

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

16 AUGUST 2019

DAY 146

20

PROCEEDINGS ON 16 AUGUST 2019

CHAIRPERSON: Good morning Ms Gcabashe, good morning everybody.

ADV LEAH GCABASHE: Good morning DCJ.

CHAIRPERSON: Are you ready?

ADV LEAH GCABASHE: Yes we are DCJ.

CHAIRPERSON: Yes. Thank you.

ADV LEAH GCABASHE: I just would like my colleagues from Bloemfontein to put on record advise you as to what they have been
10 able to do.

CHAIRPERSON: Oh yes with regard to...

ADV LEAH GCABASHE: If that is in order.

CHAIRPERSON: Document yes let us do it ja.

MR JACOBS: Morning Chair.

CHAIRPERSON: Good morning.

MR JACOBS: Chair I would just like to place it on record Chair will remember yesterday there was a request or a discussion with regard to the affidavit.

CHAIRPERSON: Yes, yes.

20 **MR JACOBS:** The unsigned affidavit I can put on record is in line with the signed one that is in the bundle.

CHAIRPERSON: Yes.

MR JACOBS: Do you also remember that there was a request with regards to the annexures and the readability thereof Chair. We have gone through an effort I will not go into detail but we can – the

annexures that is attached to that affidavit is visually in a better form now and can be read and we have handed over such to my learned.

CHAIRPERSON: Thank you very much that is very good I really appreciate that.

MR JACOBS: Thank you Chair.

CHAIRPERSON: Thank you very much.

ADV LEAH GCABASHE: Thank you Chairman.

CHAIRPERSON: Yes you ready to proceed?

ADV LEAH GCABASHE: Yes I am Chairman.

10 **CHAIRPERSON:** Mr Thabethe the oath you took yesterday continues to apply until you have finished your evidence okay?

MR MBANA PETER THABETHE: Thank you Chair.

CHAIRPERSON: Alright.

ADV LEAH GCABASHE: Mr Thabethe when we were having our hearing yesterday we were discussing Paras. I indicated to you that I have a real interest in how Paras got involved with the Department. In your memorandum you had indicated the memorandum to the Free State Premier you had motivated to go to India. We discussed that in quite a bit of detail but there are one or two other aspects related to
20 that memorandum and I would like to explore with you. One of the first ones – in fact what I think I should do is just to very briefly summarise where I think more or less we were on the issues relating to Paras. So we had dealt with Mr Narayan's travel expenses being paid for by the Department, yes?

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE: And then in the evidence you gave yesterday we also established that Mr Narayan as at the 28 February 2012 had not been appointed to the Advisory Council of the Premier?

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE: You also explained to the Chairman on the Chairman's question really that in conceptualising the dairy farm project for the Free State your intention was to extend dairy farming to local communities, emerging farmers in the Free State who would then not only supply milk to the dairy but also be equity beneficiaries of this project, did – is that?

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE: Was that your evidence? Excellent. Part of the motivation you set out in that letter for identifying Paras as the ideal strategic partner was that – and correct me if I am wrong or if I misunderstood you, you liked their business model because they collected milk from community members and processed this milk in their own processing plant. This is what attracted you to them?

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE: And that is what your evidence was okay. Now two things I want to clarify with you.

CHAIRPERSON: Please Ms Gcabashe remind what page that document is?

ADV LEAH GCABASHE: If you will just give me one – I do apologise Chairman. Chairman I found quite a few clear copies of the same documentation in the Court Record.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE: So I know I am complicating your life.

CHAIRPERSON: You are looking for those ones ja.

ADV LEAH GCABASHE: But if I might ask you.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE: To look at the Court Records.

CHAIRPERSON: No that is fine.

ADV LEAH GCABASHE: The – Chairman we will be back with you in a minute with that particular page reference.

10 **CHAIRPERSON**: Okay that is fine.

ADV LEAH GCABASHE: But the context is that particular memorandum.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE: That had the million millions on it. That is the one we looking for.

CHAIRPERSON: Yes okay.

ADV LEAH GCABASHE: So in that memorandum you – you had set out a particular motivation but I would like to take you to paragraph 40 of your ...

20 **CHAIRPERSON**: Maybe Ms Gcabashe you can tell me the page of the one that was not so clear that we were using yesterday if that is easier? I can use it for – so – until we get the clearer copy where it is.

ADV LEAH GCABASHE: 1323 File D – Reference File D.

CHAIRPERSON: Reference Pile – File B?

ADV LEAH GCABASHE: D – D for Donald.

CHAIRPERSON: D for Donald. Okay.

ADV LEAH GCABASHE: Yes.

CHAIRPERSON: And what is the page?

ADV LEAH GCABASHE: 1323.

CHAIRPERSON: Okay thank you. 13?

ADV LEAH GCABASHE: 23.

CHAIRPERSON: One second. Yes, no I found it that is the one that has got R1 000 000 000,00.

ADV LEAH GCABASHE: Indeed so Chairman.

10 **CHAIRPERSON**: Okay thank you.

ADV LEAH GCABASHE: I would at the same time ask you while you hold onto page 1323 of Reference Bundle B to also pull out your witness bundle HH10 which has your affidavits. Your bundle – yes. Which we call the witness bundle yes. If you could please go to page 109 we are looking at paragraph 40 of that document. Chairman if you want to look at the clearer copy that has been put right at the end of your file it is paragraph 40 that we will be looking at.

CHAIRPERSON: Thank you.

ADV LEAH GCABASHE: It has the number at the top MPT – reference
20 MPT109 right on the top right hand side if you have the same document I have Chairman.

CHAIRPERSON: I am sorry I – I thought the document you are referring to was the affidavit of which I now have a clearer copy.

ADV LEAH GCABASHE: It is indeed that one Chairman. So if you just go to paragraph 40 of that we are on the same...

CHAIRPERSON: I went there but I did not see the heading that you are talking about that is what confused me.

ADV LEAH GCABASHE: My apologies Chairman.

CHAIRPERSON: Page – I am looking at 40.

ADV LEAH GCABASHE: 40 that paragraph. And it starts off with the goal.

CHAIRPERSON: Yes I have got it. It start with the goal was...

ADV LEAH GCABASHE: Correct.

CHAIRPERSON: Alright.

10 **ADV LEAH GCABASHE**: So Mr Thabethe you have noted in this 2018 affidavit that – and this is what you have written:

“The goal was to procure and establish a dairy farm for the production of milk to set up milk production – I beg your pardon – milk procurement centres at which local farmers could sell and supply their milk and to set up a production and processing facility where the milk could be processed, marketed and sold.”

You have seen that paragraph?

20 **MR MBANA PETER THABETHE**: That is correct.

ADV LEAH GCABASHE: Now if we go back to page 1323 which was your memorandum you noted there in paragraph 2.2 that there were three dairy farms that you had envisaged setting up. One in Vrede, one which you – would be called the Sesotho Integrated Project and the third one would be in QwaQwa, am I correct?

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE: So the question is, in respect of these three dairy farms had you intended having all three elements that you mention in paragraph 30 of your affidavit that is the production of milk, the establishment of a procurement centre and the production of a processing facility. Is that what you had intended for the three dairy farms?

MR MBANA PETER THABETHE: Chair originally when we – we allocated a budget of R17 million was to deal with the three dairies to
10 assist the smallholder farmers. That was only to assist them on a smallholder dairy farmers. Now having learnt that small dairies were not successful we – as we proceeded we then changed the idea. We did not close them down but we changed the idea of not only supporting the smallholder farmers to establish dairies. That was originally what the money was intended for. But then we came with an idea of not only helping dairy but also to do processing and procurement which meant that we looked for a bigger option. Keeping in mind that we had three areas that we needed to support.

ADV LEAH GCABASHE: Can I – if the Chairman will allow me to
20 interrupt you? Maybe I should make my question clearer. I am simple interpreting what is written in this letter and I do not want you to run too far ahead in terms of the developments that took place at whatever phase and point in time. I am really here at the date on which you made the submission which was the 24 February.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE: As at that point in time you had three dairy projects in mind.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE: And the question was for all three had you intended to establish not just a procurement centre and processing facility but also you were going to make sure that they would have – have milk produced at the centre. So you had three elements that you had pointed to in your affidavit.

MR MBANA PETER THABETHE: The plan was not to do the same thing
10 in all three.

ADV LEAH GCABASHE: Ah that helps. But the plan when you submitted this document.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE: Was to have three.

MR MBANA PETER THABETHE: The budget that existed was for three.

ADV LEAH GCABASHE: Yes. Because I want to be sure that the R17 million for the three dairy plans I want to understand that the plans would be similar or would the plans be different plans?

MR MBANA PETER THABETHE: No they will be different Chair.

20 **ADV LEAH GCABASHE:** And you will later point us to whatever document you have supporting what you are saying about three different plans. When we get there.

MR MBANA PETER THABETHE: Okay that is correct Chair.

ADV LEAH GCABASHE: You see because we debated the R17 million the cost of R17 million yesterday which was money that had been

allocated for three dairy plans. Just again interpreting what you said to the Premier when you submitted this document.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE: Ja I just want to understand what the Premier understood you to be requesting from him.

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE: Ja. We also yesterday discussed what I called putting the cart before the horse. So what I was expressing yesterday was that there ought really to have been a pre-feasibility
10 study before you went off trying to put together a dairy farm and you disagreed with me and said there was no need for a pre-feasibility study before you spent R17 million on plans and more money on other things. Did I – are you with me? I am not misinterpreting what you said yesterday?

MR MBANA PETER THABETHE: No maybe let me repeat. I am – my understanding was the issue of when – what we were discussing was the issue of spending the money before the feasibility study.

ADV LEAH GCABASHE: Correct.

MR MBANA PETER THABETHE: Then my argument was that to do the
20 feasibility study you need the money.

ADV LEAH GCABASHE: Correct.

MR MBANA PETER THABETHE: That is correct yes.

ADV LEAH GCABASHE: And what I had proposed to you was before you even start allocating money you really need to have gone through an exercise where you decide on whether you will have the money,

whether you have chosen the right idea etcetera, etcetera and I just thought of a better term overnight. And one could call that a pre-feasibility study. I understand that you did do a feasibility study so I am not contesting that.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE: The idea I was putting to you was that of doing some kind of check on whether this really was the route you wanted to go. A less expensive way of spending government money. That is – so I am simply tidying up the language I used yesterday in
10 saying my proposal was about a pre-feasibility study which I would have thought would be less costly.

MR MBANA PETER THABETHE: That is true Chair and that is exactly the process we followed as you can check in the document there are two feasibility studies.

ADV LEAH GCABASHE: We will get to them. They are – we will get there.

MR MBANA PETER THABETHE: Thank you Chair.

ADV LEAH GCABASHE: Then again still staying with this particular visit you lodged this motivation with the Premier on the 24 February
20 2012. I am simply looking at when you signed the document. So that is when you would have given it to the Premier.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE: Now at that stage that is prior to getting permission from the Premier to go on that trip to India had you been in contact with Paras?

MR MBANA PETER THABETHE: Yes Chair.

ADV LEAH GCABASHE: When did you first start contacting Paras?

MR MBANA PETER THABETHE: If I – I may not remember exactly but it was around December when I started interacting with Paras.

CHAIRPERSON: That is December which year? 2011?

MR MBANA PETER THABETHE: 2011.

ADV LEAH GCABASHE: So you arrive in the Department in August of 2011. We know that MEC Zwane mentioned this project to Mr Roy Jankielsohn somewhere around November – October/November 2011.

10 **MR MBANA PETER THABETHE:** In December you contact Paras. You of course had conducted your desktop study.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE: And you then contact Paras.

MR MBANA PETER THABETHE: Hm.

ADV LEAH GCABASHE: Who suggested that you should contact Paras at that point in time?

MR MBANA PETER THABETHE: It was my initiative Chair.

ADV LEAH GCABASHE: Did you telephone them, did you email them, what did you do as you contacted them?

20 **MR MBANA PETER THABETHE:** I called Chair.

ADV LEAH GCABASHE: Where did you get the telephone numbers from?

MR MBANA PETER THABETHE: Chair in their website they have the telephone numbers.

ADV LEAH GCABASHE: Who in Paras were you able to contact the

first time you made contact?

MR MBANA PETER THABETHE: I contacted their office which was in New Delhi. That – then I requested to talk to somebody who could assist me with regard to their business.

ADV LEAH GCABASHE: You did not think it prudent to use the South African High Commission to try and contact Paras or to assist you? You are a man of protocol. You did not try using the South African High Commission?

MR MBANA PETER THABETHE: Chair you do use them when – when
10 you already know what you want to do so that you provide them the information of what you want to do. Because you need to clear the business that you interested in before you contact the High Commission.

ADV LEAH GCABASHE: So when you contacted Paras what idea did you have in mind at the time? Because it was before the 24 February so you were not looking for a strategic partner I see that in the letter of the 24th. What did you have in mind when you contacted them?

MR MBANA PETER THABETHE: Clearly what I wanted to do was to visit and go and see their operations.

20 **ADV LEAH GCABASHE:** So by December you had taken a decision to go and visit Paras and look at the facilities?

