*, all I want to know from you can you deny the fact that if Mr Grobler says the aircraft
10 was going to be in the air at ten past five that that was right, that that is right as a fact. --- And it would corroborate what I already understood.

Yes, correct. Now you had first gone to the departures hall, is that correct? --- No in fact I first went to the arrivals
15 hall downstairs with inspector Wilschut, we had followed him, that was the first thing I did when I arrived at the airport.

Yes, and then the two of you parted company? --- At the security portal through which I believe staff move through on the way to the arrivals hall, the restricted area.

20 Yes. But you had also at one stage gone to the Turkish Airline counter? --- Yes, that was later on.

And was that the departures counter? --- That was on the upper level at the departures section, correct.

And was it at that section that you saw the aircraft, the
25 Turkish aircraft taxiing. --- Yes sir, yes sir.

To take off. --- Yes sir.

Do you know what time that was? Do you or don't you, if you don't ...(intervention). --- I don't remember the exact time, no but it was probably give or take ten minutes, half past
5 four, if I remember correctly.

I see your candidate attorney shakes her head, she doesn't agree with you, I will tell you it was far later, you can't, you don't know? It was far later, that aircraft was taxiing out already onto the apron, then it would have been long past half
10 past four. Do you agree? Long past half past four. It couldn't have been at half past four you saw that aircraft taxiing out onto the apron, readying itself for take off. Anyway you can't really, you're not sure of the time. We accept that. --- I'm not sure of the time and I'm not sure whether that aircraft was the
15 aircraft on which the applicant was.

Well let's accept that you didn't know. But if it is told by Mr Grobler that was the only aircraft, that it was on that aircraft, the Turkish Airlines, that the passenger, Violetta Mukhamadiva was on, you can't deny that? --- No sir.

20 Yes. Now the counter there was already closed, the airlines, the Turkish Airlines counter was closed already when you got there. --- Yes sir.

In the departure hall. So whatever passengers, if that was the only airline leaving that day, a Turkish Airline, then
25 when you came there the counter was closed, she would have

had to be on that aircraft. --- I can't comment, I don't know.

Then you moved from that particular section of the airport, you ultimately went to the arrival section, international arrivals. --- No sir. Could you just be a little bit more
5 specific.

Yes, I wanted to cut out a lot of other detail in between about who you met and on the way and how you came to the arrival section, all I'm saying to you is that once you had been at the departures hall you had seen that the counter, the
10 Turkish Airline counter was closed, ultimately you landed up at the arrival, international arrival section where Mr Grobler was, that's what I'm saying to you. --- Yes you're right sir, armed with the understanding that the plane was not taking off for Istanbul, that in fact it was stopping in Johannesburg.

15 Whatever you thought, I just want to know you ultimately went to the international arrivals hall, is that correct? --- That's correct.

Yes, and it would have taken you some time to get from the departures hall to the arrivals hall? --- A few minutes sir.

20 How many? --- We stopped to chat to the representative Turkish Airlines, it probably took if I'm not mistaken about five minutes.

Yes, yes. Do you know whether that aircraft was in the air already when you came to the arrival section? --- We were
25 told by the individual, the Turkish Airline representative that it

was.

Alright, so at the time that you then came to Mr Grobler that aircraft was in the air. --- Yes sir.

That helps us tremendously. So being armed now with
5 this order, and presenting it to Mr Grobler insofar as the taking
off of that aircraft was concerned there was nothing he could
do at that juncture, am I correct? --- No sir that was not my
understanding.

I'm talking about the aircraft being in flight, the aircraft is
10 now already in flight as far as you are concerned, according to
what you were told, you are now with Mr Grobler, you've got
the order, you are seeking to get him to read it, and to
implement it, but at that point in time I'm putting to you there
was nothing that he could do in order to get that aircraft back
15 on the ground. --- That was not the object of the order.

I'm talking – just confine yourself to what I'm asking you,
there was nothing that he could do to get that aircraft back on
the ground at Cape Town International Airport. --- I don't
know whether that's correct, I don't know what the
20 competences are of Mr Grobler.

Alright that helps us too, you don't know whether he
could be in contact with the captain of the aircraft, the pilot,
you don't know that? --- I don't know that no.

And if he says he's not there was no way, and he had no
25 authority whatsoever to communicate with the pilot you can't

deny that? --- Correct.

So if he says there was nothing that he could do in order to implement the order, he was complete emasculated by the fact that this aircraft was already in the air you can't deny
5 that? --- That's not what he told me.

Alright. --- He said I was giving the order to the wrong person.

But that's not the point. I'm talking about whether or not – I will get to what you say he said to you that you were giving
10 the order to the wrong person, that does not help us insofar as disobedience is concerned, or deliberate disobedience insofar as carrying out the order is concerned. --- My assumption was, if I may Mr Albertus, was that Mr Grobler knew what I knew, that that aeroplane was not going to be taking off for
15 Istanbul, that in fact it was stopping in Johannesburg, and my understanding was, looking at who the respondents are, the Director-General and the Minister, that if I had successfully served Mr Grobler or one of his colleagues constituting immigration control with the order the wheels could easily have
20 been set in motion to have Violetta, the applicant, taken off the plane in Johannesburg.

Yes. --- That was my assumption.

Yes, I suppose he can explain to His Lordship what went on in his mind insofar as what he thought he could or could not
25 do, but all I'm saying to you is that insofar as getting the plane

to return if he was not in contact with the pilot and he had no authority to do so there was nothing he could do in order to get the plane to return to Cape Town International Airport. Do you agree? --- That could well be the case.

5 It could well be so, yes. Now what authority he had, if he had any authority at all, to do something about getting her to be taken off the plane in Johannesburg is a completely different question, correct? --- Yes sir.

 Yes. Now tell me this, you have been an attorney for a
10 number of years now. --- Yes sir.

 Specialising in immigration law. --- Yes sir.

 You were served a number of orders yourself not so? --- Yes sir.

 Now this is not to try to deflect the attention or to
15 transpose duty, His Lordship will not allow me to do that, but I just want to know from you, you know that there is a particular, let's call it for want of a better word, an entity within immigration, legal services, you're aware of that? --- I'm aware of that entity yes sir.

20 And do you have their telephone number? --- No sir not on me.

 You don't have it on you, but did you have access to it on this Sunday? --- No sir I never had access to those numbers no. Not where I was, when we went to Court and in Advocate
25 Katz's chambers I didn't have access to those numbers.

But do you have those numbers at all? --- I have some of the numbers in my office on their letterheads, yes I do.

And do you know that those numbers are available 24/7? --- I did not know they were available 24/7, but I must
5 say there are many times which I've tried to get hold of certain individuals at legal services and have failed to do so, and this was extremely urgent.

Were there other times that you did get through? --- There were times that I did get through, and
10 there would also have been very times in which I have been promised that calls would be returned to me immediately and they have not been, that members of legal of services would react to certain correspondence and they don't react to correspondence.

15 Did you ever try to get hold of them over a weekend, or beyond normal working hours? --- I don't recall sir, there might have been certain occasions where I did phone the cell phone of certain members like Sam Magotsi and others, and I did yes, on previous occasions.

20 After working hours? --- Yes sir.

Now that court order was addressed to the Minister and also to the Director-General, if I'm not mistaken, the Director-General Department of Home Affairs and the Minister of Home Affairs, not so? --- Yes sir.

25 So did you not think it wise to go beyond Mr Grobler, go

beyond him, and again I say I'm not seeking to deflect, it will become relevant later on, the attention from Mr Grobler, but did you not in your own wisdom think that it would be prudent to try to go beyond Mr Grobler to get this particular order served upon somebody that could assist in having this lady taken off from the aircraft when it touched down in Johannesburg? Did you yourself think about doing that? --- Well I'm not sure whether I exercised any wisdom at all, it was a question of pragmatics in a very short space of time and I thought that the path of least resistance quite honestly was as Judge Davis bid me to do, was to physically deliver that order to the immigration control where I thought the applicant was sitting, or at least where in the vicinity, in the ambit, or responsible for not allowing Violetta to enter the country, it was there at the airport.

His refusal to allow her into the country accept it from me he has got compelling reasons for that, but His Lordship wouldn't want to hear that, we're not here to review his decision, take it from me, even with all of your experience, I have had hours long consultations with him on this, he's got compelling reasons for his refusal to enter, that's not the issue here. I am talking about you knew of the fact that that aircraft was going to be two hours in the air before it touched down, at least two hours in the air before it touched down in Johannesburg, not so? --- Yes sir we found that out on the

way to see Mr Grobler.

Yes, and we all know that one of the issues here before this Court on a contempt charge is whether or not there was a refusal on the part of anyone or more officials on the part of
5 the department to not give effect to that order, correct? --- My impression was that the question of giving effect to the order never arose, it was rather the refusal to be served with the order, that was something that confronted me and it was on that basis that I called Judge Davis, not – the
10 question of implementation was something else in my mind.

Implementation is vital to this entire enquiry, but you had time, I put it to you, you would have had at least two hours within which to get that order through to some responsible official in order to implement it insofar as taking this lady off
15 that plane in Johannesburg, do you agree? --- You mean after the fact?

Yes, once the plane was in the air. --- You mean after we left Mr Grobler?

Yes. --- After he refused to accept the order we had two
20 hours in which to serve that order?

Yes. You see you're complaining in a sense, there has to be a complainant, I can understand, His Lordship can also be in a case of contempt the complainant if the order that His Lordship granted if His Lordship is of the view that it was not
25 carried into effect and it was done deliberately, His Lordship

can *mere moto* launch, but as I understand you're in a position of a quasi-complainant so to speak, so all I'm asking you if one is to accept for argument sake that you are a complainant, all I'm asking you can you really be heard to complain when you
5 had two hours at your disposal in order to get that order through whether by e-mail, fax or otherwise, to some official in order to implement it in Johannesburg, that's all I'm asking you. --- What Mr Grobler explained to me very briefly was that he was the wrong person to accept the order, that this
10 order should be somehow conveyed to the Department's office in Parliament or in Plein Street if I remember correctly, and I thought - and I thought wisdom or otherwise, wisely or otherwise, prudently or otherwise, that if I could not serve the order on immigration control at the actual cold face that would
15 be an absolute waste of time to try anything else.

You see Mr Eisenberg the problem here is the following, we're dealing with an official who has certain duties, he carries out his duties insofar as the entry of particular person into the country is concerned, he will explain to His Lordship the
20 protocol involved, the procedures he adopted in taking the decision but once that person, he will explain to His Lordship, was handed over to Turkish Airlines, and there's procedures to be followed in terms of (indistinct) in terms of the protocol in South Africa to allow a person in or not, that person is handed
25 over to Turkish Airlines, she is put on board the plane, once

the carriage that allows you access into the plane is detached from the plane that aircraft is completely under the control of the pilot, he doesn't have any say in it, all I'm asking you is, is that the impression that you got from him when he told you
5 that the aircraft is already in the air. --- Mr Grobler didn't tell me the aircraft was in the air.

Did he never tell you the aircraft was in the air? --- I don't recall that.

No, come, did he or did he not? --- I don't know, no I'm
10 being honest with you, I don't recall that, he might well have said that.

He may well have said that. --- He might have said that, but I don't recall it.

But you were aware of it? --- I was aware of it from my
15 discussion with the airline representative, with the Turkish Airline representative.

You see if I listen to your evidence, and correct me if I'm wrong, the sum total of your complaint as far as he is concerned, as far as Mr Grobler's conduct is concerned, is not
20 so much that he didn't want to implement the order, but that he didn't want to receive it. --- Well I tried – may I respond to that?

Absolutely. --- I had the order in my hand, when I walked towards Mr Grobler together with Ms Desada and with
25 the ACSA representatives, he was shaking his head, you

thought it was irrelevant when I was trying to guess what that
body language meant, he was shaking his head and as I recall
he addressed me as Mr Eisenberg, hallo Mr Eisenberg, and I
don't think I ever met Mr Grobler before, at least I don't
5 remember ever meeting him before.

He said he met you a few times before, he will be able to
tell His Lordship where he met you and under what
circumstances he met you. --- I see many people and I must
say I am not particular good at faces, but not a great deal
10 turns on that, I want to just continue with the trajectory or
where I was and I entered into his presence and I shook his
hand, hallo, Mr Grobler, Hans Grobler, and I tried to give him,
I had the order in my hand, and I tried to give him the order,
tried to serve the order on him and he said no, I can't take the
15 order, why can't you take the order? I've been instructed not
to take the order. That's what I recall him saying to me. So in
my mind I draw a distinction between implementation and
acceptance, and I didn't know how to respond to that, we had
no discussion about whether it was impossible to implement, I
20 just couldn't serve the order on him, and I found myself in a
position I have never been before, because I have served
orders before on police, that was our first case, I reminded
Judge Davis in his chambers that case number 1 with
Eisenberg and Associates in 1997 was driving to the airport in
25 Advocate Katz's little car and serving an order on the police to

stop a deportation. So I have served orders before and in those days, or at least up to Sunday the 6th of November I have been successful in doing this, this is the first time where a person representing himself to be in control or supervisor or
5 in charge because he was standing in the forefront of his office, almost expecting me, and he refused to accept the order, and I did not know what to do about that, and that was the reason I called Judge Davis.