MR MBANA PETER THABETHE: The – my contact was to find out whether they would agree there would be possibilities of allowing us to come and have – and see their operations.

ADV LEAH GCABASHE: Do you recall who then gave you a response

as you – who did you speak to telephonically and who responded to your enquiry?

MR MBANA PETER THABETHE: I think in the documents eventually when I called ...

ADV LEAH GCABASHE: No I do not want eventually I am still talking about that first call. I really do not want to get this mixed up. When you first called that is what we are talking about.

MR MBANA PETER THABETHE: Yes I called the number it went into their office and then I then requested somebody that I could talk to who
10 could assist us with the operations that they are having in terms of a dairy.

ADV LEAH GCABASHE: Who did you say you were when you called?

MR MBANA PETER THABETHE: I had explained myself that I am calling from South Africa as a head of a Provincial Government Department of Agriculture so I explained myself who I was and then I then requested to talk to somebody there who could assist.

ADV LEAH GCABASHE: And what the response continue you were explaining?

MR MBANA PETER THABETHE: They actually gave me the name of a
20 person who could assist.

ADV LEAH GCABASHE: Give us that name please Mr Thabethe?

MR MBANA PETER THABETHE: The person that – who was the head of the office was also indicated I think it was – let me just check the correct name from my affidavit? My apology Chair for delaying I did not anticipate.

CHAIRPERSON: No, no that is fine. No, no you can look for the name.

MR MBANA PETER THABETHE: The question.

CHAIRPERSON: Ms Gcabashe can – might decide that to move on to other things then during the tea break you might look at it more if her plans in terms of her questions permit that. But – have you found it?

MR MBANA PETER THABETHE: Hey no no.

CHAIRPERSON: Oh not yet.

MR MBANA PETER THABETHE: No, no Chair.

CHAIRPERSON: Oh okay.

10 **ADV LEAH GCABASHE**: I know that the one name I have come across is that of Mr Gajiender Kumar.

MR MBANA PETER THABETHE: Kumar yes that is correct.

ADV LEAH GCABASHE: Would that – that is the one name I have come across.

MR MBANA PETER THABETHE: Yes that is the correct – that is correct Chair.

ADV LEAH GCABASHE: Ja. Is that the person you contacted?

MR MBANA PETER THABETHE: That was the person I was told he was the head of the office at that time.

20 **ADV LEAH GCABASHE**: Okay. When was the next time you talked – and you spoke to him on that day?

MR MBANA PETER THABETHE: I was able to talk to him on that day.

ADV LEAH GCABASHE: And he was positive in his response?

MR MBANA PETER THABETHE: He was very positive. He welcomed us to come and see. We spoke about quite a number of things of which

some of them he was highlighting that a lot of people come and visit their factories, steal ideas and all those kinds of things. Those were the things that he was saying. He was wary about just to permit people but he does not have any problem to people coming to see and discuss with him.

ADV LEAH GCABASHE: Let us continue. Now you then had to make preparations to go to India I presume?

MR MBANA PETER THABETHE: Yes Chair I – after I have spoken to him that was not the only time I had spoken to him that was the first
10 time I had spoken to him. After the December holiday I also spoke to him late January giving an indication that we would then confirm that we would want to come,. We would inform him as soon as we get the necessary approval that we will be coming.

ADV LEAH GCABASHE: Okay. You then prepared the motivation for the Premier whose response you received on the 28 February?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE: And again just for my own understanding in your mind what you wanted to do was go and do some form of due diligence inspection of these people who you were interested in, their
20 company?

MR MBANA PETER THABETHE: Their company yes.

ADV LEAH GCABASHE: Because I know there are legal and commercial due diligence exercises. Is that what you had in mind?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE: You then get a response on the 29th but you

fly on the – I beg your pardon on the 28th and by the 29th you have a ticket and Mr Narayan has a ticket to fly to New Delhi. How did you manage to arrange for that trip in such a short space of time? Your approval you get on the 28th, you leave the very next day on the 29th. Just help us understand who was this efficient in making sure you could leave on the 29th?

MR MBANA PETER THABETHE: Chair if you look at the memorandum there had been some time that I had submitted it. Now you – knowing that you had dates that you have recommended you would not sit back
10 and say because I did not have a response therefore I am not making the necessary arrangement. So you do the necessary arrangement in case you receive the approval. Because those dates we agreed with the people that we are visiting. If not then you will then have to renegotiate new dates. So those approval – those arrangements you make ahead so that if you get the approval the last day of your departure you are ready to be able to go.

ADV LEAH GCABASHE: Hm.

MR MBANA PETER THABETHE: So you - you do those arrangements ahead of time.

20 **ADV LEAH GCABASHE SC:** So you had purchased your tickets already by the 29th - by the 28th - let me just go a day back - when the premier gave his approval?

MR MBANA PETER THABETHE: It - it is not the purchase Chair. It is - it is a - what is the correct word?

ADV LEAH GCABASHE SC: A reservation?

MR MBANA PETER THABETHE: It is a reservation.

ADV LEAH GCABASHE SC: You reserved seats?

MR MBANA PETER THABETHE: Yes. You - you talk to the travel agent. They reserve those seats for you.

ADV LEAH GCABASHE SC: Those particular details Chairman are on page 1-3-2-5 of the document that we are looking at. What is of interest Mr Thabethe ...?

CHAIRPERSON: Thank you.

MR MBANA PETER THABETHE: Sorry Chair.

10 **ADV LEAH GCABASHE SC:** What is of interest ...?

MR MBANA PETER THABETHE: What page?

ADV LEAH GCABASHE SC: 1-3-2-5. So it is the same memorandum. You are quite correct.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: The same memorandum which was on the reference bundle. Mr Thabethe are you there?

MR MBANA PETER THABETHE: Yes I am there.

ADV LEAH GCABASHE SC: You found the ...

MR MBANA PETER THABETHE: Yes. I have ...

20 **ADV LEAH GCABASHE SC:** Flight details.

MR MBANA PETER THABETHE: I have got it.

ADV LEAH GCABASHE SC: And the - you see because it is dated 24 February but again so these are quotes that you have received ...

MR MBANA PETER THABETHE: Yes Chair.

ADV LEAH GCABASHE SC: For these flights? What I noticed was you

left on 29 February. You arrived in New Delhi on 1 March the next day at 10 - in fact at 14:45. At quarter to three in the afternoon. So I presume you got to your hotel at about four/5 o' clock.

MR MBANA PETER THABETHE: Hm.

ADV LEAH GCABASHE SC: On 1 March. By 3 March - so one day passes. That is probably the day you visited.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: On 3 March at 11 o' clock in the morning - 10 to 11 you are leaving New Delhi.

10 **MR MBANA PETER THABETHE:** Yes.

ADV LEAH GCABASHE SC: What were you able to achieve in more or less the 24 hours you had in New Delhi Mr Thabethe?

MR MBANA PETER THABETHE: Chair as - as I have indicated the - the purpose of the mission was as I have indicated to confirm that there - there is an existent the - of - of the company itself because if - if you on the web you may believe the company exists when it does not exist. It was for me to go there and confirm. We had a meeting with them.

They took me through their company, through a presentation. We visited the site and I confirmed the product that they were saying
20 they were producing and a number of other issues that I was able to say yes indeed this company exists and if they are in agreement with us we can do business with them. That - that was the intention Chair.

ADV LEAH GCABASHE SC: At what time did you arrive at the company's offices on 2 March?

MR MBANA PETER THABETHE: I - I do not remember Chair but it was

in the same town.

ADV LEAH GCABASHE SC: You went there in the morning?

MR MBANA PETER THABETHE: We went there in the morning. We started in the office where we had discussions and then after that we then went to visit their factory.

ADV LEAH GCABASHE SC: Now they have a number of what you are calling factories. Now I am assuming that you are interested in processing plants.

MR MBANA PETER THABETHE: They - they have a number of - of
10 factories spread throughout.

ADV LEAH GCABASHE SC: Please define a factory so we understand what we are talking about Mr Thabethe.

MR MBANA PETER THABETHE: The - the processing plant is where they receive the milk where it is brought in by the tankers and then it goes through all the processes until whether they make cheese or they make yoghurt whatever that they want to make. So that is the processing facility we visited.

ADV LEAH GCABASHE SC: So you went to that particular processing facility that is in - you say - in New Delhi?

20 **MR MBANA PETER THABETHE:** In - it was in New Delhi.

CHAIRPERSON: Well she had asked you to tell her more about the factory. Is that what you were referring to when you said you went to their factory?

MR MBANA PETER THABETHE: Ja. It - it - Chair it - it is - I will alternatively use a factory or a processing plant.

CHAIRPERSON: *Ja.*

MR MBANA PETER THABETHE: It refers to the same ...

CHAIRPERSON: No, no she just wanted to be sure that she understands what you are talking about when you say factory.

MR MBANA PETER THABETHE: Yes. That is correct Chair.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: And was it Mr Kumar himself who took you on this tour of the facility?

MR MBANA PETER THABETHE: That is correct Chair.

10 **ADV LEAH GCABASHE SC:** Who formed part of his delegation when you met him?

MR MBANA PETER THABETHE: The - he had a team of people that we sat with in the office and then when we went on site it was only him and another gentleman.

ADV LEAH GCABASHE SC: You - you - if you have the names Mr Thabethe it is useful for you to mention the names of the other gentlemen or ladies who were party to what you were trying to achieve. It just helps. Do you know who he was with because we know that you were with Mr Narayan?

20 **MR MBANA PETER THABETHE:** They introduced themselves to us but I cannot remember now Chair but they introduced themselves to us.

ADV LEAH GCABASHE SC: It would also be useful if one understood at what level of seniority you were - you were dealing in this place at this point in time. That you were not talking to somebody who did not have authority to engage you on the issues you were interested in.

MR MBANA PETER THABETHE: Chair our understanding was that the person that we were dealing with was the head of the office.

ADV LEAH GCABASHE SC: As in the CEO?

MR MBANA PETER THABETHE: As in the CEO and that - that is how also I had addressed him when I also sent letters to him.

ADV LEAH GCABASHE SC: So you were able to get the attention of the CEO of Paras even though he did not know you. You had not met him before obviously?

MR MBANA PETER THABETHE: No. I - I had managed to get CEO in
10 a number of times on a call. If they are willing to talk to you they will talk to you.

ADV LEAH GCABASHE SC: Did Mr Narayan have any contribution to make to ensuring that you were able to get hold of the CEO and get consultation or discussion going with the CEO?

MR MBANA PETER THABETHE: Chairperson that - that happened later but from the beginning I had done it myself and I was - I was very fortunate that he had a certain level. All - although his English was not very good but he was able to talk English.

ADV LEAH GCABASHE SC: What value add did Mr Narayan bring to
20 what you have just set out for us arranging the meetings, being able to talk to Mr Kumar?

MR MBANA PETER THABETHE: The - the language issue was - was very key because when you get there to be able to clarify some of these things properly you need somebody who understands the language. So he was of very big assistance even when we were in the

meeting. Some of the people that were making presentations they did the presentation in their local language because they were not able to speak English.

So he then assisted in translating from the local language to English for my understanding.

ADV LEAH GCABASHE SC: How many presentations were made to you?

MR MBANA PETER THABETHE: They - they made one presentation and the other presentation was made when we were in tour just
10 explaining to us what was happening.

ADV LEAH GCABASHE SC: Is that the presentation that you - you brought back to South Africa?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Is the document that is in that bundle I think if you look at page 2-0-6 at Annexure FR14. There is a document there that ...

CHAIRPERSON: I am sorry. What is the EXHIBIT number?

ADV LEAH GCABASHE SC: It is HH10 your witness bundle.

CHAIRPERSON: Oh, okay and page?

20 **ADV LEAH GCABASHE SC:** HH10, page 2-0-6 Chair. We will have better copies hopefully Chair by lunchtime but I only want you to confirm whether this is one of the presentations that was made to you ...

MR MBANA PETER THABETHE: (Intervenes).

ADV LEAH GCABASHE SC: Because you annexed it to your papers.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: I was hoping by tea break.

ADV LEAH GCABASHE SC: Possibly Chairman.

CHAIRPERSON: Okay. 2-0-6 you said?

ADV LEAH GCABASHE SC: 2-0-6. It is really just the front page of a presentation but ...

CHAIRPERSON: Oh, okay alright.

ADV LEAH GCABASHE SC: And this is why I just wanted to establish whether this is one of the presentations. Had you taken a presentation
10 across to Paras?

MR MBANA PETER THABETHE: No we did not. We - we were in a fact finding mission. So we - we went to expose ourselves to what they had.

ADV LEAH GCABASHE SC: Then in relation to your fact finding mission you say they took you through the company's books etcetera. I presume these were written in the English language?

MR MBANA PETER THABETHE: Yes it was Chair.

ADV LEAH GCABASHE SC: And you were able to sit down and go through their structure whether they are liquid etcetera?

20 **MR MBANA PETER THABETHE:** That - that is correct Chair.

ADV LEAH GCABASHE SC: How much time did you spend doing that? That would normally be your due diligence exercise just to make sure these people actually are who they say they are as you - as you have indicated.

MR MBANA PETER THABETHE: We - we started there Chair in the

morning and they - they took us through the company, the presentation. Then immediately after that we - we went on site. My - my big interest was to understand how they operate if they are there and also to go to the site so that I have exposure to the site where they are doing the processing.

ADV LEAH GCABASHE SC: Now you also - the way you put it in your affidavit - this is the 2018 affidavit which is in HH10 at page 2-3-8. You say that you brought back your presentation. I just want to understand what you mean by that. So you will find that in paragraph 10. It is the
10 last sentence of paragraph 10.

MR MBANA PETER THABETHE: Sorry Chair. 2-3-8?

ADV LEAH GCABASHE SC: Yes but that of course is the copy that is not very clear. If you want to look at a clear copy simply go to paragraph 10 of that particular document.

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: Hm.

CHAIRPERSON: Okay now. That is not in EXHIBIT HH10. Is it?

ADV LEAH GCABASHE SC: Chairman so your clear copy was put - I would like to think at the - right at the end of your file. It is the only
20 additional document that has been put into your HH10 because ...

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: It is a clear copy of what I am reading. I beg your pardon Chairman.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: My error.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: This is actually 2017 affidavit that I am looking at.

CHAIRPERSON: Is that the new one? The clear copy?

ADV LEAH GCABASHE SC: Chairman ...

CHAIRPERSON: Is that the affidavit which has a clear copy?

ADV LEAH GCABASHE SC: It is a clear copy Chairman but it has always been in your file. So there are three affidavits.

CHAIRPERSON: Oh, okay.

10 **ADV LEAH GCABASHE SC:** It is was the last one - the 2017.

CHAIRPERSON: Okay. I think I have got it. 2-3-8 you said - page?

ADV LEAH GCABASHE SC: That is correct.

CHAIRPERSON: *Ja*. I have got it, *ja*.

ADV LEAH GCABASHE SC: And it is paragraph 10.

CHAIRPERSON: *Ja*. Okay, thank you.

ADV LEAH GCABASHE SC: My error was in calling it the 2018 ...

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Affidavit Chairman.

CHAIRPERSON: Okay.

20 **ADV LEAH GCABASHE SC:** It is the 2017 one. So that last sentence is rather ambiguous. When I read it I thought that you had taken a presentation to India and you were now bringing back to South Africa your presentation.

MR MBANA PETER THABETHE: Sorry Chair. What - what paragraph?

ADV LEAH GCABASHE SC: The last sentence of paragraph 10. I am

simply confirming Mr Thabethe that the presentation you brought back to South Africa ...

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: Oh.

ADV LEAH GCABASHE SC: Was a presentation you received in ...

MR MBANA PETER THABETHE: From there, yes Chair.

ADV LEAH GCABASHE SC: India.

CHAIRPERSON: So ...

ADV LEAH GCABASHE SC: It is not one (intervenes).

10 **CHAIRPERSON:** It is your copy of the presentation they gave you?

MR MBANA PETER THABETHE: They gave me.

CHAIRPERSON: Ja.

MR MBANA PETER THABETHE: Yes Chair.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: And you have identified the document we were talking about a few minutes ago as the particular presentation?

MR MBANA PETER THABETHE: Ja. That is correct Chair.

20 **ADV LEAH GCABASHE SC:** On your return to South Africa - so again we know that you - you had discussions with Mr Kumar. You say that you prepared a report with recommendations on the dairy project concept. Did you do that?

MR MBANA PETER THABETHE: Yes Chair. I did.

ADV LEAH GCABASHE SC: And you prepared it for purposes of lodging that recommendation with the MEC?

MR MBANA PETER THABETHE: Chair - Chair on my return I then did

a submission to the Executive Council so that they can officially agree that we - we interact with - with the company. Also to present my recommendations to them in terms of initiating this relationship.

ADV LEAH GCABASHE SC: You - you did no further work on this matter Mr Thabethe other than prepare this recommendation? You did not sit down and - and assimilate and understand and check a few more things. You simply prepared a recommendation on the strength of what you had heard and seen at Paras in India?

MR MBANA PETER THABETHE: I - I do not understand the question.

10 **ADV LEAH GCABASHE SC:** I will repeat it.

CHAIRPERSON: I think the question is whether apart from the observations you had made when you went to visit Paras and apart from what you had been told there about their operation. There was any further work you did before - when you arrived back before you prepared a submission for Exco.

MR MBANA PETER THABETHE: No Chair. There - there was not any further work because any further work that I would do would not have been given a blessing.

CHAIRPERSON: Yes.

20 **MR MBANA PETER THABETHE:** Hence the first thing to do was to request that.

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: Then you can proceed with any other work ...

CHAIRPERSON: Hm.1

MR MBANA PETER THABETHE: If you are given the approval.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: As the accounting officer had you taken a decision that Paras was the only company that you were going to do business with. I am not talking about a blessing from anywhere else. I am asking you as the accounting officer.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: So I am interrogating why you as the accounting officer did not do further work after this preliminary visit to
10 India to find out if you might not have other options within South Africa or outside of South Africa.

MR MBANA PETER THABETHE: Chair - Chair that work was done before I went to India. You will remember that we had already done that assessment and we had already on - based on that assessment was to go and visit and confirm. In my return that was confirmed. So there would not be any reason to do another assessment after you have already done the assessment and you have picked what you thought would be feasible and you have visited and you have confirmed what you had checked before.

20 **ADV LEAH GCABASHE SC:** I - I would have thought Mr Thabethe that having visited the facility you would want to just by way of example decide on whether you still wanted to have three dairy projects, three that were similar, slight different ones because you had now had an exposure to a company that did things in a manner - you say - you approved of and this is why I ask the question. Did you not apply your

mind a fresh?

MR MBANA PETER THABETHE: Chair that would not have assisted me to do before I have the blessing. That exercise was actually done after I received the approval. Hence a submission was also made to - to Treasury to reassess the budget because I had originally been allocated a budget for three projects. Now I have an approval to do a bigger project of which then I can make a decision to say which one do I start with.

So that was actually done after the approval was granted by
10 the Executive Council.

ADV LEAH GCABASHE SC: Why was it necessary to go the Executive Council with this proposal?

MR MBANA PETER THABETHE: Chair it is - it is not only this proposal.

ADV LEAH GCABASHE SC: No, no. Why was it necessary to go to the Executive Council on this proposal?

CHAIRPERSON: May - maybe let me put the question differently.

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: Why was it necessary for you to get Exco approval for
20 this proposal whether you got it by going to council or not but why was council - Exco approval necessary for this proposal?

MR MBANA PETER THABETHE: Ja. Chair - Chair let me start by saying all projects gets approval from the Executive Council.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: When did you make that submission to

Exco - the date?

MR MBANA PETER THABETHE: Chair I need also to go into my document so that I can check ...

CHAIRPERSON: The date?

MR MBANA PETER THABETHE: The date ...

CHAIRPERSON: *Ja.*

MR MBANA PETER THABETHE: Of - of the submission Chair.

ADV LEAH GCABASHE SC: Chairman will you allow me to be of assistance by rephrasing the question ...

10 **CHAIRPERSON:** Yes, yes.

ADV LEAH GCABASHE SC: Just to cut it shortly.

CHAIRPERSON: *Ja.*

ADV LEAH GCABASHE SC: Is that the proposal you took to Exco when Exco in return then gave you the resolution of 13 June? No. The resolution of 13 June is - is a - in all your court papers. I can find it. I am just trying to help you ...

CHAIRPERSON: To remember the ...

ADV LEAH GCABASHE SC: To remember ...

CHAIRPERSON: Te date.

20 **ADV LEAH GCABASHE SC:** The date.

CHAIRPERSON: Maybe - maybe remind him what the resolution of 13 June says.

ADV LEAH GCABASHE SC: The resolution of 13 June says that you can implement the project. It also says that more money must be found to support the project. That is the resolution that - that came from

Exco on 13 June 2012.

MR MBANA PETER THABETHE: Chair ...

CHAIRPERSON: Does that help to you remember when you might have made the presentation to Exco?

MR MBANA PETER THABETHE: Yes Chair. I - I remember that one but there were - there were other presentations that I did before that one.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Soon after I returned from India ...

10 **CHAIRPERSON:** Yes.

MR MBANA PETER THABETHE: Then I made a presentation ...

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: And then the one that is in - she is referring to ...

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: Was the one where I - I was already indicating that this project that I am doing does not have enough money. I request that I be assisted otherwise if I will not be able to get additional funding it may not be possible for me to do it.

20 **CHAIRPERSON:** Yes.

ADV LEAH GCABASHE SC: Chairman I have the document here if it makes sense. Just at least to give you the page reference number.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Reference Bundle A page 3-2-3.

MR MBANA PETER THABETHE: Reference Bundle A.

ADV LEAH GCABASHE SC: Reference Bundle A page 3-2-3 and I am -
I am just asking you to confirm that this is not the product of your reporting back to Exco.

MR MBANA PETER THABETHE: Thank you Chair. This is not the first presentation but it is one of the presentations I have made.

ADV LEAH GCABASHE SC: So when Exco approved your recommendation did they take a resolution of any kind?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Would - and you cannot remember when?

10 I have not seen that resolution in any of your court papers.

MR MBANA PETER THABETHE: I - I had Chair a number of these resolutions. This was not the only resolution that was taken. There was a number of them if I am not mistaken. There could be about three or four of them. I am not certain now but there was a number of them in - in the documents of the department that Exco had resolved because this project had been discussed quite a number of times and a number of resolutions were taken.

ADV LEAH GCABASHE SC: Let us go past the resolutions and take your word for it that you did make the presentation and that the
20 legislature resolved or rather - I beg your pardon - Exco resolved that you could go ahead. That is what they resolved?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: You then invited Mr Kumar to visit South Africa?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Maybe before we go there Ms Gcabashe. Let us - I just want to go back - no leave it here for now - to your visit to Paras. You said yesterday that the key thing that really attracted you to Paras was their collection of milk from small farmers. Is that correct?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Now when you were in India what did you find was special that they were doing about collection of milk from small fryer - farmers that really you needed to - to know that they were doing? You see when say the collection of milk from farmers I do not see what is
10 special about that but maybe that is because I am not an agriculturist.

If you do research and find that a certain company collects milk from small farmers and you are in the Free State. I would imagine that all you - you need is oh that might be a good idea. So let us look at how we could do that here if it would be viable to do it. I am not sure that that is something really that should be key to any - anything.

Are you able to help me understand that? I mean you have small farmers in Thembalihle or Thembalihle or wherever and you would have the dairy - the dairy farm somewhere. If you decide that it would be viable that the farm should collect milk from farmers either you are
20 going to send a truck or a car or whatever to go and collect - collect it or you will say to the farmers you bring the - your milk to the farms. So I am not sure that I understand why that would really be key.

MR MBANA PETER THABETHE: Ja. Thank - thank you Chair. The model that they have been using it is - it is not only collecting the milk but the support systems also that goes to the farmers because they

would recommend to the farmers the - the quality of the milk to be at a certain level for higher butter fat content. This is how you need to feed them. This is how you need to manage.

So they are over and above collecting the meat. They have extended the support system to the farm. They will have their own veterinarians going there assisting them ...

CHAIRPERSON: I am - I am sorry. I have also understood you to be saying - to be talking about collecting the milk ...

MR MBANA PETER THABETHE: Yes.

10 **CHAIRPERSON:** But I just heard now as if you are saying meat.

MR MBANA PETER THABETHE: No. My apologies sir. It is milk.

CHAIRPERSON: Milk?

MR MBANA PETER THABETHE: Milk.

CHAIRPERSON: Meat?

MR MBANA PETER THABETHE: Milk.

CHAIRPERSON: Okay milk?

MR MBANA PETER THABETHE: It is milk Chair.

CHAIRPERSON: Oh okay alright. Let us ...

20 **MR MBANA PETER THABETHE:** *Ja.* The - the support system - what was very interesting is the support system also. So that they do not just deliver milk. It is quality milk that they are going to be getting from them. So you - you - they also assist them because the - the dairy cattle (indistinct) they will then be able to assist them in - in the breeding of this cattle so that - assist them with the process of artificial insemination so that you also select the best of the best in terms of

milk production.

So that your herd that produces milk for you becomes top animals. So it was not only coming to say do you have milk or you do not have milk but to set up a system that makes sure that you do very well and you are producing high quality milk because for processing purposes you do need that milk and you need your hygiene system to be - to be very high because milk in terms of hygiene if you do not keep those standards of hygiene your milk gets rejected in terms of the bacteria content. So those are the support systems that were also, so I
 10 saw that they were very good, that interaction with the farmer, not only going there, their own words will then go to the farmers, make recommendations to them how to improve their systems on their farm so that they have good quality milk.