Yes, but you misunderstand the point that is going to
10 loom very largely in this matter, is whether or not the official refused to give effect to it. You appreciate that. Now if his duty was to determine whether or not a person should be admitted into the country and he, for reasons which he will advanced was of the view the person should not, and the
15 person was on the plane already. You're not suggesting that there was anything he could do in order to get the person back down here at Cape Town airport? --- To the contrary, I am.

What is it that he should have done in order to get the person to get that plane to land down back on the
20 (indistinct). --- That was not in my mind at all.

That's what I am saying. --- But may I respond to that?

I'm saying, that I'm putting it to you now, I will argue at the end of the day it's astonishing, it's astonishing that you armed with an order and you wish to prevent this person from
25 being taken out of the country and back to Uzbekistan that you

would not have thought it prudent to have served that order elsewhere, when you knew that the official who had dealt with it was almost saying that he was *functus officio* in a way. --- That was not my understanding at all.

5 Alright. So you are saying that he refused to take the order? --- Yes sir.

 But also at that point in time the aircraft was in the air. --- Yes sir.

 Alright. M'Lord I am going to unfortunately have to
10 address this issue of what transpired between Mr Eisenberg and also Mr Grobler in more detail as to what transpired between them. The problem that I've is I've got a version now which has been put to us for the first time, and that's why I addressed at the outset the question ...(intervention).

15 COURT: I'm amazed it's for the first time, but I've got to give you the ...(intervention).

MR ALBERTUS: I see what Your Lordship is saying yes, first time in inverted commas so to speak, but understand I didn't have that affidavit before me, that's all I'm asking you to
20 accept, I didn't have it beforehand.

COURT: Yes, it suits me because I've got to deal with something else as well, but that's not the reason I want to do that, I've got to give you an opportunity, Mr Grobler needs to know this is a very serious issue.

25 MR ALBERTUS: And I need to address the aspect properly, I

can't do anything less than that.

COURT: And I've got to give you latitude, that's what I said that, I'm taking it very seriously, one way or the other, let me make it clear, all I'm interested in Mr Albertus is this, what
5 were the reasons why an order in which it appears to be common cause, because it's clear now from your putting a version to Mr Eisenberg that your client got a copy of the order, and therefore the question is well he's obviously, I already can see where this is going, as to what his reasons
10 are, and frankly that's – you know the test for contempt as well as I do, all he's got to show me is that in fact he doesn't meet those tests and this doesn't necessarily have to take a huge amount of time beyond where we are.

MR ALBERTUS: M'Lord the only difficulty I've got with that, as
15 Your Lordship correctly says, it's a serious offence, very serious offence ...(intervention).

COURT: It is serious and you don't want to make any mistakes, I accept that, but there – it's a clear test, it's quite an onerous test in order to hold somebody in contempt, but I
20 am going to give you time, so what do you want me to do?

MR ALBERTUS: M'Lord it reminds me when I was a young attorney and the magistrate was giving me a cue from the bench you should close your case, and I wouldn't take it because I realised if I closed my case he might just convict, so
25 it's the same kind of thought processes that's running through

my head right now.

COURT: Well whatever your thought processes are we are not going to have a Freudian deconstruction here between you and I or what I'm thinking and what you're thinking, when we're all
5 over this we can have a cup of tea and we will share thoughts about what we were thinking at the time, you've got to do the best for your client if you can, I'm saying to you how much time do you need to do that?

MR ALBERTUS: M'Lord I would think about an hour or two,
10 just to canvas and to make notes on what transpired in that conversation, because that conversation is quite an important conversation as to the attitude evinced by Mr Grobler because it informs his decision.

COURT: Yes, I'm afraid I am going to give you a bit more than
15 that, because I have to do some justice to other people, so I can only reconvene at four o'clock.

MR KATZ: M'Lord I've got another matter.

COURT: So what am I supposed to do.

MR KATZ: Same as you, no, I've got another matter which is
20 waiting for us to finish, before Desai, J about the Mavericks matters.

COURT: And how long is that matter going to drag on for?

MR KATZ: No, if I have to be here at four I'll be here at four,
my point being I'm stuck with my Mavericks matters for Mr
25 Eisenberg.

COURT: Another one, or this one?

MR KATZ: That's the main one.

COURT: Oh, the other one, well this is the main one for me.

MR KATZ: Yes, Judge Desai has stood matter down while I'm
5 here.

COURT: Oh, and I know that Judge Desai tells me he is
worried about Mr Albertus tomorrow, is that right?

MR ALBERTUS: Oh, did I draw him for tomorrow, yes I've got
an opposed application.

10 COURT: He's very anxious that I must finish quickly because
he says he's got you tomorrow.

MR ALBERTUS: Oh, I didn't know I drew him for tomorrow.

COURT: Yes, but I have other people here.

MR KATZ: I suggest four o'clock, subject to me being
15 available at four o'clock ...(intervention).

COURT: It will have to be at quarter past four, is that alright
for you Mr Albertus, I'm sorry, I have to accommodate other
people.

MR ALBERTUS: No, no I will make myself available.

20 MR KATZ: We are in court 9, I hesitate to say I will phone
Your Lordship when the security might answer.

COURT: No, you can contact my registrar, we are adjourned
until then and we will deal with the matter accordingly. Mr
Albertus I know you've got to do what you've got to do, but we
25 can finish this this afternoon, okay.

MR ALBERTUS: Very well.

COURT: Thank you, alright.

COURT ADJOURNS: (at 12:20)

COURT RESUMES: (at 16:28)

5 **EVIDENCE FOR THE PLAINTIFF (CONTINUED)**

GARY SIMON EISENBERG: (s.u.o.)

CROSS-EXAMINATIN BY MR ALBERTUS (CONTINUED):

M'Lord I do not want to unnecessarily rake up an issue which is not going to be in any way determinant on the finding that

10 Your Lordship make but I am constrained just to place on record that my instructing attorney spoke both to advocate Schippers and also to Kirisha Pillay, who are my predecessors in this matter and both of them are saying they did not get an affidavit from Advocate Katz.

15 COURT: Well I can't go much further than that anyway, but they certainly knew what was coming.

MR ALBERTUS: I will leave that there M'Lord. M'Lord for my part I am going to try and cut through the cross-examination and get to the core M'Lord. Mr Eisenberg I am going to put to
20 you the version of Mr Grobler and perhaps then it will serve as a basis for us getting through what you stated about what happened between you and him when you met him on this fateful day. He acknowledges that you did come to the arrivals section, international arrivals section, you were accompanied
25 by a female, which I take it was the lady sitting in court today,

Ms Desada, and also by another person in the employ of ACSA, whom you said was Cheslyn, correct? --- Yes sir.

And he says that – and I put this to you already and you said you’ve met a lot of people in the course of your profession
5 but he says that he has met you previously and has spoken also on the phone with you and you are not going to deny that, nothing turns on it in any event but he will say that he knew who you were when you came walking towards him, you won’t controvert that. --- No sir, it will be correct.

10 Yes, that doesn’t play a big role in this case in any event. So any way he said that you came to him and you asked him words to the effect that are you the supervisor, can you recollect that? --- Yes sir.

And he answered in the affirmative, he said yes he was,
15 because that is true, he will tell His Lordship that he was the supervisor of that day in question. And he said that you then followed it up by asking him why did you ignore the court order, or words to that effect? --- No sir I don’t recall that at all.

20 Alright, well let me just ask you this, prior to you meeting Mr Grobler on that day did you have any feedback from Mr Wilschut, inspector Wilschut, as to the outcome of his attempt to have an order implemented. --- Are you asking me sir whether when I confronted Mr Grobler whether I knew the
25 outcome of inspector Wilschut’s delivery of that order to Mr

Grobler? --- Correct. I didn't know what happened to inspector Wilschut and his delivery of the order or attempted delivery of the order, in my mind something must have happened but I didn't know what it was.

5 So at that point in time you wouldn't have known then whether the order was promptly executed, in other words whether it was carried out with effect. --- At that stage no, in fact I wouldn't have approached Mr Grobler if I had known that the order had been served successfully in the first place by
10 inspector Wilschut.

So what did you then first say to him after you asked him whether he was the supervisor? --- As I testified previously when I approached Mr Grobler it seemed that he was standing there waiting for me and before I uttered anything he was
15 shaking his head, so I handed the order to him and he moved away, he said I can't take the order, I said why don't you want to take the order, that is what I recall.

No but you asked him are you the supervisor and to which he said yes, all I want to know is what did you follow up
20 immediately afterwards? --- I also asked him his name or he introduced himself as Mr Grobler and I said Mr Grobler here's the order, I've come to serve it on you.

I see. And without knowing at that point in time whether the order was already served by Inspector
25 Wilschut? --- That's correct.

You see the strange feature of this particular matter is that the order was already served upon Mr Grobler, are you aware of it, that the order was served upon him already? --- I'm not sure of your question, do you mean when
5 I was standing before Mr Grobler I was aware of it or am I aware of it now?

Are you aware of it now? --- I recall speaking to Ms Foster when we took our leave from the airport or rather from the arrivals hall, and she handed the order back to me that I
10 had given Inspector Wilschut and said that he couldn't serve it, he returned the order to me.

Well Mr Grobler's evidence will be that the order was served on him and he made a copy of it, and he put it into the file of Violetta Mukhamadiva and he made a copy of that order
15 because and I can tell you before you served the order on the attorney that order was given to me when Mr Grobler came to consult with me. He brought the copy of the order. Do you know where he got a copy of the order from? --- I think he could only have got the order from Inspector Wilschut.

20 Yes. --- Because he didn't make a copy of mine.

Oh, he didn't make a copy of yours yes, but he will say that when he phoned his supervisor before he had met with you he had already been served an order and he had a discussion with Mr Wilschut, explained to him there was
25 nothing he could do, the person was already on route to – well

was on route already out of Cape Town, so what I'm saying is the order was already served on him and you can't deny that. --- Well I am most surprised with the information, if you want me to respond to what you've just said because this is
5 not something that Mr Grobler indicated to me, he didn't tell me that he couldn't – I couldn't serve the order on him because the order was – the first order or the first copy of the order was already served on him, he just said I'm the wrong person to serve the order on, you must go somewhere else to
10 serve it.

Alright we're going to get involved in a long cross-examination.

COURT: No, we are not going to get involved in a long cross-examination.

15 MR ALBERTUS: No, no, I'm saying we're going to if we proceed, and I'm going to cut it short.

COURT: Yes, you should.

MR ALBERTUS: I will be cutting it short. We will be getting into a long cross-examination if we're going to continue along
20 this line and I'm going to try and cut it short. I already put to you what Mr Grobler says happened, you asked him whether he was the supervisor to which he said yes, and then he will say contrary to what you are saying he says that you asked him why did you ignore the court order. --- I don't recall
25 telling him that at all, I asked him as far as I can recall why

don't you accept the order from me.

Well why don't you accept, was that the first thing after enquiring as to whether he was the supervisor? --- I don't recall whether that was in a time sequence immediately after
5 he uttered the words I'm a supervisor, but the overriding memory I have was that I had the order in my hands, stood in front of him, and I said here's the order, I've got come to serve it on you, and he was still shaking his head, he said I can't accept the order, that was my version and that remains my
10 version.

Alright, he will for what it's worth say he never shook his head, it's not a big point, I'm just putting it to you just when he goes into the witness box he's not confronted with the fact that it was never put to you, but anyway. He then says that he told
15 you when you asked him why did you ignore the court order, now I'm just putting to you what he says because we cannot add on what he says and make it better, but I hear what your comments are when you say he never said this or said that, so I'm just putting it to you as he gives it to me. So he then says
20 that after you had asked him the question why did you ignore the court order he said to you the court order is not directed at me. Now if one looks at the court order it cites the minister and it cites the Director-General, right? --- Yes sir.

So whether he's write or wrong and I'm not here to
25 appraise his, at this point in time to appraise the answer that

he gave, to help you at the end of the day rather what this all adds up to, but that's his answer, he says he gave you, he said look this order is not directed at me. Did he say anything to that effect? --- He said if I can recall correctly I am not the
5 correct person, there are procedures and I don't recall whether he used the word at that stage regulations, but he said he's been instructed not to accept the order and he told me that I would need to serve the order on the department's office at 120 Plein Street.