CHAIRPERSON: Ja, but I still do not see why you need to go and – go to India for that, that should be key, because if you are going to establish a project which will require somebody else to supply you with a certain product obviously you must have your requirements as to what requirements must the product meet, in order for it to be acceptable to you, so you might say well the quality of the milk in the case of a dairy,
 20 milk that you are going to collect from the small farmers these are the requirements, and if they have difficulty in meeting those requirements in a private sector situation you might not have any interest in helping them, you say I will only deal with those who meet my requirements, that is how business operates, those who cannot meet my requirements I will not have anything to do with that, but in this case because you

are government and you want to assist the small farmers you might then say well what we will need to do is see how we can assist the small farmers to give this farm quality milk, that part I understand, but it seems to me that all you need really is people who know what advices should be given, who would know what needs to be done for small farmers to provide quality milk. I am just not sure that I see this spatial key thing that I think you had in mind Paras would be having about the collection of milk and I am trying to understand it and put myself in your position.

- 10 **MR MBANA PETER THABETHE:** Ja, thank you Chair. What the Chair is explaining is exactly what we intended to do, Chair I had indicated that we had started in the country to explore that idea, because our main idea is to support these farmers that we know they are going to meet those standards, and we have to support them, we have to develop them and make the money available for them to be able to get to that standard.

- Now if we do invitation locally to say this is what we want to do and you are not getting the support, because the standard of the supply of the milk are there, in the country, this is how you have to
20 deliver the milk for it to be consumed. It is there and these farmers are struggling to do so, so we come in and we want to say, we want to assist them, can anybody who want to work with us join us in doing so, and you do not get that locally. Then you begin to look somewhere else and say where else can I get help to assist our own farmers.

CHAIRPERSON: Well part of what you have said might be helpful in

the sense that I think you say in terms of what the requirements would be for the milk to be of the relevant level of quality, that you knew, you knew what is required.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Yes, what you needed is somebody who would assist in helping the small farmers to do what is necessary in order for their milk to be at the right level of quality, is that right?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Yes, now is my understanding correct that you say
10 you did approach various entities or organisations or companies within the country to say we would like to help as the Provincial Government, or as the department to help small farmers here in the Free State or in Vrede to do what is necessary in order for them to produce quality milk.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: And you say nobody was interested?

MR MBANA PETER THABETHE: That's correct Chair.

CHAIRPERSON: Who are the entities that you approached?

MR MBANA PETER THABETHE: Chair we have organised meeting with a number of them, if I can mention we had discussions with Nestle,
20 we had discussions with Parmalat, we had discussions with Clover and if I am not mistaken we had discussions with Dairy Belle.

CHAIRPERSON: And they were not prepared to assist in your efforts to effectively help the small farmers to produce quality milk, they were not prepared to be involved in such a project?

MR MBANA PETER THABETHE: They did not indicate interest Chair

to work with us in that project.

CHAIRPERSON: But did you write to them or did you speak to them or both?

MR MBANA PETER THABETHE: We spoke to them Chair, we invited them, Chair will remember we have indicated that we did a lot of consultation before on these projects and to the legislature, to a lot of other people, inviting and calling them to participate and work with us.

CHAIRPERSON: And at that – and around when was that in relation to your trip to India, was it before or after, I guess it was before.

10 **MR MBANA PETER THABETHE:** It was before Chair.

CHAIRPERSON: Are you able to give some estimate, it must have been 2011 I guess?

MR MBANA PETER THABETHE: I think – it was 2011 Chair, the process I think we did for two months consultation, I think it ended somewhere mid December, when we had started in October.

CHAIRPERSON: And what reasons did they give, if they gave any reasons, for not being prepared to partner with the Provincial Government to assist small farmers?

MR MBANA PETER THABETHE: Chair what we had been doing was in
20 kind invitation to them, to join us, because we had already realised that some of them were collecting milk in the Free State and if I am not mistaken there were specific farmers that they had signed contract with and very few of them were small farmers, and the few that I had mentioned which were in Qwa-Qwa which were also in the other place is in the Harrismith area, they had signed contracts, we had assisted

those small farmers to get to a certain level on their farms of their small dairies, but those farmers were complaining that they were not making money because of the transport issue, so their main interest was to collect the milk, that is what we picked up and the development part of it became a problem, because we did not want only them to collect the milk but also to participate in developing these small farmers.

CHAIRPERSON: Now one of the things you said you found Paras did was to send their own vet to the small farmers in India, they would send
10 their own vet.

MR MBANA PETER THABETHE: Ja, they had a technical team which included vets, there are those that will also assist them with their grazing pastures, so they had a team that will then visit them and assist them with the technical knowledge.

CHAIRPERSON: It is just difficult for me to understand that you would not be able to get people to assist with this kind of thing when so many people accept that there is a need for transformation in various sectors and there is a need to contribute and so on, that is part of my difficulty but your evidence is you tried, nobody showed interest?

20 **MR MBANA PETER THABETHE:** Ja, Chair we have tried not only in the dairy industry but also in other aspects of agriculture, we did find it very difficult, hence in developing these farmers at certain stage you can help them to produce but they may not have a market.

CHAIRPERSON: But did you tell them that the you know there would be money for them if they came on board, they will get money as well?

MR MBANA PETER THABETHE: We did Chair.

CHAIRPERSON: And they were not interested?

MR MBANA PETER THABETHE: They did not indicate any interest Chair. Like I say Chair not only in the dairy also government has money to assist smallholder farmers, but you struggle with your money, you give them the land ...[intervenes]

CHAIRPERSON: You say I have got money, I will give you money, I am not asking you to do this for free, they still are not interested?

MR MBANA PETER THABETHE: That is the problem, you buy, we
10 have been assisting farmers with farms, we have the money to assist them to develop hence the land that you give to the farmers the majority are in waste.

CHAIRPERSON: But it is just interesting you know somebody in South Africa is in business, you say I want to do business with you, you will get money from me, I am not asking you to do this for free, they are not interested, but somebody in India is interested. Can you see that?

MR MBANA PETER THABETHE: Ja, Chair I must also mention we had good examples of cooperation between but there were pockets of them, where you get a ...[intervenes]

20 **CHAIRPERSON:** In the country?

MR MBANA PETER THABETHE: In the country.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: There are areas where you get a white commercial farmer with the knowledge assisting the neighbouring black farmers and we had been saying if we had issues like that we

would then support financially so that those farmers develop, so you have pockets of these where you get that kind of support.

CHAIRPERSON: Okay.

MR MBANA PETER THABETHE: And we are willing to make money - I am no longer ...[indistinct] we were willing to make money available to those systems.

CHAIRPERSON: Okay thank you.

ADV LEAH GCABASHE SC: Chairman can I just make one small addition to the questions you have been asking.

10 **CHAIRPERSON:** Yes.

ADV LEAH GCABASHE SC: Mr Thabethe all the things you describe you say took place between August 2011 when you arrived, August 2011 and December 2011, all these assessments of what people could do, could not do, what they were complaining about, what they were not complaining about, took place between August and December 2011?

MR MBANA PETER THABETHE: Ja Chair I did mention yesterday that some of the studies had been done before I arrived, they were already ...[intervenes]

CHAIRPERSON: Ja, I think you did make that point.

20 **MR MBANA PETER THABETHE:** Thank you Chair.

ADV LEAH GCABASHE SC: And you will be able to assist us get some proof of what you are talking about from the Department?

MR MBANA PETER THABETHE: I can – ja I can ...[intervenes]

CHAIRPERSON: I guess if you are given access?

ADV LEAH GCABASHE SC: Chair the Department has been very

helpful, so I think if Mr Thabethe just gives us an indication of where we will find the documents he is referring to.

CHAIRPERSON: Oh okay, yes.

ADV LEAH GCABASHE SC: I am sure Dr Masiteng, who is the current Acting Head, will assist.

CHAIRPERSON: I can appreciate, okay yes.

MR MBANA PETER THABETHE: Chair I must just correct the other place was not Harrismith, it was Ficksburg.

CHAIRPERSON: Oh the one you were struggling to remember and
10 mentioned Harrismith?

MR MBANA PETER THABETHE: Yes, now if you can request the Department to give you the study that was done between the Department and Germany on the Ficksburg proposal they will be able to give you a very comprehensive study that was done, which the Department has.

ADV LEAH GCABASHE SC: We are going to ask them to give all of them to us.

CHAIRPERSON: It might help if you are able to mention somebody who is still in the Department that would know the document that might
20 help.

MR MBANA PETER THABETHE: The current Acting HOD Dr Masiteng.

CHAIRPERSON: Oh he knows about it?

MR MBANA PETER THABETHE: He knows about it Chair.

CHAIRPERSON: Okay thank you.

ADV LEAH GCABASHE SC: Thank you Chair.

CHAIRPERSON: Okay, we will take ...[intervenes]

MR MBANA PETER THABETHE: I am limiting my interaction Chair with the Department because when I was suspended I was given strong conditions not to talk to the Department.

CHAIRPERSON: Yes. Yes, that was of course when you were still in the employ of the Department.

MR MBANA PETER THABETHE: No, when I was suspended.

CHAIRPERSON: Yes, well when you were suspended you were still in the employ of the Department isn't it?

10 **MR MBANA PETER THABETHE:** Yes.

CHAIRPERSON: You didn't cease to be an employee of the Department when you were suspended isn't it? You only ceased to be an employ when your contract expired.

MR MBANA PETER THABETHE: Okay, no that is correct Chair.

CHAIRPERSON: Yes, yes okay alright but I think the bottom line is that you are prepared to do whatever you may be permitted to do to assist to obtain the information.

MR MBANA PETER THABETHE: I will do so Chair.

CHAIRPERSON: Yes, okay we will take the tea adjournment and we
20 will resume at twenty five to twelve.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV LEAH GCABASHE SC: Yes thank you, we may proceed.

ADV LEAH GCABASHE SC: Thank you Chairman. Now Mr Thabethe before I actually tidy up the visit of Mr Kumar can I just get a bit of context to your relationship or the reason that you – you approached Paras. I am looking page 237 of HH10 which I your witness bundle. It is the 2017 affidavit that you deposed to and I am looking at paragraph 8. So it is page 237 HH10 and paragraph 8 thereof. Are you there?

MR MBANA PETER THABETHE: Yes Chair.

ADV LEAH GCABASHE SC: Here you speak of your analysis of India being identified as the highest milk producer and you talk about there
10 being an existing bilateral agreement on agriculture between South Africa and India. Then you say see attachment MPT3. Now I know we do not have those annexures but can you just elaborate on what you were referring to here?

MR MBANA PETER THABETHE: Ja Chair the – let me start with the issue of the existing bilateral agreement. This was an indication that agreements were signed between the two departments. It covered a whole range of issues but it also indicated that relationships between the two departments can be created relating to issues of agriculture which were covered in that agreement.

20 **ADV LEAH GCABASHE SC:** Can I point you to an MOU that is part of the Court Papers in fact the copy I am holding here can be found in Court Records Chairman. The Court Records file.

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: B – Court Records B and it is at page 659. What we tried to do here Chairman was stay with the same numbering

so whatever is written in in the black khoki pen will be same number that we as the commission have used.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: We just tried to – instead of changing the numbers we stayed with their index to make our lives easier.

CHAIRPERSON: 659 you said?

ADV LEAH GCABASHE SC: 659 Chairman. Have you got it Mr Thabethe.

MR MBANA PETER THABETHE: That is correct I have it Chair.

10 **ADV LEAH GCABASHE SC**: Is this the agreement that you are referring to which was signed on the 4 June 2010?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Is this – is this the correct document?

MR MBANA PETER THABETHE: That is correct document.

ADV LEAH GCABASHE SC: Oh.

MR MBANA PETER THABETHE: We referring to.

ADV LEAH GCABASHE SC: So we can safely assume that MPT3 is the document that is on page 659 of the Court Record?

MR MBANA PETER THABETHE: That is correct Chair.

20 **ADV LEAH GCABASHE SC**: Now the heading here reads “Memorandum of understanding between the government of the Republic of India and the government of the Republic of South Africa on agricultural cooperation.” Correct?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Why do you call it an agreement – a

bilateral agreement?

MR MBANA PETER THABETHE: Chair this might have been maybe the correcting quoting but this is the document we are referring to as attached.

CHAIRPERSON: What is the issue with that Ms Gcabashe?

ADV LEAH GCABASHE SC: It is not an agreement Chair that is the first thing about it.

CHAIRPERSON: Uh.

ADV LEAH GCABASHE SC: It is not an agreement it is a memorandum
10 of understanding Chairman.

CHAIRPERSON: Oh the – oh the emphasis was on agreement rather than on bilateral.

ADV LEAH GCABASHE SC: Well yes because I am assuming that the relationship that was being carved with Paras was based in part on what Mr Thabethe understood this document encouraged.

CHAIRPERSON: No, no, no my – I thought that when you were asking him why he was calling it bilateral agreement the emphasis was bilateral but that is not what it was. It was about agreement or memorandum.

20 **ADV LEAH GCABASHE SC:** Absolutely Chairman.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Now it is important Mr Thabethe to clarify this because this document has been relied on my understanding of these papers as a document that encourages South Africa including organs of state like the Provincial Government and the Department to

engage the Government of India or companies in India for various purposes. But what it actually says is first you will find the purpose I have no difficulty is with rather it is to promote scientific and technological capacity building. Then the competent authorities it is a government to government memorandum of understanding.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: Scope of application says the competent authority shall subject to the domestic law enforce in their respective countries endeavour to facilitate the necessary support and facilities to
10 implement joint agricultural development programmes. More importantly article 5 speaks to a joint agricultural working group. Now article 5.1 are you there? 5.1 article 5 sub 1. This is important.

MR MBANA PETER THABETHE: Got it Chair.

ADV LEAH GCABASHE SC: It says: the joint agricultural working group herein after referred to as the JAWG shall be established to implement the provisions of this memorandum of understanding. Now when you made reference to this document in your paragraph 8 in 2017 were you aware that this document has no legal force in this country?

MR MBANA PETER THABETHE: Chair if I may respond to the
20 question? The establishment of the dairy does not rely on this document. This document offers protection in case if you have a relationship with a country and you get into problems you are able to interact because you have got an existing agreement. So government can assist you to facilitate if you have challenges. Hence we then being quoting this document. We have not been saying this is the

document that allows us to the do the process but it provides the platform for us when we have got problems.

CHAIRPERSON: It enables you not to be asked who in the country have you ever seen dealing with that country.

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: How did you come about to have dealings with that country? You say well it is a country with which South Africa has an established arrangement.

MR MBANA PETER THABETHE: That is correct Chair.

10 **CHAIRPERSON**: Okay.

ADV LEAH GCABASHE SC: That is the precise point Chairman. South Africa does not have an established arrangement with India not in terms of this document. There may be another one but not in terms of this document.

CHAIRPERSON: So is there no memorandum of understanding such as the one that is reflected on that page?

ADV LEAH GCABASHE SC: Chairman the correct interpretation of this particular document is that the joint agricultural working group is the vehicle through which this particular document or this agreement rather
20 will be operationalised. Now

CHAIRPERSON: No, no, no my question is, that page – what was the page where that memorandum appears?

ADV LEAH GCABASHE SC: 65 the memorandum itself Chairman?

CHAIRPERSON: Ja so my question is.

ADV LEAH GCABASHE SC: Is on 659.

CHAIRPERSON: My question is are you saying that there was no such memorandum this is a fake thing or something – did it not exist, was it not entered into between South Africa and India that document or is your point on the content of the memorandum?

ADV LEAH GCABASHE SC: There are two points Chairman. The latter but more importantly the misrepresentation in the affidavit by calling it a bilateral agreement. A bilateral agreement and as Mr Thabethe is aware goes through various hoops before you sign a bilateral agreement between two countries.

10 **CHAIRPERSON**: Yes okay let us try and get this clear. So it is accepted that there was a memorandum of understanding between the two countries, is that part correct?

ADV LEAH GCABASHE SC: That there was one that was signed Chairman.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: In 2010.

CHAIRPERSON: Yes, yes.

ADV LEAH GCABASHE SC: Yes because this document.

CHAIRPERSON: Okay.

20 **ADV LEAH GCABASHE SC**: Was signed.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: In 2010.

CHAIRPERSON: Yes so that part is fine?

ADV LEAH GCABASHE SC: Yes Chairman.

CHAIRPERSON: Okay. The part which is in contention is whether it is

an agreement, is that part of what is in contention?

ADV LEAH GCABASHE SC: The reliance of the Department.

CHAIRPERSON: On the document?

ADV LEAH GCABASHE SC: On the document.

CHAIRPERSON: Irrespective of what it is called whether agreement or understanding.

ADV LEAH GCABASHE SC: No it is important to have the right label Chairman.

CHAIRPERSON: Yes.

10 **ADV LEAH GCABASHE SC:** Because it has different.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: It has different legal standing depending on what it is. A memorandum of understanding.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Can never be a bilateral agreement.

CHAIRPERSON: No, no but that is why I said I want to find out whether another point of contention is whether it is an agreement or not.

ADV LEAH GCABASHE SC: Correct.

20 **CHAIRPERSON:** Okay. Alright. And then the reliance whether reliance on it was justified?

ADV LEAH GCABASHE SC: Correct Chairman.

MR MBANA PETER THABETHE: Those are the points of contention?

ADV LEAH GCABASHE SC: Absolutely Chairman.

MR MBANA PETER THABETHE: Okay alright.

ADV LEAH GCABASHE SC: Yes.

CHAIRPERSON: I think you – you want to add?

ADV LEAH GCABASHE SC: No I was simply going to say contextually it was also important because Mr Thabethe represents the Provincial Government.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: When he is interacting with a private company.

CHAIRPERSON: Yes.

10 **ADV LEAH GCABASHE SC:** And provision for that is made in this.

CHAIRPERSON: In the memorandum?

ADV LEAH GCABASHE SC: Ja.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: I will take him to it Chair.

CHAIRPERSON: Okay you understand – you understand the points of difference so I think:

1. It is whether that memorandum of understanding is an agreement obviously that raises the question when you say bilaterally the whole question starts from being an agreement because if it is not an agreement then you do not even go to whether or not it is a bilateral agreement. But of course it is between two countries as I understand the memorandum.
2. The second point of contention is whether there was justification for reliance on it to the extent that there may have been justification on your side for relying – or there may have been

reliance on your side on it. You understand?

MR MBANA PETER THABETHE: I understand Chair.

CHAIRPERSON: Okay. I do not know whether you would then want to take from there now that there is clarity.

ADV LEAH GCABASHE SC: I would Chairman.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: I just want to point out that article 6 – so we have dealt with article 5 which is the implementation article. Article 6 at G says cooperation shall consist of but not be limited to the following and item G says: promotion of contacts between the relevant public and private enterprises, organisations and other such fields as may be agreed upon by the parties. So you are a public entity, Paras is a private entity. Had the implementation mechanism been operational you would be relying on G, am I correct?

MR MBANA PETER THABETHE: It is correct Chair. Can I – can I – can I maybe mention something?

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Our reference to this document was for protection in an event where we have a problem then we will revert to this document and request the Department of Agriculture in India to assist because they – the forms of cooperation have been indicated that document that it could be public to public or public to private and so. So that in an event where you are no longer treated fairly then you go back to the Department and say, we need your assistance in this area and this agreement will then assist you. Because we are already

– because there were already set-ups that were formed, meetings that were happening between the two country departments where you were raising your problems, they raise their problems and you are able to resolve those problems and proceed. Hence the document refers to establishments of those systems.

ADV LEAH GCABASHE SC: Mr Thabethe if you look at article 12 it reads thus:

10 “The memorandum of understanding shall enter into force on the date on which each party has notified the other in writing through the diplomatic channel of its compliance with the constitutional requirements necessary for the implementation thereof. The date of entry into force shall be the date of the last notification.”

Now those constitutional requirements that are necessary have not been concluded and you are aware of that are you not?

MR MBANA PETER THABETHE: Chair maybe I am not reading it correctly.

20 **CHAIRPERSON:** Well the question is are you aware of that or not? Let us start there. Yes you are aware or no you are not aware and then we can take it from there. What Ms Gcabashe is saying to you is that before that memorandum of understanding could be operational – could be put into effect certain things had to be put in place. They are set out in the memorandum and she has referred you to them. And as long as those things had not been done the memorandum of understanding

could not be of use and she is saying you are aware that those things had not been done. Are you not aware that they had not been done as yet when this happened?

ADV LEAH GCABASHE SC: I am not aware that they have not been done Chair.

ADV LEAH GCABASHE SC: Chairman I – I am – the reason I raised this aspect as one of concern is because I have assumed that the Premier and the MEC would have taken comfort in the fact that they were told that there is a bilateral agreement that supports what they
10 want to do with the private company in India. And that is really where the concern lies. You interacted with the MEC – with EXCO. You – I know we will get some of that documentation in due course you have not been able to produce it and when they considered the matters you brought before them as I understand your paragraph 8 you would have said to them do not worry we actually have a bilateral agreement. So there is this protection which you are referring to now that we would have should things go terribly wrong. So you are misleading them in the information that you are giving them essentially and yet they are the people whose decisions, whose views you have relied on.

20 **MR MBANA PETER THABETHE:** Ja Chair I had attached these documents for everybody to see to agree not to agree. So it was at the disposal of everybody. Including the people that could have advised differently to say but we do not agree with you. This document has also been attached to a number of other documents that we had been legally doing. Hence I am saying Chair the reference to this document

was for protection purposes.

CHAIRPERSON: Well maybe let us talk about that protection because in part that is what Ms Gcabashe is talking about but she may – at this stage she might be talking about a certain aspect of the protection. Let us talk about another aspect of protection.

MR MBANA PETER THABETHE: Yes. Now...

CHAIRPERSON: There is a protection that I said to you, you may have been thinking of and you agreed. Okay? Now the point – part of the point being made is I will – or at least that is what I am thinking. If you
10 are going to rely on an agreement or on this memorandum of understanding at least you would be expected to check that it was operational already. Because if it was not operational it could not give you any protection, do you agree with the latter part?

MR MBANA PETER THABETHE: I agree Chair.

CHAIRPERSON: Yes. So – so did you check whether it was operational before relying on it?

MR MBANA PETER THABETHE: Chair the document was already operationalised because ongoing meetings were happening between the two departments. The Department of Agriculture in South Africa and
20 the Department of Agriculture in India. So this memorandum of understanding was being operationalised.

CHAIRPERSON: Now you heard Ms Gcabashe referring you to a certain clause I think it was 5 if I am not mistaken which sets out what needed to be done before the memorandum could be operational. Do you not agree that those requirements that she drew your attention to

were requirements that had to be met before the memorandum could be operational? Do you not agree with that part? Irrespective of what may have been happening factually namely maybe there were meetings taking place notwithstanding the fact that maybe those requirements had not been met. Leave out what may have been happening factually. If you look at that clause and requirements being set do you not agree that those requirements would have had to be met before the agreement – the memorandum could be operational?

MR MBANA PETER THABETHE: Chair that is the part that I am – I
10 was not agreeing with.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Because my ...

CHAIRPERSON: Just talk – talk to that, let me hear that.

MR MBANA PETER THABETHE: My understanding of that was you cannot do business with a country until there is a signed bilateral agreement country to country. That is the one which I said I do not agree with that one. Because at – until you get to the country to country you must have examples of cooperation's that have been successful that you can be part of your motivation for the signing. You
20 may not rely all – you cannot say we will only do business once country to country has been signed where there is an objection. Unless there is an objection that we do not encourage country to country but in this instance there has been no objection because the Minister when he signs an agreement he gets dedicated to enter into that agreement. So I did not see any problem for this to happen.

CHAIRPERSON: Yes but just to make sure that we understand each other. Are you saying that the clause that Ms Gcabashe read to you has reflecting requirements that had to be satisfied before the memorandum of understanding could be operational? Are you saying you do not agree that that clause says that? Or do you want to be referred to it? Ms Gcabashe do you want to continue from there?

ADV LEAH GCABASHE SC: In his affidavit?

CHAIRPERSON: Oh okay.

ADV LEAH GCABASHE SC: Chairman can I – can I again just
10 elaborate a little bit.

CHAIRPERSON: Yes that is fine.

ADV LEAH GCABASHE SC: On the points that you are raising.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: You see Mr Thabethe.

MR MBANA PETER THABETHE: Hm.

ADV LEAH GCABASHE SC: What underscores my concern with the manner in which you have used this document is the fact that in 2010 when this agreement was entered into you in fact worked at the Department of Agriculture and Fisheries and Forestry, did you not?

20 **MR MBANA PETER THABETHE:** That is correct Chair.

ADV LEAH GCABASHE SC: So you knew about this document because you worked in that environment?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: You then moved to the Free State to principles who know that you have come from a particular national

environment. They accept you into the Department of Agriculture / the Department of Rural Development on the understanding that when you bring information to them such as a memorandum of understanding that was signed in relation to agriculture they can trust the representations that you are making to them. You understand what I am saying?

MR MBANA PETER THABETHE: I understand.

ADV LEAH GCABASHE SC: This is precisely the point I make. Because you knew that a joint working committee first had to work through all the legalities, the constitutional issues you knew that this
10 document would only come into force at a later stage yet you relied on it in 2012 and continued to rely on it now in 2019.

MR MBANA PETER THABETHE: Chair the memorandum of understanding had a timeframe period and this timeframe period was to establish these committees to make sure that becomes operational. Our reference to the document was to say there is already an established relationship so the two countries are talking to each other. That is what we were saying here. We were not saying the country has – get to a stage where we have a relationship that is not bound by timeframes. And we have attached the document.

20 **CHAIRPERSON:** Okay just – just so that we make progress. From what you say it seems to me that you accept council's proposition that the structure contemplated by the memorandum had not been established, is that correct? You accept that?

MR MBANA PETER THABETHE: The structure.

CHAIRPERSON: The JW.

MR MBANA PETER THABETHE: Had been established Chair.

CHAIRPERSON: Had been established?

MR MBANA PETER THABETHE: Yes Chair.

CHAIRPERSON: And was it in operation?

MR MBANA PETER THABETHE: It was in operation.

CHAIRPERSON: Okay it is just important that when a question is being put to you you deal with it first even if you have some elaboration so that we know where areas of difference are. So you say the structure to which she referred had been established?

10 **MR MBANA PETER THABETHE:** That is correct Chair.