10 Alright. Again he will have a version on it and it's his version, and as I say we can't change what happened. Now he says that after he gave you the answer of giving his version to you or whether he said to you the order is not directed at me, he then says you asked him but are you not acting under the
15 directions under the control of the Director-General, did you ask him such a question? --- I might well have done that.

To which he said yes, he was acting under the control of the Director-General delegated authority, do you remember an answer to that effect? --- I have a vague recollection, I don't
20 remember by the way the precise words he used.

Now you will admit that he did tell you that you told His Lordship you couldn't remember whether he said he won't accept the order or can't accept the order, but I think it will be pedantry to push that point, either word, because at the end of
25 the day he refused to take the order, that's your evidence, is

that right? --- Yes, but if I may add he said he was instructed not to accept the order, that I remember well, because that struck me.

No, no, sure, sure, and you will accept that that is what
5 he said to you. --- Yes sir.

That he was instructed not to accept it, again, whether it's good or bad I'm putting his version to you as to what transpired. --- Yes sir.

His reasons for that I can put to you now but he will also
10 convey that to His Lordship and he says when he testified for the fullness of my cross-examination I will tell you what he says, because he says earlier on when Mr Wilschut was there he had made a copy of the order, he had phoned his supervisor, and his supervisor had told him but you shouldn't
15 have accepted the order because that order is not addressed to you, right or wrong again, that was his motivation for telling you that, you understand? --- I understand yes.

So in other words now he's telling you look I am instructed not to take the order, so then he didn't take the
20 order, correct. --- That's correct.

Right, now what he says that happened further on was that he then says that you together with Ms Desada and the ACSA official was in terms of the airport protocol in a sterile area and he said to you that – he addressed the ACSA official
25 and said that you people are not allowed there and he must

escort you out of the area. Did he say such a thing? --- Yes sir he did.

He did. And you then said to him look you must speak to the judge, did you say something to that effect to him? --- After...(intervention).
5

Before even phoning Judge Davis did you say to him he must speak to the judge? --- I said this is a – something to the effect that this is a difficulty I have with you not accepting the order, this is serious, I am going to call the judge, because
10 I don't know what else to do.

He says then that he told you look I'm not going to speak to you, did he say words to that effect that I'm not speaking to you? --- Who?

Mr Grobler. --- He said he is not going to speak to me?
15 Yes, because you're now, you're saying to him look I want you to talk to the judge but he's now telling you he doesn't want to talk to you, you must get out of that area? --- No sir that's not my recollection.

Well what did he say? --- Well let's go back to the
20 telephone call to the judge, if I can.

No, let me just stop you, he says this was before you phoned the judge? --- I don't recall that.

You don't recall? --- No.

He then says that he told you that, that he was not going
25 to speak to you, that you had to leave, and you then said to

him look he has to speak to the judge and you then phoned on your cell, you phoned the judge, you phoned someone, which you did, you know on your version. --- Yes sir.

You phoned the judge on his version, you did make a
5 call. --- Yes sir.

And he heard you over-saying that Judge Davis I am at immigration, this is how he recalls, I'm at immigration, this guy doesn't want to speak to you and did you some words to that effect? --- While I was on the phone to ...(intervention).

10 Judge Davis? --- Yes, I was telling the judge where I was, that I'm trying to serve the order on Mr Grobler, and I mentioned Mr Grobler by name, I think that was in reply to the judge's question what's his name, I think it was something to that effect, and Judge Davis said to me well if that's the case
15 let me speak to the gentleman or Mr Grobler, so I said okay fine, in that case, I took the cell phone and I gave it in a routine normal way to Mr Grobler and I said the judge wants to speak to you. He says well I don't want to speak to the judge and he moved away.

20 Yes, well he wouldn't say – he is going to say I don't want to speak – but in any event it might come out at the same thing, I am again constrained to put his version to you as he gave it to me.

COURT: I suppose I am constrained to tell you that what I did
25 overhear was this, because I would like to put it to you right

now.

MR ALBERTUS: Oh no thank you M'Lord, I appreciate that.

COURT: Right, because I'm in a difficult situation as you appreciate. Mr Eisenberg called me, he said he's having great
5 difficulty, I can't remember the exact words, but what I do remember was this, he said – I said well let me speak to whoever it was, I can't remember if it was Mr Grobler, Mr Eisenberg then I head him say the judge wants to speak to you, there was some silence and then came back Mr Eisenberg
10 and said he doesn't want to speak to you. I then said to Mr Eisenberg if he doesn't want to speak to me he runs the risk of being in contempt and that was where it was left.

MR ALBERTUS: Yes now Mr Grobler says, and again I say it might – the produce of it all might be the same, whether he
15 said he didn't want to speak to you, the fact is he didn't want to speak to the person on the other side of the phone, but he said his words to you was that he doesn't want to speak to you, you've got to leave that area, he was concerned that you were in a sterile area and he wanted you to leave that area, so
20 he has to come and explain to His Lordship when he goes in the box why he said these things, but that's what he says, and I'm constrained to put it to you as he will testify that he said to you no, no, he is not prepared to speak to you, that you have to leave the area. Is that – and you interpreted that that he
25 doesn't want to speak to the judge and therefore you told

Judge Davis look he doesn't want to speak to you, is that correct? --- No sir that's not my recollection at all.

He said at some stage he had gone into the office, there's an office there, you had come into the office behind
5 him and you pushed the phone in his face and said here, judge Davis on the phone. Did you do that? --- Did I go into his office?

Yes, pushed the phone in his face. --- Sorry Mr Albertus you're asking me two things, whether I went into his office
10 ...(intervention).

Well fine, ...(intervention). --- I didn't go into his office.

Well he said you did. Again that's his version, it might not be again important in the ultimate scheme of things but when he goes into the box I wouldn't want him to be confronted
15 with that it was never put to Mr Eisenberg that you went into his office, you understand. He says there that you shoved the phone in his face, did you do any such? --- Could perhaps demonstrate that, because I'm a little bit worried that your question may be a leading question taking into consideration
20 the newspaper article that was written including comments by Mr Mellet about certain allegations of assault, now this question you're asking me may well be serious and have serious implications for me, but my recollection does not go there. I had Judge Davis on the phone, we were under
25 tremendous pressure, and Judge Davis demanded that he
21.11.2011/16:29-18:16/DS /...

5 speak to the gentleman concerned. I thought that request
made of me by the Judge who had issued the order is an
extremely serious request, and I emphatically asked Mr
Grobler to please speak to the Judge, whether I assaulted him
with my telephone I have no such recollection that I did so, in
fact I don't carry myself, I don't deport myself in that way,
especially in front of people who were standing around me, I
had my candidate attorney, I had Mr Sheldon, ACSA Security,
who was in the vicinity, I had Cheslyn Daniels, information
10 officer from ACSA with me, I had other immigration people
there as well, whose names I don't recall and Mr Grobler. The
allegation in the newspaper against me is that I assaulted Mr
Grobler with my telephone by shoving it in his face. Well I
don't have a recollection of that, I had a duty, I am an officer
15 of the court, the judge has asked me to speak to the gentleman
and I handed the telephone as I normally would to anybody
under the circumstances, asking Mr Grobler to speak to the
judge. If that constitutes an offence of assault well let that lie
where it is, because I have no such recollection that I offended
20 Mr Grobler in any way.

Yes no I'm not trying to elevate what he has instructed
me into an assault, I'm just giving his version to you, that you
had gone into the office, the other people that were with you
did not go into the office, it was just you and him and he says
25 then that you shoved the phone in his face, not that you

pushed it against his cheek, I didn't understand him to say that, but shoving it in his face.

COURT: Could I just ask a question for clarification, is it his version that I was on the other end of the line at that point?

5 MR ALBERTUS: He has a version for that M'Lord.

COURT: Well that's astonishing, since I heard nothing.

MR ALBERTUS: From whom M'Lord?

COURT: Well you would hear on a phone if people were shoving phones and being noisy, I heard nothing.

10 MR ALBERTUS: Of what kind M'Lord?

COURT: Well in other words all I heard was this, and let's get this clear, because if your client is lying that's even worse for him, so I want to put the version, you are in a hole, stop digging, and this is what happened. Mr Eisenberg is correct, 15 he called me, he said to me the difficulties, he then said to me, I said I want to speak to this immigration person, there's a court order, it must be implemented, let me pause there just to say this Mr Albertus, I don't need to say if for your benefit, but I do say it for your client's, these happen quite often, we 20 phone police stations to release people, officers of the State actually respect judges generally speaking, obviously Home Affairs appears to be different, but in the police context quite often I phone police people, the constable or the sergeant who will say how do I know you are a judge and I say I am, do you 25 want me to come down, I will come down right now, in this

particular case, using that which I have done for 14 years I asked Mr Eisenberg whether I could speak to Mr Grobler, I then heard Mr Eisenberg say the judge wants to speak to you, there was complete silence, I heard nothing, then Mr
5 Eisenberg in exactly the same calm manner that he had been all the time said to me he does not want to speak to you, it was I who probably was less calm then, because I was somewhat irritated by the fact that this bureaucrat was not prepared to speak to a judge, and that's the version, there's no
10 other version.

MR ALBERTUS: Yes M'Lord, I hear what Your Lordship says.

COURT: And I just want your client to know that, so when he is under oath he complies with it.

MR ALBERTUS: I am putting the version that's given to me as
15 counsel ...(intervention).

COURT: Yes, and I just want to protect your client from perjury, apart from what trouble he is in already.

MR ALBERTUS: Well M'Lord I can argue that aspect at the end of the day ...(intervention).

20 COURT: You can certainly, but I am just saying there we are.

MR ALBERTUS: I am going to put it again to you, because I've gone through this version a few times with Mr Grobler and I'm going to put it again to you, Mr Grobler says that when you went into the office you pushed the phone and you shoved it in
25 his face, did you do such a thing, that was my question to

you? --- No sir, I didn't go into his office.

Alright, did you shove the phone in his face at any stage? --- No sir.

How did you attempt to hand the phone over to
5 him? --- As I demonstrated with my hand on a number of occasions, I had the phone, the cell phone in my hand, the very same cell phone as I have now, the judge wants to speak to you, here is the cell phone, here's Judge Davis on the phone.

10 And you're holding your hand out straight, arm stretched out in a horizontal position? --- Well if Mr Grobler was standing in front of me which he was I said here is the phone, the judge wants to speak to you, he moved back, said you don't want to speak to the judge, Judge Davis Mr Grobler does
15 not want to speak to you, that's the end of that.

Yes.

COURT: It strikes me however Mr Albertus that save for credibility questions this is not strictly necessary.

MR ALBERTUS: What is not strictly necessary?

20 COURT: This line of enquiry because at the end of the day I'm not quite sure how this goes to all that's required, the explanation for why the court order wasn't complied with.

MR ALBERTUS: This witness was led quite extensively and I have really M'Lord tried to cut down on my cross-examination
25 but I am now dealing ...(intervention).

COURT: But I am saying to you, please understand I am not here to deal with an assault charge, nor am I here to deal with what may have happened between Mr Eisenberg and Mr Grobler save for understanding why Mr Grobler refused to
5 actually implement a court order, that's all I'm here for.

MR ALBERTUS: Well that's why I'm dealing with this particular ... (intervention).

COURT: I'm saying to you I don't understand the relevance of this, and as the presiding officer I am entitled to ask.

10 MR ALBERTUS: No, I don't think it is highly relevant to that question but credibility might enter into the picture at the end of the day.

COURT: I doubt it, and I think you should move on. Sometimes you should be guided by a bench Mr Albertus.

15 MR ALBERTUS: M'Lord I must protest, I think Your Lordship is interfering unduly with my cross-examination.

COURT: I am trying to keep your cross-examination to what my relevant inquiry.

MR ALBERTUS: But if this witness says something I am
20 constrained to put it to him if there is a different version, because at the end of the day credibility might enter into the picture, I can't foresee how this matter is going to pan out, but I will not shirk my duty of putting to a witness something that I have contra instructions of, if Your Lordship believes I should
25 leave it there I will leave it there M'Lord.

COURT: I am telling you to leave it there.

MR ALBERTUS: I will then leave it there M'Lord.

COURT: I mean I've been around long enough to know what the implications are when a judge says leave it, you can
5 assume I also know what I'm doing. I know what the implications are when I say to you leave it, it means I am highly unlikely then to find a prejudicial situation where I say to a counsel leave it, I would have thought you would realise that.

10 MR ALBERTUS: M'Lord I don't want to make much of this, but Your Lordship will recall Your Lordship placed on record what Your Lordship's own observations were regarding what happened on the phone. It would be therefore highly remiss of me not to deal with this aspect and to give it more clarity.

15 COURT: I appreciate that, I'm telling you by leaving it there there's going to be no prejudicial consequence.

MR ALBERTUS: I accept that M'Lord.