CHAIRPERSON: So does that mean that your understanding therefore is that that memorandum of understanding – let me rephrase that. Is your understanding therefore that everything, every requirement had been met that needed to be met for the memorandum to be operational?

MR MBANA PETER THABETHE: Otherwise Chair there would not have been meetings between the two countries.

CHAIRPERSON: No, no, no let us get it right. Are – is that a yes?

MR MBANA PETER THABETHE: No, no I am saying – I am confirming Chair that it has been met.

20 **CHAIRPERSON:** That they have all been met?

MR MBANA PETER THABETHE: Because meeting has been ongoing.

CHAIRPERSON: Okay alright.

ADV LEAH GCABASHE SC: Chairman because it is our job to make enquiries as a commission.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: We actually made enquiries in government and I have an email from the Department of Agriculture, Forestry and Fisheries.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: That reads as follows:

“The MOU for the RS – Republic of South Africa and India was signed by the parties on the 4 June 2010 and never came to force though the implementation mechanism in the form of the joint working group on agriculture is ongoing.”

So and this is from the Director who heads the Directorate.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: My understanding of this Chairman is that it never came to force and if a simple enquiry by the commission can elicit a response from the Directorate responsible for that part of the world I do not see why a former colleague who worked in that department could not just have made enquiry before relying on a document and alloweing his principles to believe that they could rely on a particular document. I – that is where my difficulty lies.

20 **CHAIRPERSON:** Yes.

ADV LEAH GCABASHE SC: Chairman.

CHAIRPERSON: Yes. Let us - let me just go back to ...

ADV LEAH GCABASHE SC: Page 6-5-9 Chairman.

CHAIRPERSON: 6-5-9.

ADV LEAH GCABASHE SC: Yes. I would like to add Chairman and to

you Mr Thabethe ...

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: That that paragraph 8 I refer to in your affidavit of 2017 precedes the visit to India paragraph. So I am assuming - it is the only inference one can really draw that when you went to visit Paras you gave them the same impression with respect to the relations between India and the Republic of South African and that is of real concern because they took your word for it as did our provincial representatives/Government representatives largely because
10 of your history in that national department.

MR MBANA PETER THABETHE: Chair can I - can I ...

CHAIRPERSON: Yes, yes.

MR MBANA PETER THABETHE: Respond to that?

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: I - I do not agree Chair. I am - I - I thought I was explaining to say putting - putting it in force would mean eventually that the - the two countries have got an agreement and the difference between putting this agreement in force. It means the systems were activated. That - that is my understanding.

20 The systems were activated and the response she is reading says so. That the systems have been activated. They are ongoing.

CHAIRPERSON: Okay. Maybe let us - let us - I may have also contributed to some of the confusion. I had understood - no I think my understanding was - was correct. 5.1 - Article 5.1 says:

“A joined agricultural working group shall be

established to implement the provisions of this
Memorandum of Understanding.”

So from that you can see that what is said is that for the
implement of this memorandum you need this group.

MR MBANA PETER THABETHE: Yes sir.

CHAIRPERSON: *Ja.* Now my understanding which may have been
wrong of Ms Gcabashe’s question to you or one of the questions much
earlier was that she was saying this group had not been established
and therefore there could be no - the memorandum could not be
10 operational.

MR MBANA PETER THABETHE: Yes Chair.

CHAIRPERSON: So I may have misunderstood that part but you - you
did say recently that ...

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: The group who had been established ...

MR MBANA PETER THABETHE: That is correct.

CHAIRPERSON: And I think the email that Ms Gcabashe has read
confirms that part.

MR MBANA PETER THABETHE: That is correct Chair.

20 **CHAIRPERSON:** That the group had been established.

MR MBANA PETER THABETHE: That is correct.

CHAIRPERSON: If that is factually correct it would seem therefore that
the group that was supposed to implement the memorandum was there.

MR MBANA PETER THABETHE: That is ...

CHAIRPERSON: Whether or not they were implementing the

memorandum ...

MR MBANA PETER THABETHE: The memorandum, yes.

CHAIRPERSON: Might be another issue but that they had been established seems to be accepted as factually correct.

MR MBANA PETER THABETHE: That is my understanding Chair.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Chairman I am happy to ...

CHAIRPERSON: Hm.

10 **ADV LEAH GCABASHE SC:** To just get an affidavit from this particular
directorate ...

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: But I can also confirm that when you look at the DIRCO website - my colleague has just shown me - you have agreements that have been signed. There are Memorandum of Understanding there as well. This particular one is reflected on the site with the ones that have been brought into force a note is there against that particular agreement.

With this particular agreement there is no note that says it has come into force.

20 **CHAIRPERSON:** Well ...

ADV LEAH GCABASHE SC: So I really am simply questioning the diligence of this very senior public official.

CHAIRPERSON: Well may - maybe before we look at the diligence we look - we need to look at what it is that needed to be done in order to put it in force if the establishment of the group was not enough to put it

in force. So let us cover that because maybe that is where the - the trick is.

ADV LEAH GCABASHE SC: Chairman ...

CHAIRPERSON: *Ja.*

ADV LEAH GCABASHE SC: So if you then look at Article 5.2 it reads as follows:

“The heads of the JAWG shall be senior officials.”

Sub 3 reads:

10 “The JAWG shall be responsible for establishing
working groups, approving and overseeing their
work plans, assessing the outcomes of
implementing programs of the Memorandum of
Understanding, submitting proposals for the future
development and improvement and recommending
solutions to overcoming problems and difficulties.”

That is where the protection element that Mr Thabethe - that you referred to.

CHAIRPERSON: Well we - we will have to check with him ...

ADV LEAH GCABASHE SC: This does not give him ...

20 **CHAIRPERSON:** Whether that is what he was talking about.

MR MBANA PETER THABETHE: *Ja*, Chair ...

CHAIRPERSON: Is that - is - are - is - is - are the things mentioned in Article 5.3 the things you were talking about when you said you would rely on this memorandum for protection if something went wrong?

MR MBANA PETER THABETHE: No Chair. The - the items that are

being mentioned here were programs of the working groups that they will - they are going to work on but it - it does - it does not say all - all investment opportunities that exist between the two countries have to go through this working group. It - it does not say that.

So it - it says these are the key areas that - they will be dealt with and the meetings between the two working groups will be continuously dealing with - with those things and that is my understanding.

CHAIRPERSON: Just articulate again what it is that you regarded as
10 protection that you thought was necessary for your - for arrangements - arrangements relating to Paras in relation to this memorandum.

MR MBANA PETER THABETHE: Protection will mean there - there is ongoing engagement between the two countries. If - if you were to raise a concern you have a platform that you can get into and raise your concern.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: That is the protection because the ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: The - it - it is there. It is in
20 existence.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: That - that is the protection.

CHAIRPERSON: That is what you were talking about?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: That you - you could then go to approach national -

the National Department of Agriculture ...

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: And say we have an agreement with a private entity in India ...

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: But we have these problems. See whether the Government of India can assist us or not.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Okay.

10 **ADV LEAH GCABASHE SC:** Chairman I believe it can be cleared up by an affidavit.

CHAIRPERSON: Yes, okay.

ADV LEAH GCABASHE SC: Might I just point out though that Article 8 of the same Memorandum of Understanding deals with the details of joint implementation programs. So that is a completely separate section. The details of the joint implementation program but be that as it may Chairman the - the concern really is what Mr Thabethe - the concern is what you did given that you the Head of a Department and accounting officer in relation to your reliance on this document to give
20 comfort to your principals and to give comfort to a third party that some protection would be a forward.

Some - some - afforded because there was a vehicle for resolving any difficulties that might arise. This document does not give you that protection.

CHAIRPERSON: You - you are free to - to comment and defend your

position if you want to do that.

MR MBANA PETER THABETHE: Thank - thank you Chair. Chair I do not agree that the document will not offer any protection because it offers you a platform to raise your concern because if - if the Government of that country can then engage and you are able to engage them the problem will be where you do not have a platform to engage then.

Then you have a problem. You do not know who to talk to. Therefore I say it does not mean that this document was just signed for
10 the sake of signing. It - it is for assisting the country.

CHAIRPERSON: So it might - you - you say it might not be strict protection or guaranteed protection but you say it provides - it provided a channel through which you could ask the Government of India to do something if Paras gave you problems?

MR MBANA PETER THABETHE: That is - that is correct Chair.

CHAIRPERSON: But in terms of what it is that the Government of India could do or could not do that you do not know?

MR MBANA PETER THABETHE: No, no Chair.

CHAIRPERSON: *Ja ...*

20 **MR MBANA PETER THABETHE:** And ...

CHAIRPERSON: And it could be that there was legally no protection it could provide but you say at least a request could be sent through channels?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Yes, okay.

ADV LEAH GCABASHE SC: Can I just say Mr Thabethe that one of the reasons this agreement - I beg your pardon - this Memorandum of Understanding and its interpretation is important to the matters of the Vrede Dairy Project is because there was a debate on whether you had established a private/public partnership in engaging Paras and Estina or whether some other form of agreement had been entered into.

Now the memorandum - there was that debate. Maybe I should stop there first. There was a debate. Was there not?

MR MBANA PETER THABETHE: The - there were suspicions Chair
10 that we have entered into an illegal public/private partnership but at that stage we had an agreement signed and it was not that. So I do not understand where it came from because there was an agreement on the table and the agreement was not a PPP agreement.

CHAIRPERSON: Ja. No I think Ms Gcabashe simply wanted you to confirm that there were people who were saying is this not a public you know a private - public/private partnership agreement and others saying it is not. I think that is what she is talking about and you are confirming that ...

MR MBANA PETER THABETHE: Yes.

20 **CHAIRPERSON:** That is so.

MR MBANA PETER THABETHE: Yes Chair.

ADV LEAH GCABASHE SC: And this particular Memorandum of Understanding could either have afforded a vehicle or protection - the protection you speak of had it been in operation or - and people should have understood its status or it would not have and that is - that is

really the bottom - the bottom line. The manner in which you have used this document. That is - that is really the only contentious point.

MR MBANA PETER THABETHE: Chair I do not agree. The - the debate was not on the basis of this document and it did - it has never referred to this document to be have been used for that debate. That is why I say I do not - I do not agree because later it was also confirmed that indeed it is not after all documents were - were made available.

So it - it might not have been referred to this document because this document was released later not before the debate but
10 when the inquiries were done it is only then that they saw this document. So it might not have been used or relied on for the debate.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: I - I am moving onto a new ...

CHAIRPERSON: Oh. I was about to say we have spent quite some time ...

ADV LEAH GCABASHE SC: Yes.

CHAIRPERSON: On this document, *ja*. Okay.

ADV LEAH GCABASHE SC: Thank you Chairman. Mr Gajinder Kumar - you then invited him to come to South Africa?

20 **MR MBANA PETER THABETHE:** That is correct Chair.

ADV LEAH GCABASHE SC: When did he arrive in South Africa?

MR MBANA PETER THABETHE: I - I need to refer back Chair to ...

CHAIRPERSON: *Ja*. Feel free to do so.

ADV LEAH GCABASHE SC: Page 288 of HH10 might be of assistance to you. Your paragraph 12.

MR MBANA PETER THABETHE: 258.

ADV LEAH GCABASHE SC: I hope I am getting - oh, no. The ...

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: Two - 238 not 288, 238. That is the 2017 affidavit.

MR MBANA PETER THABETHE: That - that is correct Chair. You say it is paragraph - Chair?

ADV LEAH GCABASHE SC: 1-2 - 12. You then invited the Chief Executive Officer of Paras.

10 **MR MBANA PETER THABETHE:** That - that is correct.

CHAIRPERSON: I am sorry. Did you say 238?

ADV LEAH GCABASHE SC: 2-3-8 Chairman and it will just be paragraph 12 of the - the clean document. I beg your pardon Chairman.

CHAIRPERSON: Ja. Okay. No, no.

ADV LEAH GCABASHE SC: It is page 238 period.

CHAIRPERSON: No, no I think all this discussion about that memorandum has confused me.

ADV LEAH GCABASHE SC: It is just page 238 Chairman.

20 **CHAIRPERSON:** I am - I am - I was - I was looking at the black numbers instead of the red numbers.

ADV LEAH GCABASHE SC: Hm.

CHAIRPERSON: So yes I have got it.

ADV LEAH GCABASHE SC: And then paragraph 12 thereof.

CHAIRPERSON: Ja.

ADV LEAH GCABASHE SC: You just needed some reminder Mr Thabethe.

MR MBANA PETER THABETHE: Yes Chair.

CHAIRPERSON: Look at ...

MR MBANA PETER THABETHE: I was - it is referring to ...

CHAIRPERSON: The red numbers hey. Have you got it? The red numbers page 2-3-8.

MR MBANA PETER THABETHE: Yes. I have got it Chair.

CHAIRPERSON: Oh, okay.

10 **MR MBANA PETER THABETHE:** I thought it - it was referring me to the attachment which indicates the dates.

CHAIRPERSON: Oh.

MR MBANA PETER THABETHE: This paragraph does not give the dates because the question was when.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: I thought you might be able to remember once you looked at the manner in which you had noted it in your affidavit. In any event would it have been early in the year, would it have been ...

20 **MR MBANA PETER THABETHE:** Hm.

ADV LEAH GCABASHE SC: Later in the year, would it have been towards the end of 2012?

MR MBANA PETER THABETHE: Chair in my founding affidavit those dates were - were indicated.

CHAIRPERSON: Were given.

MR MBANA PETER THABETHE: Can I - can I look for that one?

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: Because it has the dates.

CHAIRPERSON: I - I do not know whether you need the particular detail Ms Gcabashe whether just the month might do.

ADV LEAH GCABASHE SC: The month is in order Chairman.

CHAIRPERSON: Do you remember - was it early in - in 2012, February/March?

MR MBANA PETER THABETHE: Hm.

10 **CHAIRPERSON:** Or was it in the previous year?

MR MBANA PETER THABETHE: I do not remember Chair.

CHAIRPERSON: You cannot remember.

MR MBANA PETER THABETHE: I cannot remember.

ADV LEAH GCABASHE SC: Would it have ...?

CHAIRPERSON: Was it soon after you had come back - you had come back from India?

MR MBANA PETER THABETHE: It was - it was after I had come back from India.

20 **CHAIRPERSON:** But reasonably soon or two/three months later or - after you came back? You will not be held to that as long as it is more or less - gives us an idea.

MR MBANA PETER THABETHE: It could have been a month or two Chair. It was not a very long period.

CHAIRPERSON: That might be good enough.

MR MBANA PETER THABETHE: But I can ...

CHAIRPERSON: Is that - is that good enough?

ADV LEAH GCABASHE SC: That is good enough Chairman.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: It is an introduction to a totally different topic.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Line of questions.

CHAIRPERSON: Okay.

MR MBANA PETER THABETHE: Okay.

10 **ADV LEAH GCABASHE SC:** It - so it would have been before you signed the agreement of 5 June?

MR MBANA PETER THABETHE: That - that is correct Chair.

ADV LEAH GCABASHE SC: Right. Who suggested that Estina partner Paras?

MR MBANA PETER THABETHE: Chair - Chair during the visit of the - the Indian company ...

CHAIRPERSON: Paras?

MR MBANA PETER THABETHE: Paras. They - they indicated interest not only on the model but also to invest into the project. Then my
20 concern to them was that it - it would be very difficult to interact and enter into an agreement with a foreign company. For us to be able to do that they must register in South Africa or have a partnering company that they - we can operate with.

That - that is what we indicated to them. That we will not be able to do so because if - if you enter into an agreement with a

company that its laws do not apply in South Africa we are going to struggle. They had to register or identify a company which they can work with.

CHAIRPERSON: So is your evidence therefore that when you went to India Estina had not been identified yet as a company that would be involved in this dairy project?

MR MBANA PETER THABETHE: No Chair.

CHAIRPERSON: And at that stage when you went to India is the position that you were not contemplating as yet that Paras would need
10 to be registered in South Africa or that they would need to work with a local company. At that stage is it something that only came up when they visited South Africa?

MR MBANA PETER THABETHE: That - that is correct Chair. What I can also indicate is that it was also our interest to raise their interest for investment.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Which during the visit they indicated that they can work with us but they had not confirmed if they would want to invest. Hence we then invited them to say this is where we
20 want to do the project. This is how we want to do the project. Are you interested? Can we use your - your model because we did not want also to be accused of using a model that we do not have permission to use?

On - on those basis then I invited them to come and we had discussion with them. We took them to the site where we in turn

thought we will have the project put up and then they indicated the - the interest and we - we therefore indicated to them how would - we would want them to - to work with us. Either to register or to have a company in South Africa that they could work through.

CHAIRPERSON: So when you were in India having discussions with the Paras officials was your contemplation simply that you were - you wanted to see how their model worked and you would then come back and seek to apply it in south - in South Africa and that their involvement in the project would be limited to the fact that you were
10 using their model and maybe where you have problems you could consult them but that - that is where - how far they would go?

MR MBANA PETER THABETHE: It - it was both Chair. In an event they would have said no we do not want to be an investor in the project. We - we would then only get permission from them to use their model.

CHAIRPERSON: But you - you wanted to use their - your first prize was permission to use their - their model ...

MR MBANA PETER THABETHE: Their model, yes.

CHAIRPERSON: And them being an investor in the program?

20 **MR MBANA PETER THABETHE:** That is correct Chair.

CHAIRPERSON: Yes and - and you discussed these while - while you were in - in India with them ...

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: As a possibility?

MR MBANA PETER THABETHE: Yes. Correct Chair.

CHAIRPERSON: And they indicated some inclination one way or another?

MR MBANA PETER THABETHE: Yes. The - the use of the model - they were actually saying it will open up for them because in - in their presentation they have also indicated to us that they - they were exporting milk from India to - I am trying to recollecting now whether it was Nigeria or - but I think it was Nigeria where they have been putting milk.

They would say then if - if you have a system similar to us
10 they believe that this milk could then be taken from South Africa to Nigeria because ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: They would have guaranteed - because in their presentation their qualifications and their certificate indicated which qualifies particular products in terms of the registration and ISO numbers. So those were the things that we wanted them to assist us to guarantee those levels of quality.

CHAIRPERSON: I - I think I may have asked you this question yesterday but I want to ask it again because I am trying to look at this
20 issue from different angles including your angle okay. Could you just tell me again what the important features were of this model of Paras that you wanted to implement in - in South Africa in terms of this project? What were the special features?

MR MBANA PETER THABETHE: Ja. Chair where - where - when we did our initial research we realised that in the model they were

collecting milk from the small farmers and - and that is what we intended to do versus the other models that we have been looking at. The system of collecting the milk plus the additional support that they have been given.

So that was key for us because we have - we have not seen a model similar to that being - being implemented somewhere and - and that is what we wanted to do. When we went there we then established other advantages that were not part of our - our presentation like the support system that they have been giving to the farmers. They would
10 not only collect the milk but they had a system of supporting them and making sure that these enterprises were growing.

So those - those were - were also good enough for us to say if - if you had to become investors would these features also come with you so that you assist that we the expected. Some of the issues that were there were - were the certification that international certification for their milk which you could use to export the meat and sell it anywhere like they were doing so.

Those were additional features which if they are not party to you - you would not use them. They can only be used by them.

20 **CHAIRPERSON:** No. I do not understand this thing that you would require permission from them to collect meat from the - from the local farmers. Are you able to ...?

MR MBANA PETER THABETHE: Not - not the collection Chair.

CHAIRPERSON: *Ja*, what?

MR MBANA PETER THABETHE: You - remember when you market milk

it has ISO standards which is accredited to you. Certain levels of - of hygiene and so on. You need them to assist you to achieve that standard because they have been there. They know how to deal with it. Then they will provide support to your farmers to produce milk of that standard of certification.

That is what I am trying to say. Not to collect the milk. You can collect the milk but it may not reach the standard ...

CHAIRPERSON: *Ja.*

MR MBANA PETER THABETHE: Which they had.

- 10 **CHAIRPERSON:** But in terms of actual certainty of content what was special about what they did to put the milk at the right quality level? Was that something that is unusual in South Africa what needed to - what they were doing to make sure their milk was at the right quality?

MR MBANA PETER THABETHE: Chair they will never tell you. It is - it is - they - they - that is the information that you never get to know. They will never tell you how they achieved because they are in - in the competition. There are things that they do to get them to a particular level. They will never tell you. If - if I may use an example Chair.

- 20 KFC will never give you their ingredients to get to what you - you eat as KFC because they do not want you to do it. It is their intellectual property. If you want it ...

CHAIRPERSON: *Ja.* No, I understand that. I am sorry. I am interrupting you Mr Thabethe.

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: I - I understand that but in South Africa there are big

companies which deal with milk and that milk must be at a standard which is acceptable nationally in the country.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: You - you were not looking at exporting the milk that you would produce from this farm. You were not looking at that. So whatever the standard is you - you had no reason to what any standard that would be beyond the standard accepted nationally in South Africa. That is my thinking.

MR MBANA PETER THABETHE: That is correct Chair.

10 **CHAIRPERSON:** Okay. Now the companies here in South Africa must be able - must be able to put - must be able to say this is what you need to do if you want your - the quality of your milk to reach this level. Why - why - what is special as a feature in that with regard to Paras?

MR MBANA PETER THABETHE: Yes Chair. This is the debate that we have had.

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: We had invited them but they did not respond to us.

20 **CHAIRPERSON:** But you say you are also not able to articulate and you must just be - you must listen to me carefully because I don't want to put words into your mouth, you must be able to say if you say that's not correct. You're not able to say what the content of the feature is that you were looking for in their model insofar as putting the quality of milk at a certain level. You simply say there is something they do, I don't know what it is, and I know they won't give it to me but I like it

and that's what I want.

MR MBANA PETER THABETHE: You are correct Chair, the general hygiene standards are set and those general hygiene standards are set by Agriculture, but in each and every company there are features that you'll never know, that they will not disclose to you other than the general hygiene standard that you must set but those general hygiene standards that are set Nationally needs expertise for you to be able to achieve that, now if you have a group of small farmers you want them to achieve those standards, you need to provide expertise support to
10 them for them to be able to reach those standards.

CHAIRPERSON: So in the end it appears to me, that really for all intents and purposes, your evidence amounts to saying, and I want you to be able to say whether you agree or not, amounts to say really, the only reason why we find ourselves having to work with Paras was that the local companies were not interested in helping us?

MR MBANA PETER THABETHE: That's correct Chair.

CHAIRPERSON: Okay, thank you.

ADV LEAH GCABASHE SC: Now Mr Thabethe, Mr Kumar arrives in the country and you talk to him about a local partner, had you not
20 mentioned the local partner aspect to him...[intervention].

CHAIRPERSON: I'm sorry Ms Gcabashe I'm interrupting you again, I think that answer also says, in effect, that really there might have not been any significance in their model because if the local companies were prepared to work with us, what they would have given us would have been adequate for our purposes as well.

MR MBANA PETER THABETHE: What I believed Chair, was that between us and them we could have worked a model.

CHAIRPERSON: Just repeat that.

MR MBANA PETER THABETHE: My belief was that between us and the companies in South Africa if we would have agreed we would have agreed on a model and our model was very simple, provide support to the small farmers.

CHAIRPERSON: Yes but I think it emphasises the point that I wanted to clarify with you that, actually the only reason why, on your evidence,
10 the only reason why you end up where you say you end up with Paras is because local companies are not interested in working with you.

MR MBANA PETER THABETHE: That's correct.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Thank you Chair. I was talking about Mr Kumar and the question was whether you raised the issue of a local partner with him when you were in India?

MR MBANA PETER THABETHE: My apologies Chair...[intervention].

ADV LEAH GCABASHE SC: Did you raise the matter of a local partner with Mr Kumar when you were in India?

20 **MR MBANA PETER THABETHE:** Yes Chair, if they were to have interest then they would, either come and register as a company in South Africa, operating under the laws of this country and if not there must be a company in South Africa that they would be able to work through.

ADV LEAH GCABASHE SC: In your paragraph 12, at page 238 to

239, you talk about touring with Mr Kumar, you call him the CEO here, the next sentence is talking about the interest he had developed, the following sentence says,

“It is when that, the Paras dairy CEO was informed that his interest of investment in South Africa should be through a South African registered company”,

So it's either you informed him when you were busy touring the vicinity of Vrede or you had mentioned this to him when you were in India, it can't be both or if it is, maybe just explain it to the Chairman?

10 **MR MBANA PETER THABETHE:** I'm trying to find the document Chair is it on HH10?

ADV LEAH GCABASHE SC: Your affidavit, the one I'm reading from?

CHAIRPERSON: Page 239, Ms Gcabashe?

ADV LEAH GCABASHE SC: Yes sir.

CHAIRPERSON: Ja same affidavit that we have been looking at, page 239 of HH10, the one that has got paragraph 12, that we were dealing with a little earlier, page 239 the red numbers not the black numbers.

MR MBANA PETER THABETHE: I'm struggling Chair because there's been a divider here, it ends in 235...[intervention].

20 **CHAIRPERSON:** Okay I think Ms Molefe will help you – you have got it?

MR MBANA PETER THABETHE: Thank you Chair.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: So Mr Thabethe, if you read the first three lines of paragraph 12 you will find that you say that you informed

the CEO of Paras that any investment should be through a South African company when you were touring the Vrede area.

MR MBANA PETER THABETHE: That's correct Chair.

ADV LEAH GCABASHE SC: I asked you earlier on if you had mentioned the same issue to Mr Kumar when you were in India, and you said yes.

MR MBANA PETER THABETHE: That's correct Chair. I'm not sure if I had to capture both of them, that I had said it on both side but what we have indicated here is, that when he was here we've indicated to him.

10 **ADV LEAH GCABASHE SC:** Much as this isn't written in the most elegant English, with all due respect, what's written here?

MR MBANA PETER THABETHE: Chair I studied bantu education, the English that I might have written here, might not have been the best English.

CHAIRPERSON: No I doubt whether Ms Gcabashe intended to say anything about the quality of your English, I doubt if she...[intervention].