MR KATZ: M'Lord there is one other aspect.

MR ALBERTUS: M'Lord this is improper.

20 COURT: I'm not – no, no, Mr Katz I've made a ruling, I'm not going to – carry on Mr Albertus, otherwise we are going to be here forever and I don't want to do that.

MR ALBERTUS: I appreciate that. --- Sorry Judge Davis may I take some water?

25 COURT: Yes, you can have some whiskey if you want, I think I

need one.

MR ALBERTUS: Just again on that he says that he did use words to the effect that when you told him it was judge Davis on the phone he said to you I am not speaking to him, you
5 need to get out, so there was this refusal to speak to the person on the other side of the phone, do you accept that? --- Yes.

Yes. And he then says ...(intervention).

COURT: Which by the way, just to guide you further Mr
10 Albertus, is the only question I'm interested in, I'm not interested in any of the other questions, just as I said to you before, and I say again, you can leave it.

MR ALBERTUS: Thank you. M'Lord I don't want to press it too far, you must also understand the difficulty that I have here
15 M'Lord, I don't want to tread on your toes here M'Lord.

COURT: You can tread on my toes, you have been treading on my toes, they're very sore at the moment, but the fact of the matter is you're entitled to do that, that's your job, my job is to say I can constrain the enquiry and I've been around long
20 enough to say to you Mr Albertus when I constrain it anything that's as it were to the south of the constraint is not going to be held against your client, I really mean that. The only issue I'm interested in is the issue which pertains to the question of the compliance of the order, nothing more, that's all I want to
25 hear.

MR ALBERTUS: Alright, M'Lord I am going to refrain from putting further questions regarding what passed between them because the produce of it all is at the end of the day he refused to take the order and we leave that there.

5 COURT: And he has actually by virtue of the version you have given me is he has given to an extent an explanation which doubtless he will amplify when he gets into the box, yes, I understand that.

MR ALBERTUS: And at the end of the day he will explain to
10 Your Lordship he intended no contempt, but that is for Your Lordship to decide. Just this aspect, which I believe is quite vital in the ultimate decision that His Lordship has to take, when you were trying to get Mr Grobler to speak to Judge Davis the horse had already bolted not so, the lady was
15 already on that flight, correct, as you earlier stated, and the plane was on its way out, correct? --- Yes sir.

I have no further questions M'Lord.

COURT: Mr Katz is there anything else?

RE-EXAMINATION BY MR KATZ: Just one question, Mr
20 Eisenberg I can't remember but during your evidence in chief did you read Mr Cheslyn Daniels' affidavit into the record, I just can't remember now.

COURT: Yes, he did.

MR KATZ: As it pleases the Court, I have no further questions
25 for this witness.

COURT: Thank you very much. Thank you very much for testifying Mr Eisenberg.

NO FURTHER QUESTIONS

MR KATZ: M'Lord arising out of the cross-examination it
5 appears that there's an issue that Your Lordship may wish to hear Ms Desada ...(intervention).

COURT: Tell me what it is and then I'll tell you whether we should.

MR KATZ: It's not clear to me what Mr Grobler's version is
10 going to be, but one of the issues that he is going to testify I understand to is that he was given a copy of the order by inspector Wilschut, made a copy and then something happened, now one of the issues that also arises from the cross-examination is this, when he received the order had the
15 horse bolted and Ms Desada may be able to comment on the timing of that.

COURT: Alright, can I say this, on a very restricted leash I will hear the evidence. By the way the same holds true for Mr Grobler, I'm only interested in certain things, what Mr Grobler
20 had for lunch or whether he was rushing home to watch the cricket or the rugby or the soccer thereafter I've got no interest in. Sorry, can I have your full names.

STEPHANIE MARIA DESADO: (d.s.s.)

EXAMINATION BY MR KATZ: Ms Desada you are a candidate
25 attorney at Eisenberg and Associates and on the 6th of 21.11.2011/16:29-18:16/DS /...

November 2011 you attended at Cape Town International Airport and met Mr Eisenberg there. Is that correct? --- That's correct yes.

There's one limited aspect which you have been sitting in
5 court the whole morning, I've seen you here, and this evening,
and you've heard the cross-examination of Mr Eisenberg and
one of the aspects that I just wish you to assist the court with
is this, Mr Eisenberg had testified that he had given a copy of
the order to Inspector Wilschut and Mr Eisenberg didn't know
10 what happened to that instruction to the inspector to serve the
order. Have you got any knowledge of what happened after Mr
Eisenberg had served the order, or not served, had handed the
order to the inspector? --- I arrived at the airport at about
twenty five to five and at half past four I called Mr Eisenberg
15 on his cell phone and he said to me that he had just left SAPS,
he was with Ms Foster and Inspector Wilschut and that I
should meet him ...(intervention).

COURT: Sorry, you say you arrived at 4.35, twenty five to, but
at four thirty you called him? --- Yes.

20 Five minutes earlier? --- Yes.

So you called Mr Eisenberg, yes? --- Well I actually
arrived inside the parking area at 4.30 and I called him and he
said that they were leaving the SAPS to the international
arrival and – because I was going to meet him at the SAPS
25 section and then at twenty five to four I spoke to him again –

twenty five to five I'm sorry, he said to me he is on his way to international arrivals and I should meet him there. I got to international arrivals, it probably took me a couple of minutes, when I arrived at international arrivals it was Mr Eisenberg and
5 Ms Foster, and they were waiting for Mr Wilschut, who had apparently taken a copy of the order to serve on the immigration official.

So let me get this right at 4.35 already Mr Wilschut had disappeared, inspector Wilschut had disappeared, ie to deliver
10 the order? --- Yes.

Thank you. --- And then shortly after quarter to five Mr Eisenberg and Ms Foster, well we were still waiting for Mr Wilschut and they were told, we were asking the security officials to find out if they could establish where Mr Wilschut is
15 because we were worried about the plane leaving at ten past five, and the security official told us that we are not allowed through without a permit. Mr Eisenberg then asked him where would we get a permit from and they said at ACSA information counter. So I stayed at the security, at that portal and Mr
20 Eisenberg left with Ms Foster and at about – a few minutes before five there were two officials, they were wearing I think it was blue jerseys and it said foreign ministry or something of the sort on their jerseys and I asked them while I was waiting for Mr Eisenberg if there was any way that we could get this –
25 the court order served on the immigration official. So they

took the copy that I had, left with it, while I was waiting there, Mr Eisenberg still wasn't back, they came back with it and said to me that they are aware of the court order but there's nothing we can do, and they gave it back to me. And then I was
5 standing there waiting for Mr Eisenberg and just a few minutes after that, it was probably about three minutes past five Mr Wilschut came out of the section and gave me his copy that he had and on the copy was a yellow post-it and in red pen it said Mr Mellet and his telephone number and he said to me that
10 they – the immigration officials are refusing to accept the order and that we've got to serve it on 120 Plein Street and Violetta will be on a plane at ten past five, and that's when I called Mr Eisenberg and that's when I met him at departures.

MR KATZ: Did anything else happen that you can add to the
15 story of that day? --- When we met Cheslyn Daniels upstairs at departures and he took us downstairs through the restricted area and we walked towards Mr Grobler's office, not at one time did we ever enter the office and Mr Eisenberg didn't either, when he approached Mr Grobler he already knew who
20 Gary was and said that he's here to serve a court order to which Mr Grobler responded saying that he can't accept the order and that's when Mr Eisenberg said that he needs to call the judge. When he handed the phone to Mr Grobler, Mr Grobler took a step back, when he took the call
25 ...(intervention).

MR ALBERTYN: M'Lord is this a limited aspect M'Lord, we're traversing all this evidence, it's going to make me really re-cross-examine this witness.

MR KATZ: I will leave it up to Your Lordship.

5 COURT: I was thinking that too, because I don't want to go into that, I mean thank you, it's not your fault at all.

MR KATZ: I will leave it in Your Lordship's hands.

COURT: Okay, thank you. Yes ...(intervention).

CROSS-EXAMINATION BY MR ALBERTYN: M'Lord just
10 another aspect, thank you M'Lord. Ms Desada you established that Mr Wilschut and you say at about three minutes past five had served the order? --- No, he gave it back to me.

Gave it back to you. And he told you that – what did he tell you? --- That the officials, I can't remember if he said
15 won't accept it or can't accept it, but they told him to tell Mr Eisenberg that he has got to serve it at 120 Plein Street, there's nothing that they can do basically.

Yes, but from that you understood that the order was not being implemented. --- That's correct, well he told me that
20 she is going to be put on a plane back to Istanbul at ten past five.

And you say you called Mr Eisenberg? --- Yes.

And you told him that? --- Well I was busy telling him and he was on his way to departures.

25 Yes, but you told him that you had this conversation with

Mr Wilschut? --- I told Mr Eisenberg that I can't remember if I said to him I spoke to Mr Wilschut but I remember telling Mr Eisenberg that she is on a plane or that she will be put on a plane at ten past five.

5 So you can't remember whether you told him that Mr Wilschut tried to serve the order? --- No, no, I can't remember whether I told Mr Eisenberg on the phone at that time, whether I had spoke to, or whether Mr Wilschut at that time on the telephone whether Mr Wilschut had tried to serve
10 the order, but I remember telling him on the phone that we was going to be put on a plane at ten past five, that was what we were panicking about, I phoned Mr Eisenberg for that purpose, to tell him that that's what I was told.

 Yes, because the distinct impression that Mr Grobler got
15 was when Mr Eisenberg came there was that he was aware of the fact that the order was not given effect to and hence Mr Grobler's evidence that he will give he asked him you know why did you ignore the order, so is it possible that you told Mr Eisenberg? --- That I told Mr Eisenberg?

20 That Mr – that inspector Wilschut had been in touch with Mr Grobler and that ...(intervention). --- No, I don't know who inspector Wilschut spoke to, he just came to me and said to me he can't serve it, he was told to tell us, Mr Eisenberg, that it's got to be served at 120 Plein Street, that's what he said to
25 me, he didn't mention names at the time, and when I phoned

Mr Eisenberg I specifically phoned him to tell him that she was going to be put on a plane at ten past five.

Just to wrap this up, I don't want to push this any further, but it's quite possible you could also have told him because
5 you do not have such a clear recollection, you could also have told him that the order – that Mr Wilschut couldn't implement the order, or get the order implemented? --- I'm sure I would have told him at some point, but I know that at the time when I phoned him it was a very, very short phone call because as
10 soon as I told him that he said to me I think he said meet me at departures or I'm going to departures, but it was literally a couple of seconds. When I said to him that she is going to be put on the plane I could tell that he was also rushed.

Then just last question, that this conversation, and it's
15 very important when which Mr Eisenberg had with Mr Grobler and he was trying to get Mr Grobler to speak to Judge Davis, whatever went on in the mind of Mr Grobler just leave that out of consideration, just the time when more or less was that, have you got any idea when more or less that was? --- It
20 could have probably been just after ten past five.

So in other words Mr Eisenberg quite fairly when I cross-examined him, asked him about the time that he wanted Mr Grobler to speak to Judge Davis the horse had already bolted, it was too late to close the stable doors, do you also agree
25 with that? --- It was just after ten past five, so yes.

I have no further questions thank you Judge.

COURT: Just one question from my side, when you spoke to Inspector Wilschut when would that have been? --- That was at about five or just – it was probably ...(intervention).

5 A few minutes later you found yourself ...(intervention).
--- We wait for about – when I got to Mr Eisenberg like I said I think he arrived at half past four and we waited for about 30 minutes before Mr Wilschut came back out.

Okay, that's all I wanted to know. Thank you, Mr Katz?

10 **RE-EXAMINATION BY MR KATZ**: No re-examination.

NO FURTHER QUESTIONS

PLAINTIFF'S CASE

COURT: Yes Mr Albertus?

MR ALBERTUS: I call Mr Hans Jurie Grobler to the witness
15 stand.

EVIDENCE FOR THE DEFENCE

HANS JURIE GROBLER: (d.s.s.)

EXAMINATION BY MR ALBERTUS: Mr Grobler your home language is Afrikaans am I right? --- Yes sir.

20 But you are quite prepared to testify in English? --- I am M'Lord.

HOF: As jy wil Afrikaans praat gaan maar voort. --- No M'Lord I will speak in English.

MR ALBERTUS: You will speak in English, you are also quite
25 at home in English. Right, now you know what the charge is

here Mr Grobler? --- Yes, yes sir.

This is a very, very serious charge. --- I do understand.

It is one of contempt of court, one that you deliberately, let's not say after receiving the order, but having knowledge of
5 the order of this court you refused to carry it out, that's essentially what it's all about, to put it in lay terms. --- Yes sir.

You refused to give effect to the order. Now I am going to ask you to testify around that point but before I get there
10 will you tell His Lordship what position do you occupy in the Department of Home Affairs and more particularly in the section immigration? --- M'Lord I am appointed as a control immigration officer at Cape Town International Airport, working for the department of Home Affairs, my duty in essence is to
15 be a supervisor, I manage the overall shifts by placing officers at arrivals, departures terminals, my duties include to override any hits or any related problems in respect of the movement control system, my appointed duties as well is to make decisions on the possibility of inadmissible passengers as well
20 as travel documents that is not in compliance with the regulations as prescribed by the Immigration Act, as amended.

COURT: Now can I just ask you how long have you been in the department? --- Since 1998, I started as an admin clerk, in 2001 I got the post as an immigration officer.

25 You started in 1998? --- 1998 yes M'Lord, and I'm a

supervisor since 2006.

MR ALBERTYN: Now it seems common cause that on the 6th, it was a Sunday you refused entry to Ms Violetta Mukhamadiva, is that correct? --- I did so yes M'Lord.

5 And you obviously have your reasons for that? --- I do.

Now after having refused entry to Ms Mukhamadiva what happened, very, very shortly, can you just explain to His Lordship what transpired thereafter? --- M'Lord Ms Mukhamadiva was not arrested and she was not issued with a
10 deportation order, she was found inadmissible, the documents were served on her in terms of Section 35(7) of the Immigration Act, after the documents was completed she was handed over to the custody of her airline.

Now which airline would that have been? --- Turkish
15 Airlines. Turkish Airlines was the conveyance that brought her into South Africa, in terms of the Immigration Act, the international protocol any inadmissible passenger is handed over to the airline and that airline is responsible for the detention of that said person until such time that they convey
20 that inadmissible passenger out of South Africa.

Now did you before making your final decision on this speak to anyone? --- I did, when I made the decision regarding the refusal of Ms Mukhamadiva I phoned my supervisor, the assistant director, Ms Geneva Hendricks, which
25 is also the head of operations at Cape Town International

Airport explaining to her the situation that I was faced with as well as my decision and the reasons for that, she acknowledged that I was in the correct with regards to the facts that was presented by Mukhamadiva and the way that I did the examination and it was agreed that the refusal was handled correctly and that she should be refused admission into South Africa.

Alright, so now she was handed over to the Turkish airlines, what happened thereafter? --- Immediately when the airline signs a notification of refusal, the moment when that notification is served on the airline and the airline signs that they take the passenger away. What usually happens is that they will take that person into the departure hall or into a for example a lounge like business class lounge or a premier lounge, what could happen also is that we have a temporary holding facility, however we do not enforce that, we tell the airline, the airline asks us permission, if they can keep such person in the international departures area, and we agreed to that, and Ms Mukhamadiva when the papers was served was escorted by the airline official to the international departures awaiting the departure of Turkish Airlines.

Now what time of the day was the Turkish Airlines destined to leave Cape Town? --- The scheduled time when the aircraft is in the air is ten past five.

Ten past five. Was there any other Turkish Airlines

leaving that afternoon? --- Turkish Airlines the specific aircraft that arrived was the only aircraft that arrived and the only aircraft that departed, it came in as TK040 and it left as TK041,

5 And now after this lady was handed over to the Turkish Airlines can you tell His Lordship what would normally happen, she would be taken either to a premium lounge or a business lounge or some other holding facility, but would she still be under your control? --- In terms of Section 35 (7) as I
10 mentioned earlier such person is immediately in the custody of the airline, the notification include a refusal of a person that is served to the effective person clearly states the responsibilities of the airline and it clearly mentions Section 35(7) and that the airline is responsible for the detention and
15 the removal out of South Africa.

 Now later in the day did you establish whether she was put on that aircraft? --- As the afternoon continued one of my duties will also be to be at the departures terminal. The afternoon proceeded without any incident, I had no, any – no
20 communication from the airline at that stage, as well as Ms Mukhamadiva, at 4.3 I concluded my duty at the departure terminal, because I was awaiting the arrival of Emirates Airlines, flight EK771 arriving from Dubai, so I left the departure terminal on route to the arrivals terminal. In the
25 corridor the handling agent that stayed with Ms Mukhamadiva,

her name is Talita Carelse, I bumped into her and she informed me that she was finished, Ms Mukhamadiva was already boarded on the aircraft and that she was in custody and under the full command of the captain, even though she
5 didn't have to tell me because she was no longer in my custody I still thanked her. I then proceeded to the arrivals ... (intervention).

What time more or less was that did you say? --- Four thirty, I exactly know the time as four thirty that I moved to the
10 arrivals hall.

Alright. --- After the discussion I just went down to the stairways into the hallway and I arrived at the international arrivals hall. I then as is normal, as we – it's – how can I say, if I may use the word M'Lord *gewoonte* ... (intervention).

15 Customary, yes. --- Yes thank you M'Lord, I then went to the glass windows that is in the international arrivals hall and then I saw the arrival of Emirates Airlines. Now M'Lord there's big flight boards that indicates the time as indicated by ACSA International time, I distinctly remember the time as
20 twenty to five. When the aircraft, Emirates Airlines, came into the bay I saw clearly it was in full view, the runway is in full view, that the aircraft Turkish Airways was on its way taxiing towards the runway. I didn't make anything of that because my attention was on the arrival of Emirates Airlines to see which
25 bay it was going to park and when it was going to disembark.

So the flight pulled in there and the air bridge was going to attach to Emirates Airline. I then proceeded away from the glass windows towards the immigration booth awaiting the disembarkation of the passengers on Emirates Airlines. It was
5 then that inspector Wilschut came into the international arrivals area and met me in front of the immigration booths. Inspector Wilschut told me that look Hans I was given a court order that needs to be served on you, you apparently refused a passenger and that passenger cannot depart. I took the court
10 order, I read through the court order, I saw who the respondents were, I read on the second page also that the applicant as well as legal counsel and the Department of Home Affairs had to be in court the following day. My exact words to Inspector Wilschut was "Wilschut the flight has already left".
15 Then I told him explicitly I can't do anything, but then I took the court order from inspector Wilschut, I then proceeded to the supervisor's office and I made a photocopy of that court order. When I completed the photocopy I gave the copy that inspector Wilschut had, I gave it back to him. I then
20 immediately proceeded to phone my supervisor, again the assistant director ...(intervention).

And her name again? --- Geneva Hendricks, my direct supervisor, I told her look Geneva we have been served with a court order, this is what the court order said but the flight had
25 already departed. She then instructed me she said Hans you

cannot take that court order, the court order is addressed to the Director-General and to the Minister, it should be delivered at Plein Street. However I still told her the importance of the document and the fact that I am still going to make a
5 photocopy, acknowledging the fact that I did receive the court order, that I did give it my due consideration, but the flight had already left. I told her that I am going to place this court order in the file with the rest of the documents of Ms Mukhamadiva and that that file will be placed underneath her office door. I
10 was off the following day M'Lord, so that she can have access to that file as well as the contents and the court order and she could forward it to the relevant authority. She said yes, that's fine, I can do that.

Now look there are two stages over here, the one now
15 when you are given the order by inspector Wilschut and we will come later when Mr Eisenberg came to you. The question is ultimately whether you refused – whether you deliberately refused to give effect to it. Now you say you told Inspector Wilschut that this woman was already on the plane, the plane
20 was already – what did you say? --- The plane was already departing, I saw that earlier.

Now could you as the person who was served with this order do anything about it, in other words could you have implemented this court order at that stage? --- M'Lord I
25 couldn't the communication line at that stage is between the

captain that is in command of that aircraft, and air traffic control services, that is the level of communication, I did not have the access or the means to contact the captain. Furthermore if there was enough time what could have
5 happened is that that court order could have been taken to the air traffic control services by myself, however air traffic control services does not have an office in the central terminal building, it is way on the other side of the airport, near the N2. I should have then ...(intervention).

10 Slowly, slowly. Yes? --- I could have gotten into a car, I didn't use my car, it's a Sunday, my wife took me to work, my wife is on maternity leave, she is at home, she brought me to work, I had to have access and I had to have authorisation to use the State vehicle to drive there. Our State vehicles does
15 not have the necessary permit to enter the air traffic control area, my permit also does not allow me to enter air traffic control services. Even if I had the number, we don't have the number for them because we do not communicate with them.

 Is it a restricted area? --- It is a restricted area, my
20 permit do not have access, I am not part of that, I do not have any jurisdiction or any duties within the air traffic control services, so even if I did manage to get the phone number for them they would have never accepted that, it should have been then delivered in person to them. I could have done that
25 M'Lord, but the time had run out, the flight departed, I had no

access to a vehicle and it was also not in such a distance that I could have walked to the air traffic control services.

Alright, so now we get to Mr Eisenberg, now Mr Eisenberg came later, right, and he fairly conceded that the
5 time he came to you that the aircraft was already gone. Now just again explain to His Lordship very, very briefly again what happened when Mr Eisenberg came to you, where were you? --- M'Lord I was at the international arrivals area, and I was in front of the supervisor's office, not my office, it's the
10 supervisor's office. Mr Eisenberg, the female lady that is sitting here in front of me, as well as an official of ACSA was on their way inside the international arrivals terminal. I saw them coming, Mr Eisenberg then eventually arrived at me with the lady and then the ACSA official. I greeted Mr Eisenberg, I
15 know Mr Eisenberg, I've met him previously, we've had a few telephone discussions in the past regarding certain cases, I knew him, and I greeted Mr Eisenberg. Mr Eisenberg then had the court order and asked me why didn't I implement the court order, I informed Mr Eisenberg M'Lord that I can't accept the
20 court order, the passenger had already left. I further, and it's true, I did tell Mr Eisenberg that the court order was addressed to the Director-General as well as the Minister of Home Affairs and that I was instructed not to take it. Mr Eisenberg then replied and told me but are you not representing the Director-
25 General, I said yes through the delegations in the regulations I

am representing him under the Immigration Act. Then I focused my attention on the ACSA official, which I later learnt his name was Cheslyn, I told him listen here but you, Mr Eisenberg, and this lady you are not allowed into a restricted
5 area, the reason why I said that M'Lord is that Cape Town International Airport is identified as a national key point, and it thus falls under the National Key Points Act. Any intrusion of that security can have serious consequences on the security of the country, any official that wishes to be in the security area
10 needs to apply for a proper ACSA permit, number 1, number 2 you go for training, number 3 a police clearance is done on the applicant and it is crossed referenced to the State Security Agency Any person that wishes to visit a department within the restricted area needs to obtain prior authority and
15 clearance and as such will be issued upon approval an ACSA visitors permit. That security point is not manned by police, it's manned by Protea Security Services. I later established also that the ACSA official and Mr Eisenberg, neither of them signed, even signed into that register to indicate their
20 presence within the restricted area. Cheslyn is the gentleman that was referred to as Cheslyn is a customer care agent, he is working at the information centre at the central terminal building, he does not have security access.

COURT: I am not sure this is hugely relevant.

25 MR ALBERTUS: Yes, alright, if you can just stop on that, Now

Mr Eisenberg says that in the course of his conversation of dealings with you he had phoned on his cell a person whom he said was the Judge, do you recall that? --- Yes M'Lord.

Can you just take us shortly through that? --- After I
5 informed obviously the ACSA official that they were not supposed to be in the terminal Mr Eisenberg then proceeded to make the phone call and said that he was going to call the judge and that I needed to speak to the judge, Judge Davis. I told Mr Eisenberg, I told him that I am not going to deal with
10 you, you need to go out of the terminal, he said but I needed to speak to Judge Davis, he issued the court order. It is true that I did move away, but I did move inside the supervisor's office M'Lord, I am staying with that point this is what happened, I moved inside the supervisor's office again telling
15 him not – again informing him that he needs to leave the terminal. Mr Eisenberg then informed the judge on the phone that I refuse to speak to him. Mr Eisenberg then came to me again, by that time he was agitated towards me, and he then pressed the phone against my cheek and said you have to
20 speak to the judge, again I told him, that is then M'Lord where I agree, where I said I am not speaking to the judge, you need to get out of the terminal. Mr Eisenberg then wanted to know by that stage what was my name, I was wearing my immigration name tag, he read the tag, he said Grobler,
25 Grobler who, I said Hans Grobler, then he said to the judge
21.11.2011/16:29-18:16/DS /...

I've got his name, Hans Grobler. After he spoke to him and he said yes I've got his name, okay, and then he ended the phone call. The reason M'Lord why I did not speak to the judge on the phone, and I say this with the utmost, utmost, utmost
5 respect, is that I never believed that there was a judge on the phone, Mr Eisenberg unlawfully entered the security area, Mr Eisenberg has in the past used intimidating tactics to coerce officials into making statements and taking actions that will benefit his matter and his case, and I did not believe that there
10 was a judge on the phone. It was already an impossible situation M'Lord, that's why I didn't take the phone. Mr Eisenberg when he hung up and gave my details to the judge, then Mr Eisenberg ended the call and then they left the terminal. On his way out he wanted to know what gives me the
15 right to behave like this, I told him I am simply doing my appointed duties, there is – and there's the reference to the charter, there is a charter that explains to me my conduct as an immigration official within the department. Mr Eisenberg then made remarks about Mr Mallet and one of the points that
20 he made is why are we targeting Mavericks, I said that's not the case. Mr Eisenberg then stopped ...(intervention).

COURT: Again I'm not interested in your conflict, alleged or otherwise, with Mavericks, not my issue. --- Yes M'Lord. But by that time Mr Eisenberg left and the matter was concluded.

25 MR ALBERTUS: Now let me ask you this Mr Grobler, if this

lady was still in your care, under your custody before she was handed over to Turkish Airlines and the order was served upon you what would you have done? --- M'Lord I would have never been contemptuous of a court order, if that court order
5 came in time I would never even have handed her over to the airline. I still would not have given her admission, because I couldn't do it, however, however, there is a temporary ... (intervention).

COURT: But in fairness to you, in fairness to you, if you read
10 the order the order was very careful, it didn't give her permission to come into the country. --- Yes.

You could well, and indeed I want to be fair to the witness on the other side it's my omission because of the rush, the order was exactly as I reflect, it's nobody's fault, but I
15 had discussed with both Mr Eisenberg and Mr Katz and upon reflection I would have put it in the order, it's a lesson you learn yourself, that I wanted her held in the cell because the first thing I said to Mr Eisenberg and Mr Katz was well if I let her in then you will have a devil of a job maybe to find her, I
20 don't know, so therefore I wanted her cauterised for the night, come to court the next day and then one would have an explanation, one way or the other, whether you were right, or they were right, I don't know, but I just wanted to let you know that was the basis of the order, it was never, there's no
25 authority here to have said oh he is going to let her into the

country. --- M'Lord I would have done that, as I said I would
have never even given her over to the airline, and she would
have been kept over there so that – and I would have referred
this matter to my senior management and for them to take a
5 decision, but it would have never been disrespected.

as I said I would have never even given her over to the airline,
and she would have been kept over there so that – and I would
have referred this matter to my senior management and for
them to take a decision, but it would have never been
10 disrespected.

MR ALBERTUS: Thank you M'Lord, I have no further
questions.

COURT: Thank you. Mr Katz?

CROSS-EXAMINATION BY MR KATZ: Mr Grobler you said
15 that you joined the department in 1998, what did you do before
that? --- Before that I was working as a cashier at a fuelling
station in Pretoria.

And did you become a supervisor in 2006? --- Yes
M'Lord, yes.

20 Are you familiar with the Immigration Act and the
Immigration Regulations? --- I am.

And in your handling of the woman who is now known as
Violetta did you comply with the terms and the provisions of
the Immigration Act and Immigration Regulations? --- I did so
25 yes M'Lord.

Okay, which form did you – you said something about you didn't arrest her, and you did not issue her with a deportation order, is that correct? --- That is correct.

What did you issue her with? --- When a person is
5 refused admission into the country there is two forms, actually three forms. When the airline has made an error in outloading someone without their visa or fraudulent documents it's a notification of a fine to the airline, that's international practice. The second form is a notification to the airline that they have a
10 refusal, that notification best ...(intervention).

COURT: Sorry, that they need a what? --- A notification of refusal.

Refusal? --- That's it. That forms bears the name and the surname of the inadmissible person as well as the refusal
15 reasons, thirdly there's a notification that is given to the admissible person, explaining, outlining the details why they are refused, the responsibilities of the airline concerned, as well as the right to appeal the decision, that form is signed by the immigration officer as well as the affected admissible
20 person.

MR KATZ: In the case of Violetta did you sign those three forms? --- What happened is because Ms Violetta Mukhumadiva was a female I asked one of my junior female officers to assist me with regards to the documentation, I can
25 do that, it was signed by her, I checked that the documents

were correct, addressing the correct people, the correct date, having an appointment number as well as the correct name of the airline and that form was served then on her and explained to her the reason of that refusal.

5 What form number is that, do you know? --- No, I cannot give that form number, it is electronic on the computer, I access it.

 Now I need to address you on this issue because if one has – do you know Section 8, are you familiar with Section 8 of
10 the Immigration Act? --- Look I cannot say the sections by heart, obviously when we are dealing with a case I go into electronic copies that I do have on my computer.

 Let me put it to you Mr Grobler that you didn't comply with the Immigration Act and the regulations as you were
15 required to do, in at least one respect, and that is you didn't serve a form 1 on Ms Violetta. --- Can you explain form 1?

 Yes, Section 8(3) provides for an appeal ...(intervention).

MR ALBERTUS: M'Lord this is more like an attack on the correctness of the decision and borders on ...(intervention).

20 COURT: I'm monitoring this with some care, I assure you I won't let it go too far. What do you want ...(intervention).

MR KATZ: Well M'Lord what concerns – the point, well M'Lord the difficulty is there's been evidence in respect of what happened to Ms Violetta, my client is Violetta is her complaint
25 is that she was not allowed in unlawfully.

COURT: But my complaint as it were is that my order was disregarded, and that's all I can be interested in, which – poor old Mr Albertus has had the sharp end of this for most of the day and in fairness I have to be fair to both sides. I'm not
5 interested in anything else, I can't be Mr Katz.

MR KATZ: No well I'm not sure that you can't be ... (intervention).

COURT: It would be fabulous to be interested in the Immigration Law, it's very fascinating, but it's not today.

10 MR KATZ: 6th of December M'Lord, I understand.

COURT: I know that, you and I will have a nice chat then.

MR KATZ: M'Lord the difficulty is ... (intervention).

COURT: In relation to a very different kind of litigant.

MR KATZ: Very different kind.

15 COURT: It happens to (indistinct) if you're interested, it's a rather different category.

MR KATZ: M'Lord the difficulty that I have is this M'Lord, to my mind, and I say as somebody who has had some involvement in immigration matters, it's a very serious matter
20 when a person arrives at an airport with a valid visa in their payload, and is turned around.

COURT: Yes, but you see – I understand that, may I say to you Mr Katz I appreciate that, and had this thing worked out the way I had planned it everybody would have been in my court
25 on Monday morning, including Mr Grobler and he would have

been able to tell me and he may have had very compelling reasons, I don't even – you know I just want to make it perfectly clear, I have – I am not taking a view about whether she should have been allowed into the country or not, I took a
5 view – just for the benefit of the witness – I took a view at the time – when you give orders like this you don't have to give reason – but if I was asked to give reasons they would have been the following:

- 1) I was placed before me with a visa, which to my mind
10 looked valid;
- 2) I had an officer of the Court who is an attorney, of some experience before me. He tells me X, look at this and I say I've got to balance rights here, the Department may have certain rights, he may, she may
15 have certain rights.

With great respect the departments do make mistakes, I mean none of us are infallible, and therefore the only thing I could have done was to say we can't bring her here now because they've got to be given notice, but everybody come
20 before me on Monday morning and we will sort it his out, right, like people who live in a State which is predicated upon the rule of law. Now unfortunately that didn't happen Mr Katz, I don't now where any of this takes me in relation to the only enquiry before me.

25 MR KATZ: The point is this, if Your Lordship is not willing to

entertain that aspect ...(intervention).

COURT: It may well come before us in some other guise, I mean clearly it may, I mean there are all sorts of – you know I'm not going to give you legal advice as to what the
5 consequences of the wrongful administrative action is, seemingly it is, but I can't deal with that now, please.

MR KATZ: As it pleases the Court. Now I just want to place on record that it is not accepted that you handled Ms Violetta and her refusal into the country in a lawful manner, I have just
10 placed that on record and that is from some other proceeding and ...(intervention).

COURT: Mr Grobler you don't have to answer that because I am going to be making no finding about whether you did anything legally or not, in relation to that, please understand,
15 you are not here on trial in relation to your decision insofar as whether you allowed her in or not.

MR KATZ: Now Mr Grobler you seem to have, I am going to turn to the events later on that afternoon, where were you when you noticed that the Emirates Airline had
20 arrived? --- As I explained earlier M'Lord in front – the international arrivals area in front of the big glass doors.

In front of the big – which – I've been there (indistinct) can you be more specific, which big glass doors? --- M'Lord I can draw a map of that, you have ...(intervention).

25 COURT: I think most of us here sadly have been at that airport

far too often for our liking, so if you tell us where I think we probably all know. --- Onto the ...(intervention).

Is it the one that the passengers come through after going through customs? --- No M'Lord it is the one that
5 comes through the apron side when a flight is not attached to an air bridge.

MR KATZ: Oh, I see.

COURT: Oh, there.

MR KATZ: So in other words the plane arrives and the persons
10 need to catch a bus from the plane to be able to enter the airport building and as they enter the airport building there are glass doors, is that right? --- Ja.

Is that the glass doors that you were saying? --- Ja, if you – if the aircraft parks at the bravo parking which is
15 opposite where the air bridges are you are correct, the bus will come and drop them in front of the glass doors and then they will proceed.

And you were standing at those glass doors at what time? --- It was twenty to five M'Lord as I previously said.

20 And when did you see the Turkish airlines plane let's call it on the runway, or moving, what time was that? --- I was twenty to five, Emirates Airlines came in, I saw Turkish Airlines were busy taxiing on to the apron, and the reason why also I remember that well is that the aircraft was taking off in a
25 north, was taking off from left to right, that was – I distinctly

saw that because the taxi way is in front of those glass doors.

Now that Turkish Airline was that one which went into
bravo spot or was it one which had the – I don't know what you
call those ...(intervention). --- It was the one M'Lord that was
5 attached to the air bridge alpha gates.

Alpha gates, attached to the air bridge. --- That's
correct, yes.

What time was that Turkish airline scheduled to take
off? --- The scheduled time according to the board was ten
10 past five, ten past five that aircraft, the international
(indistinct) should be in the air.

Because when I travel from that particular spot the plane,
I've never been on a plane and I've left that airport a number
of times recently, it's never left before the time that it was
15 scheduled to take off, so I find it surprising that Turkish
Airlines at twenty to five would be taxiing when the plane was
only meant to leave at ten past five.

COURT: Half an hour before the scheduled departure, that's I
think the question put to you. --- M'Lord I still say to you that
20 it was twenty to five, I'm not changing anything in that respect,
I'm sticking to what I said, it was twenty to five.

MR KATZ: Would there be records at the airport to that effect,
do you know? --- I'm sure that is something that you may
follow up.

25 I see. Now what time did inspector Wilschut meet with

you or interact with you, can you remember that? --- As I explained M'Lord twenty to five I was watching that aircraft taxiing and I did say that when I saw the air bridge attached to Emirates air lines that I went to the cubicles, I proceeded
5 through the boot awaiting the arrival of or disembarkation of the passengers from Emirates Airlines, obviously that would have been past twenty past five.

So you say the Emirates Airline was attached to the air bridge, is that how I understand you. --- Attaching yes on the
10 air bridge.

Two minutes ago you said that it wasn't and that's why you were standing at the glass doors where the bus would drop off the people. --- If you recall the evidence that I gave, I specifically said they must throw it at the glass windows to see
15 at which bay the Emirates airline was going to part in, and I distinctly did say that was waiting for the air bridge to attach. In my opinion the arrival of Emirates Airlines, Emirates Airlines had no bearing on the fact that I saw the flight leave, it's only with respect to the time.

No but you've given very specific evidence about specific
20 times and specific events in what could be called a rushed afternoon and I'm testing your evidence because as I understood your evidence you said that you were standing at the glass doors and the Emirates airline arrived at what you
25 called Bravo bay. --- Alpha gates.

No you had said Bravo to the court, that's what I'm putting to you. --- M'Lord I specifically said Alpha gates.

No, what you had said was the Turkish airline was at Alpha Gates and that was why the air bridge was attached to it, if I misunderstood your evidence we can have it replayed by
5 the machine, but that was your evidence, the Emirates airline arrived at Bravo gate and that's why you said that you were at the glass doors because you knew the bus was coming there. --- M'Lord I mentioned when you asked me about the
10 bus I explained to the Court that the Bravo gates, or the Bravo parking area is across the runway, that's where the passengers are brought into the bus and I said that the Alpha gates are the parking base where the air bridges were, I did say that.

15 You did say that and you said that the Turkish airline was connected to an air bridge that was why you said it was parked in the Alpha bay. --- I didn't say the Turkish airlines was attached, I was referring to Emirates airlines, if you recall my testimony I said by that time Turkish airlines was already
20 taxiing to the runway.

Mr Grobler I don't want to be rude, and we can play the recording again, but your evidence was clear the Emirates airline arrived on Bravo, it was a bus that was going to take them to the glass doors, and that was why you were at the
25 glass doors. The Turkish airline I asked you in turn was that

attached to an air bridge or not, and you said it was, and it was in Alpha bay, that's what your evidence was, if you're changing your evidence perhaps you can – or if I've got it wrong you can perhaps explain to the court. --- It might have
5 that you have it wrong M'Lord, but I said Alpha gates, and I said Bravo – the Bravo parking area is the bus and the Alpha is the air bridge.

What was your – so where were you when you received the court order? --- As I explained earlier in my testimony I
10 moved towards the immigration booth, awaiting the arrival or the disembarkation of the passengers of Emirates Airlines.

Why were you at the glass doors as you're describing it, what were you actually doing there? --- M'Lord it is a common practice, it's something that we do, we have stats that we have
15 to complete at the end of the day. In those stats it needs to be said where the parking, which parking bays is an aircraft parked at, okay, and obviously what we do as supervisors the officers are not manning those cubicles during a shift 24/7. furthermore and it's an issue that we followed up with ACSA
20 there's no monitor inside the restroom.

There's no? --- There's no monitor inside the restroom, inside the restroom where the officers are sitting, so the supervisors will see at which side is the aircraft parking and when the passengers are disembarking so as to inform officials
25 that passengers are disembarking and are on their way to the

terminals.

So you were at the glass doors at what time?

COURT: 4.40 he said.

MR KATZ: 4.40? --- 4.40.

5 And what, were you there, I'm not sure I understand –
you were at the glass doors at 4.40 at that point you were
awaiting Emirates Airline is that right? --- As I explained to
you I was watching Emirates Airlines park into the bay yes.

I see. And you then what happened, can you just explain
10 again, because maybe I'm getting confused about your
evidence and if I am I apologise, what happened after 4.40
what was the next step in the saga. --- As I explained earlier
in my evidence I moved to the booth awaiting the
disembarkation of the passengers from Emirates airlines, it
15 was then during that waiting period of the passengers to come
into the arrivals hall that inspector Wilschut approached me
with the said court order.

With the court order, and was it just the two of you that
had this discussion? --- It was just me and him.

20 And what was your reaction to the court order? --- As I
explained in my testimony earlier Inspector Wilschut told me I
was given a court order to serve on the department, there was
a passenger that was being refused entry and the court order
sought to have that stopped and I took the court order from
25 him as I explained earlier in my evidence, I read through the

court order and I read on the second page that the applicant as well as legal counsel had to be there the next day.

And? --- And then I informed inspector Wilschut that the flight has departed, I can't do anything.

5 Now if the flight had not departed at that point what would you have done? --- M'Lord the moment when an aircraft door is closed the aircraft is under the command of the captain, when the aircraft door is closed as I said earlier in my statement or in my evidence the communication line is
10 between the captain and ATNS. So at that stage there was nothing more than I can do with regards to serving the court order.

Mr Grobler you didn't answer my question at all, my question was if at the point that the order was served on you,
15 you could in your view have done something about it, what would you have done? --- As I explained earlier if there was sufficient enough time the only logical explanation or logical thing that I could have done as I said in my evidence is to take that court order to ATNS and ...(intervention).

20 To? --- ATNS, which I mentioned is the air traffic control services, and tell them that there was a court order served, the departure of that aircraft cannot happen. However I do not number 1 have access to that area and I had to take a vehicle to get there, it's on the other side of the airport as I
25 mentioned.

Could you not have phoned them? --- I do not have the number of ATNS, it's not our daily duty to deal with ATNS.

So let me ask you, you would have ensured if you could have that Ms Violetta would have been in court the next morning at ten am, if you could have, but your version is you couldn't have, is that right? --- I'm saying that by that by that time I couldn't have yes.

Now I also understood your evidence that you had spoken after this court order to Ms Hendricks, is that right, after service of the court order? --- Yes I did mention when I made the photocopy that I spoke to Ms Geneva Hendricks.

And what did she tell you? --- I informed that we were served a court order regarding this matter, she told me that I could not accept the court order, it should have been delivered at the ministry place because it was addressed to the minister and to the Director-General.

But why did you phone her if there was nothing you could do about this court order, it was over, the horse had bolted? --- M'Lord I am not the sole manager of that airport, anything out of the ordinary that happens during a shift I am bound to report that to my supervisor as well. There is a chain of management and it is just the proper, it's just the proper thing for me to do as an official to inform my supervisor that there was an incident at the airport, we do it daily.

I am instructed that at the moment there's somebody at

the airport trying to get in who has been refused, as we're talking, if you were the supervisor and a court order was served on you what would you do now with the court order. --- Just repeat that question again.

5 At the moment as we are talking my instructions are there's a person at Cape Town International Airport being refused entry, similar to Ms Violetta, if you were the supervisor on duty now and a court order of the type that we are now seeing by Judge Davis on the 6th of November was served on
10 you what would you do? --- As I explained earlier in my testimony if there was sufficient time I would respected that court order, I would have not handed over that lady to the airline, it all depends on the timing of that court order.

 So what Ms Hendricks said to you about the 120 Plein
15 Street what has that got to do with anything? --- I cannot answer on behalf of Ms Hendricks.

 You can't answer on behalf of her, right. Now you say that your charter or your – what do you mean by charter, you spoke about a charter in your evidence? --- The director
20 which is the head of the office, Mr Mallet, has given a charter to immigration officials, as well as supervisors outlining the conduct of and what is expected of an immigration officer.

 Now does this charter affect people's rights? --- It does not do that.

25 It does not at all? --- It does not do that.

So what you do on a daily basis in terms of this charter and the actions that you take and whatever way you do it doesn't affect people's rights you say? I haven't seen this charter is it published somewhere, where is it, can I get a copy
5 of it? --- That is an internal communication and instruction between the director and the personnel of that office.

And what was the relevant part of the charter that applied to the circumstances that you and Mr Eisenberg had dealings with in this matter? --- As I mentioned earlier in my statement
10 Mr Eisenberg asked me why I was behaving the way I did, referring to my conduct, and I told him that I was acting in accordance with the instructions, and what the charter said.

And what specifically does the charter say, what are your instructions in that regard? --- In that regard I am not only
15 seen as an immigration official but as a point security officer, and in an event that there is any intrusion of the sterile area it is my job as a security officer because of the fact that the department of home affairs is part of the security cluster not to entertain anyone that is illegally entered the sterile area, not
20 to get involved in any argument, but to diffuse the situation, and to act professionally.

I see. Now have you read the newspaper article that's attached to Mr Daniels affidavit? --- The only newspaper I read with regards to the deportation of Ms Mukhumadiva, the
25 fact that Mr Eisenberg was at the office and the statement of

Mr Mallet.

COURT: Is it that one, just out of interest? --- It's not that one, I have a copy with me M'Lord, that I read.

MR KATZ: Well in that newspaper article it's suggested that
5 the Department is considering, I will read it to you, laying charges against Eisenberg because of the assault, alleged assault in respect of the telephone, do you know anything about that? --- I was told that I could do so if ...(intervention).

Who told you? --- Mr Mallet, my manager.

10 What did he tell you? --- He did tell me if that is what has happened, and I told it happened, I am free to lay charges, I told him however I am not going to do that, I specifically told him I am not going to do that, there is a much more important issue and to waste the court's time with an event of he said
15 and he said.

What is much more important ...(intervention).

COURT: Alright, but I don't have to deal with that either.

MR KATZ: Ja, I think he was going to say something about relevance to today's procedures.

20 COURT: Oh, okay, yes sorry.

MR KATZ: What were you referring to? --- No, I was not going to say that – I was going to say that the issue regarding my being at the court for contempt is much more important than making a case of assault.

25 I've never met you, I don't know if you know of me, I

have never heard of you, but ...(intervention).

COURT: Well he probably thinks the same of you Mr Katz.

MR KATZ: No I am saying this positive, now if I had turned up with a court order would you have acted any differently
5 compared to if Mr Eisenberg had turned up? --- It depends where you turned up sir.

No, if I turned up where Mr Eisenberg turned up? --- I would have handled the situation exactly the same way.

So you would have refused to take the phone when I said
10 to you here's a judge on the phone, you would have done exactly the same. --- Most probably I would have done that
M'Lord.

But yet your evidence earlier was that one of the reasons that you did that was because you were surprised that it was a
15 judge because Mr Eisenberg has this reputation for bullying officials, if I understood you correctly. --- It is that and then again I referred to you, and you also need to indicate to me if you have authorisation to be in a restricted area.

No, no, Mr Grobler please, if somebody that you don't, I
20 don't know me, but if somebody that you don't know, a neutral person if I can call it that, not a good person, not a bad person, turns up and say I'm a lawyer, attorney or an advocate, I've got a court order.

COURT: But you know that they're a lawyer, let me put that to
25 you, you know that they're a lawyer, and they say I have the

judge on the phone who ordered, who made the order, please speak to him would your response have been any different had it been Mr Katz, who is an officer of the court, rather than Mr Eisenberg, I think that's the question.

5 MR KATZ: Rather leave me out of it because he might associate me with Mr Eisenberg. A neutral person, Mr Jones.

COURT: Mr Smith, Mr Jones, Mr Dlamini, it makes no difference. --- M'Lord the situation that I was presented with most probably I would have reacted the same.

10 MR KATZ: So your evidence earlier that you didn't take the phone because of your – or Mr Eisenberg's reputation, is not correct? --- I would not say I will not give – I will not say that that statement was incorrect, I'm sticking by that statement.

No but your evidence was that the reason that you didn't
15 take the phone was you didn't believe there was a judge on the other end of the line, that's what you said. --- I did say that.

So then the question is if – and the reason you didn't believe there's a judge on the other end of the line was because it was Mr Eisenberg particular, it was him, that's what
20 you said, that was your evidence. --- And that's so agreed.

Excuse me? --- Then so agreed yes.

Yes, but now that the court has asked you would you have reacted the same if it was somebody else other than Mr Eisenberg and your answer is you would have, so therefore
25 your earlier answer is not consistent with your answer that you

have just given now, it's not consistent. --- I cannot say that I was going to act and change the story M'Lord, I am sticking to what I have said.

Which is – well tell us which is your version. --- I did
5 say earlier in my testimony that Mr Eisenberg has a reputation for coercing officials in doing things that he would like them to do, he has a threatening attitude, I'm not going to say that I didn't say that, and I'm sticking to that testimony.

Yes, now did that influence your decision to take the
10 phone or not, that reputation of Mr Eisenberg, or alleged reputation of Mr Eisenberg? --- What I wanted to get to M'Lord which you said that it was not relevant, was the fact that Mr Eisenberg was illegally using his cell phone, he did not have a cell phone permit and hence therefore I did not
15 entertain Mr ...(intervention).

COURT: In the area is what you're talking about? --- In the area.

Alright, okay. --- And that's why I would have reacted the same.

20 MR KATZ: I see, so your version is that you would have complied but for the fact that it seems to me that the airline had already taken off, is that right? --- Yes.

Is that your evidence? --- What I said is is that I saw the aircraft taxiing towards the taxi way and by that stage it
25 was too late.

Did you consider bringing any evidence to the fact that this airline left half an hour before its scheduled time, did you consider that? --- No.

I see, because a very serious charge as you suggested, I find it extremely problematic to know that Turkish Airlines leaves half an hour before its scheduled time, given the fact that at the airport and I've done some work on this, there are very specific slots for aeroplanes, time slots for aeroplanes to take off from the airport, do you know that? --- Yes I do, Mr Eisenberg himself indicated that the flight left at half past four.

I don't recall him giving that evidence.

COURT: No, I think it was later than that, I think his evidence would have been later.

MR ARNOLD: He said half past four and I said to him it probably was later, and I think that's why Ms Desada tried to say it was later.

MR KATZ: I see, may I just have one second M'Lord. Mr Grobler I just want to – I know you have given evidence on this aspect, have you ever been confronted with a telephone which apparently has a judge on the other end of the line? --- No I haven't M'Lord.

Wouldn't the natural thing for you to have done, the normal thing, the professional thing to do is to take the phone and say hallo Mr Grobler speaking, who am I speaking to, that's what I would have done, in case it turned out that there

was a judge on the other end of the line. Why wouldn't you do something like that? --- M'Lord yes after the circumstances has passed when you rationally think about the situation I do admit yes, that would have been the best thing to do, I'm not
5 saying that I would have, but that would have been the best thing to do.

You see I will put it to you Mr Grobler that your evidence as far as this question of the Turkish airline plane leaving or being on the runway at twenty to five is not believable, it's not
10 true, that you've made that story up in order to avoid what you know are the serious consequences of a finding that you intentionally violated a court order. I put that to you. --- I am not changing my testimony in that regard M'Lord.

I see, and I put it to you that your refusal to allow Ms
15 Violetta in the country, your dealing with Mr Eisenberg, Inspector Wilcox thereafter all form part of let's call it a pattern of conduct to – in some negative way deal with Mr Eisenberg/Mavericks. You don't like Mr Eisenberg, you don't like his reputation, you don't like Mavericks and this was all
20 part and parcel of a *strategum*, the entire events of that afternoon, from the moment you wouldn't, you refused her entry, to the moment that you ensured that Mr Eisenberg would leave the premises and not speak to the judge. --- That is your opinion.

25 Well I'm putting that to you. --- As I said that is your

opinion, that is not the case.

It's not the case. I know M'Lord that Your Lordship has restricted me in my cross-examination of the issue, but I would wish, if I may, just one question on – and he can answer as he wishes, as to why he refused entry to the particular person.

COURT: No, I don't want that, I can't do that, for a whole range of reasons, which includes the fact that there may well be proceedings hereafter, I can't incriminate him, I don't know what you may do in future. This could be a live case. I really mean that Mr Katz, I can't.

MR KATZ: Yes, yes as it pleases the Court, I understand.

COURT: I would love to know, but not as a judge.

MR KATZ: Then I have no further questions, but I do want to say that the cross-examination, part and parcel of my cross-examination would have been to take that line.

COURT: I understand exactly where you're going, I can't deal with that, I'm in a delicate position.

MR KATZ: As it pleases the court.

MR ALBERTUS: M'Lord may I just also add you would have cut me off at the knees if I tried to lead evidence on that.

COURT: Well I am not doing that, that's why ...(intervention).

MR ALBERTUS: Yes, no I said if I had to go down that road, yes.

COURT: Both of you, him too.

MR ALBERTUS: Thank you M'Lord, I have no further

questions for Mr Grobler.

COURT: I just have a couple Mr Grobler, I'm intrigued by the following, because this case has implications way beyond this. You know we get quite a lot of cases, I in my rather lengthier
5 career as a judge than I would have liked, I have had quite a few cases of this kind, not with you I might add, but with other members of your department, literally going back from 1997 I think, 96, fifteen years ago, and I'm intrigued by the following because given what you're telling me how does one deal, I
10 know there's some problem between let us say your department and your officials and Mavericks, and that's not my concern here, another judge will be dealing with that, and I'm sure one way or another justice will be done, but let me give you hypothetical, another hypothetical, what would have
15 happened if on that plane there had been a mother trying to secrete a child away, and I had given an order saying that the child must come back here, because of custody questions. I mean it's horrifying me that I can see children leave this country and the department throwing up its hands and saying
20 there's nothing we can do. And I think that brings us stark relief, this is not about the fact, it's about a principle, I mean given what you've told me there would be nothing that could be done. --- M'Lord in this respect when it came to Ms Violetta as I say I thought you had ...(intervention).

25 Ja, leave her aside, what would I do, I'm talking about

the procedures that you have sketched out, what would have happened if I had given a court order saying that a little child of three years old who is now with the mother is being illegally secreted out of the country, or by a child molesting, a trader, and I want that child back, get him off the plane. On the basis of what you told me there's not a hope in Hades that that's going to happen and that's really worrying me, and I would like to know what your view is, because it reflects on precisely the procedures that we are talking about. --- M'Lord I do agree with you, that if it's in a time frame where an aircraft is departing, or in the process of departing, for all reasons concerning immigration it will, we will not be able to do anything else.

But why could you not do something in Johannesburg. --- I beg your pardon?

Why would you not have been able to do something in Johannesburg with a live order which had been served on the department? --- That order to Johannesburg?

Yes, why could the department not have contacted Turkish Airlines and said you got somebody on this plane who is the subject of a court order, I'm sorry, you've got to get them off the plane? --- M'Lord as Mr Eisenberg and I also say that it never occurred to anyone of us to do that. When the flight left Cape Town International Airport is identified as a port of entry by the minister, the flight is – the routing is an

international routing, it's not a domestic flight, when that flight leaves the passengers as well as the cargo on board of that aircraft has been cleared at Cape Town International Airport, when that aircraft lands at Johannesburg it's in transit, it's the
5 same principle in custom terms when you have a
...(intervention).

Well let me ask you would the department have had the same attitude if it had been a little child on the plane and they went to Johannesburg, or let's say some criminal on the run?
10 Would they have said no there's nothing we can do, we may have the most infamous rapist on the plane who is trying to get out of the country, there's nothing we can do about it, can you imagine what the outcry would have been? --- I can imagine yes M'Lord, I can imagine.

15 And you would have done something, because the department would have used its common sense and would have gone to the Turkish Airlines and said we have got a court order, get them off the plane. The Captain may have refused, I don't know, that's an interesting question. --- It's true the
20 captain might have sir, I might, excuse me M'Lord apologies.

Let me ask you another question then, in this letter, sorry this article which I – which has been handed in to me I am just intrigued by one aspect, because it's relevant to these proceedings, Mr Patrick Tarrique Mellet who is described as
25 the head of immigration for the Western Cape says the

following:

“All immigration officials have been instructed not to accept anything like the court order.”

What does that mean? Does that mean that we now have
5 a regulation that the department will not accept court orders? --- M’Lord in that respect the point that was made in that newspaper I respectfully ...(intervention).

I’m just interested as an official, has it been communicated to you that you should not accept anything like
10 the court order? --- No, it was only now when this case occurred that I was said.

Very well, but you have now been told this. --- Yes.

Mr Mellet has instructed you? --- Yes M’Lord.

Thank you very much. Anything further?

15 MR KATZ: M’Lord yes, there is a case decided by the Supreme Court of Appeal called Abdi, in which some – and I speak under correction, Somalians were refugees, or Ethiopians, were in Namibia and there is no direct flight from Namibia to Somalia, and they were deported from Namibia and
20 the only way they could go was via Johannesburg International Airport, and they were in the transit area and Home Affairs took the view that Mr Grobler has expressed to the Court that nothing they could do because of the transit area, the Supreme Court of Appeal said that the Department of Home Affairs
25 misunderstood the law and ...(intervention).

COURT: I know that, absolutely right. Is there anything that you wish to ask?

MR ALBERTUS: No M'Lord.

5 COURT: Okay, thank you very much, you are excused.

NO FURTHER QUESTIONS

COURT: Do you want to address me at all?

MR ALBERTUS: Yes M'Lord. M'Lord criticism can certainly be directed at Mr Grobler but the question is not whether he acted
10 correctly, whether he acted wrongly ...(intervention).

COURT: Whether he breached the requirements.

MR ALBERTUS: Correct M'Lord, and those requirements are quite – they are heavy if I can call it that M'Lord, and at the end of the day if he raises – because it is a quasi-criminal
15 offence, if he raises a reasonable doubt in your mind you must give him the benefit of it. Now I can understand M'Lord the position that you are in, and I say this with all seriousness, any judicial officer, a judge of the High Court, even in the Regional Court wherever, would want his or her order to be
20 carried out, because if we get to a point where court orders are not carried out the whole legal system will be plunged into chaos, and I for one M'Lord would not like to see that, and it is therefore very important, and it is an underpinning of the rule of law and the principle of legality that court orders must be
25 respected.

But the question is here then whether the – and there is no applicant here, but we must accept that the court order has been proved, and that’s the first question, whether there was, whether the order was served, we accept that the order was served, and whether there was non-compliance, now our difficulty whether one could typify the failure to give effect to the court order as non-compliance. The evidence of Mr Grobler is that on this day in question there was nothing that he could do because the passenger was already on the flight and that seems to be ...(intervention).

COURT: Okay and the possibility of performance – he couldn’t do it.

MR ALBERTUS: Yes, correct, and that’s common cause, Mr Eisenberg and also Ms Desada quite fairly conceded that the lady from Uzbekistan was already on the flight when they came there and that the flight was already on its way out. Now according to Mr Grobler it was all about the timing of the order, had the order come in earlier, had he been served with the order earlier he could perhaps have got that order to the necessary authorities, and in his view there was nothing he could do about it. The question is whether he deliberately refused to carry it into effect, that’s the question here.

I don’t want to make a meal of this M’Lord, you may criticise Mr Grobler but at the end of the day I think he’s entitled to the benefit of the doubt. Unless you want to hear

me further M'Lord?

COURT: No, thank you very much.

MR KATZ: One point M'Lord, only just one. On the version that Mr Grobler has given he is either correct objectively, or
5 not, that the Turkish airline left at twenty to five, that's not something that I can cross-examine him on and what I'm going to suggest, if Your Lordship picks up this suggestion, Ms David is going to be very irritated with me about it, and that is just to subpoena the relevant record because if it didn't leave at
10 twenty to five, then not only is Mr Grobler possibly in contempt, I say possibly, but he is certainly guilty of perjury and I don't believe that this is a matter that should be just left on the basis of an objective fact which can be easily identified, easily researched, with a short affidavit from the relevant
15 person at ACSA and I am going to ask, to suggest to the Court, as an officer of the Court that this is a matter which requires that type of investigation, rather than to for example criticise Mr Grobler's evidence, he could have done this, he could have done that, that he is not guilty of contempt, it doesn't solve the
20 problem, and it doesn't go anywhere, so my suggestion M'Lord is for ...(intervention).

COURT: You know Mr Katz that may be so, I hear what you're saying, but the more I listen to this I think the fault lies way beyond Mr Grobler, and I have become increasingly of that
25 view that Mr Grobler is caught between people who perhaps

should know better at higher level and aren't doing their job properly and I've got a solution to that in something I want to propose.

MR KATZ: M'Lord on that note ...(intervention).

5 COURT: I am not here to hound Mr Grobler beyond what's required, I hear what you say, if indeed the Turkish airlines thing, and I am more than happy to enquire into that, to be perfectly honest, if you want me to, and if it's a perjury charge well then we have to deal with that accordingly, but even then I
10 have to tell you that I just listened to what the regulations are, how these people are educated into what they should do, it horrifies me.

MR KATZ: M'Lord let me just on a personal note, and nothing to do with Home Affairs, when Mr Eisenberg phoned me from
15 the airport and I'm not placing this ...(intervention).

COURT: Look there are also aspects about Mr Eisenberg here that I want to – I'm very concerned that they are running a vendetta against an officer of the court.

MR KATZ: M'Lord this is – there's a long ...(intervention).

20 COURT: But in relation to my matter I am only what's on this, I don't want any suggestion here that Mr Eisenberg didn't act in the highest traditions of what was expected of an officer of the court in my case, and that concerns me too.

MR KATZ: One minute, M'Lord one minute.

25 COURT: I will be placing it on record.

MR KATZ: I personally from my house when I saw Mr Eisenberg having trouble getting to Home Affairs I phoned Turkish Airline, I can't remember exactly what happened but I eventually got hold of ACSA, I explained to the woman that
5 there was a Mr Eisenberg running around the airport trying to serve at home affairs and this woman, I've got her name, said to me that she could do nothing, home affairs weren't her responsibility, ACSA didn't care, go to the police, but not her problem, or go to Turkish Airlines. I then asked her for her
10 name and explained that there was – I already explained and I asked her for her name and she put the phone down on me. There are going to be discipline, I hope disciplinary proceedings pending against her.

I then as soon as the phone was put down, I mean I was
15 astounded that this happened, but it's got nothing to do with Mr Grobler, it could be the child example, the Abdi example, I then phoned ACSA back and that's when I got through to Mr Cheslyn and I explained to him that this woman had been very rude to me, had put the phone down and that's how Mr
20 Eisenberg and Cheslyn had communicated, but if ... (intervention).

COURT: I realise all of this, it's a hugely problematic issue, I'm aware of it, let's just test your proposition, if he's wrong, Mr Grobler is wrong about the time, that the plane went, even
25 Mr Eisenberg said I think it was before five o'clock that he saw

the plane leaving.

MR KATZ: I don't but even if he is wrong ...(intervention).

COURT: Well I will tell you what it must, it's got to be
somewhere around there because of the time and schedules
5 that I got from everybody.

MR KATZ: Well my only concern as an officer of the court that
if Mr Grobler is lying, and I don't say that he is lying, I can't
say that he is lying under evidence, then ...(intervention).

COURT: There is also limits to what we can do here, I mean I
10 have spent most of the day on this together with another case,
and I'm now sitting here at quarter past six kind of thinking to
myself am I the only judge who works in this building, you
know I mean there's a limit to what one can do, and I have to
accept that is the case, as I hope you do.

15 MR KATZ: I accept that.

COURT: Alright, I am going to give a judgment now, I think it's
only fair to Mr Grobler that he knows what it is.

JUDGMENT

COURT AJDOURNS: (at 18:46)