ADV LEAH GCABASHE SC: It's the construction, the formulated here chair, and all I'm saying is, when one reads this, Mr Thabethe, it's got
20 nothing to do with Bantu education, when one reads this, you are left with the impression that it is when the Paras Dairy CEO was informed, it is only then when he was here on tour...[intervention].

CHAIRPERSON: No, no, no Ms Gcabashe you referred to English...[intervention].

ADV LEAH GCABASHE SC: Can I read it to you Chairman?

CHAIRPERSON: No, no hang on, you referred to English, and the – his answer suggests that he understood from what you were saying that you were saying that the English used, was relevant to whether it says what he is saying or not and he therefore said, look I studied Bantu education.

ADV LEAH GCABASHE SC: Chairman can I read the sentence into the record, as it is written here?

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: This is the relevant sentence, it is
10 preceded by context.

CHAIRPERSON: Ja just read it.

ADV LEAH GCABASHE SC: Mr Thabethe, this is what's written here,

"It is when that, the Paras Dairy CEO was informed that his interest of investment in South Africa should be through a South African registered company",

What should really, on my interpretation be reflected here or recorded here is,

"It is then, not when – it is then that the Paras CEO",

So it's that confusion that arises from the use of the "it is
20 when" as opposed to "it is then" because my interpretation is, "it is then", and this is why I say it was not drafted particularly elegantly, are you with me?

CHAIRPERSON: Well I still thank that Mr Thabethe was – it was legitimate for him to mention what he mentioned, so maybe it's how – you might not have intended what he said, but I think maybe what

should happen is, put to him, what you understand this to mean and let him answer without any reference to English, maybe we'll make progress if we do it that way.

ADV LEAH GCABASHE SC: I believe I've now done that Chairman.

CHAIRPERSON: Ja well do you still need an answer from him?

ADV LEAH GCABASHE SC: I still need an answer from him.

CHAIRPERSON: Ja I don't remember what the question was, so do you remember what the question was Mr Thabethe, do answer if you do?

10 **MR MBANA PETER THABETHE:** Yes Chair, I had answered it by saying that we had indicated when we were in India and also when we were here.

CHAIRPERSON: Yes okay.

ADV LEAH GCABASHE SC: You go on to say, Mr Thabethe, in the next sentence,

"In the discussion a proposal of signing an agreement with the South African company was put forward to Paras, Paras Dairy had to develop a project proposal which was presented through the South African owned company",

20 So my question is, that second leg of the discussion, did it take place in India and in South Africa?

MR MBANA PETER THABETHE: Chair now this is an affidavit that I had signed way after, which I was narrating, what had happened, so here I was explaining what had happened not...[intervention].

CHAIRPERSON: Hang on one second, let me just go back, was the

question when something happened?

ADV LEAH GCABASHE SC: This further discussion, yes Chairman.

CHAIRPERSON: Yes so, I think you may be wanting to explain something but the question is when and the answer might be before this and that happened or after this and that happened and then if you are then asked why, you said that then you can explain if it's necessary, so the question is about when.

MR MBANA PETER THABETHE: Can she repeat the question Chair?

CHAIRPERSON: Yes okay.

10 **ADV LEAH GCABASHE SC:** The paragraph – the sentence that I read, refers to discussions that took place at the time that you were either touring the Vrede area or around that time, are you agreed with that?

MR MBANA PETER THABETHE: That's correct yes.

ADV LEAH GCABASHE SC: Right, then the question was, these further discussions on the South African company did they take place, both in India and in South Africa?

MR MBANA PETER THABETHE: Chair the discussion on a South African company, either being them registering or bringing another
20 country took place when we were in India and when we were here. What we did when we were here we emphasises after he has raised his interest, we then emphasised on it.

ADV LEAH GCABASHE SC: You go on to say – I'm just trying to make progress, really Mr Thabethe, further down in the same paragraph that the Paras CEO left the country and at some time appeared Estina

company, please tell us about that?

MR MBANA PETER THABETHE: Chair after the CEO of Paras left, the company called Estina came to discuss with us that they have been appointed, or their relationship with Paras, they would want to take the engagement further. I then said to them there is no problem but I need confirmation from them that they are a company that had agreed with Paras that we're going to interact with, that's what I did.

ADV LEAH GCABASHE SC: Yes and then you asked for written confirmation?

10 **MR MBANA PETER THABETHE:** That's correct Chair.

ADV LEAH GCABASHE SC: Did you get that written confirmation?

MR MBANA PETER THABETHE: I did get an agreement that was signed between the two companies.

ADV LEAH GCABASHE SC: Again can I refer you to another memorandum of understanding? This one you will find in the reference bundle A, I beg your pardon 284...[intervention].

CHAIRPERSON: I think he was not paying attention when you mentioned the page, it's reference bundle A and page?

ADV LEAH GCABASHE SC: Page 284 Chairman.

20 **CHAIRPERSON:** 284, give it to me I'll find the page, thank you.

ADV LEAH GCABASHE SC: Is this the agreement – what you call an agreement – this memorandum of understanding?

CHAIRPERSON: It's the top number, you have two numbers page numbers but it's the top one they're both black this time, have you found it?

MR MBANA PETER THABETHE: I've got it Chair.

CHAIRPERSON: Okay, alright, 284, okay.

ADV LEAH GCABASHE SC: Is this the document you're referring to?

MR MBANA PETER THABETHE: Chair this was not the first document I got, this was a confirmation of the agreement that has been entered.

CHAIRPERSON: So this is not the confirmation that you had asked for and received, this was a later agreement?

MR MBANA PETER THABETHE: That's correct Chair.

CHAIRPERSON: Okay.

10 **ADV LEAH GCABASHE SC:** So MPT11 is a completely different document?

MR MBANA PETER THABETHE: There should be another document Chair, where – that says, we confirm that Estina is the company that we will work with, so there should be two documents.

CHAIRPERSON: Would it be a letter or an agreement?

MR MBANA PETER THABETHE: It's a letter Chair.

CHAIRPERSON: It's a letter?

MR MBANA PETER THABETHE: Yes Chair.

CHAIRPERSON: Oh okay.

20 **ADV LEAH GCABASHE SC:** Who gave you that letter Mr Thabethe?

MR MBANA PETER THABETHE: Chair the letter was given to us by Estina.

ADV LEAH GCABASHE SC: Did you ask Paras for that confirmation?

MR MBANA PETER THABETHE: After I've received the letter we then checked with Paras who will provide us with the memorandum of Estina,

so they confirmed.

ADV LEAH GCABASHE SC: So they confirmed that, what they had asked Estina to give you a letter?

MR MBANA PETER THABETHE: They had confirmed that they are – the partner company in South Africa is Estina. So then Estina wrote to us to confirm that this is the company of preference by Paras.

ADV LEAH GCABASHE SC: So that letter from Estina was emailed to you?

MR MBANA PETER THABETHE: I don't remember how it was received
10 Chair, whether it was – I can't recall now but we did receive a letter.

ADV LEAH GCABASHE SC: I'm trying to get documents from the Department because you do not have the access that we have and this is why we ask, because I want to contact the department for these documents...[intervention].

CHAIRPERSON: Yes he can't remember, he can't remember if it was emailed or sent or hand delivered or sent by post.

MR MBANA PETER THABETHE: Yes but there is a letter Chair that we received.

ADV LEAH GCABASHE SC: You, in paragraph 13, talk about a
20 verification exercise that was done...[intervention].

CHAIRPERSON: Are we back at 239?

ADV LEAH GCABASHE SC: We're back at 239 Chairman, paragraph 13.

CHAIRPERSON: Thank you.

ADV LEAH GCABASHE SC: Page 239, paragraph 13.

MR MBANA PETER THABETHE: That's correct Chair.

ADV LEAH GCABASHE SC: Did you do a due diligence on exactly what Estina (Pty) was?

MR MBANA PETER THABETHE: Chair what we checked whether the company, indeed, was registered in South Africa.

ADV LEAH GCABASHE SC: Can I ask you to stop, don't forget the next point, how did you go about doing that, what document did you ask for in checking that?

MR MBANA PETER THABETHE: Chair we have a system in
10 Government, we check it ourselves, we go into the register of companies and we go in there and check each company and we do confirmation by doing so.

ADV LEAH GCABASHE SC: Continue, so the first thing you did was, you did a check through your system?

MR MBANA PETER THABETHE: Yes and we also checked compliance to tax because we may not interact with a company that is not registered, so the two key documents that we pulled from the system is your confirmation for company registration with company number and also the business of the company, that it does, that will be in the
20 company registration. Then we go into the tax system, we check the compliance of that particular company and those are the two exercises that we do.

ADV LEAH GCABASHE SC: So you were able to establish that the business of Estina was the business of carrying on commercial, industrial business, services, sales and support, this you will find,

Chairman, in Estina's memorandum of association which is in the Court records at page 565 and 566 – Court record, so it's the Court record file B, for Bernard, Court record file B, 566 has the main business of the company. Don't go – you're going too far Mr Thabethe, I'm peeping from this side. So the first document you have there is the certificate of incorporation, am I right, what you have there?

MR MBANA PETER THABETHE: Chair 565 is the memorandum of association.

ADV LEAH GCABASHE SC: Yes correct, then we are talking about
10 the same document, continue to...[intervention].

MR MBANA PETER THABETHE: But this is not the company you get from the system, this is not the document you get from the system.

CHAIRPERSON: Okay maybe you should tell me what you got from the system?

MR MBANA PETER THABETHE: The company registration document it tells you the name of the company, the director, what is it registered for, it's the – I'm just trying to get the correct name, it's the CIPRO...[intervention].

CHAIRPERSON: CIPRO document – CIPRO?

20 **MR MBANA PETER THABETHE:** Ja.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: That's the document I'm referring to Chair.

CHAIRPERSON: Yes okay.

ADV LEAH GCABASHE SC: That document told you what about the

business of the company?

MR MBANA PETER THABETHE: It indicated that the company was registered for agriculture, farming and related activities, I think there's a copy Chair, on page 586.

CHAIRPERSON: 586?

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: Okay, yes, the main business, main object, agriculture, farming and related activities.

ADV LEAH GCABASHE SC: You are aware that when this company
10 was registered, it was registered as a commercial company, what I'd read out earlier and that it then changed, not only the directors but it's main business in or about – and I'm doing this from memory, October 2012, I can simply confirm it but from memory, having read these papers, October 2012 but before October 2012 it was a commercial company doing business, doing – it had nothing to do with agriculture, would you dispute that?

MR MBANA PETER THABETHE: Chair I would not but the document in front of me tells me something different.

CHAIRPERSON: Yes maybe the question – maybe let's say this, this
20 document was it, in 2012, that you found it, you got it in the system?

MR MBANA PETER THABETHE: Chair for us to be able to deal with any company in Government, we had to deal – because the first thing that you do, you collect documentation because you must register them into the system in terms of Treasury, so you collect the documentation to make sure that they enter into the Government database, so you

cannot deal with them unless you have registered them into your database, so you will need these documents.

CHAIRPERSON: No, no I understand that, but that wasn't my question, I understand that you have been giving evidence since yesterday, so - no, no my question is, when was it when you got this document from your system or from CIPRO, it was in 2012, isn't it?

MR MBANA PETER THABETHE: It was in 2012 Chair.

CHAIRPERSON: Ja where about in terms of month, I'm not necessarily talking about dates, just the month?

10 **MR MBANA PETER THABETHE:** I would not Chair – because I do not directly deal with it, it's the supply chain part of the department that deals with it, so they do that and then they compile those documents, they don't necessarily bring it to me to say, this is what we have done because it is part of the exercise that they do.

ADV LEAH GCABASHE SC: Chair can I be of assistance, in term of the MOU that he says followed on after he received the letter and presumably after he did the verification exercise.

CHAIRPERSON: Oh just put that to him so that...[intervention].

ADV LEAH GCABASHE SC: So you would have checked on or tried
20 to verify who Estina was, after you received the letter from Estina saying that Paras is partner, after you had seen that the MOU between Estina and Paras had been signed, the one that you said was not the first MOU, yes or no?

MR MBANA PETER THABETHE: No Chair you do that after you have received the confirmation that this is the company that you are going to

be working with. Then you go and you check them into the system. Then if there is a problem in the system then you would know because they will come back to tell you look this company is not registered. Or this company is not tax compliant. Then that is the due diligence that we have to do.

ADV LEAH GCABASHE SC: I simply want to point you Chairman and Mr Thabethe you too to page 563 of the Court Record. 563 of the same Court Record.

MR MBANA PETER THABETHE: Thank you Chair.

10 **ADV LEAH GCABASHE SC:** Which is a notice of meeting and it reads as follows:

“Estina Proprietary Limited Registration number 2008/015033/07. Please take notice that a meeting of the members of the above company will be held at the registered offices of 144 Catherine Street, Block AA, First floor Grayston Ridge Office Park, Sandton at 8:30 to consider the following resolution.

- 20
1. That the main business – that the main business and main object be changed to agriculture, farming and related activities.
 2. The change of the registered office to be 144 Catherine Street, Block A, First Floor Grayston Ridge Office Park, Sandton, 2146 dated at Sandton on this [blank] day of October 2012 signed by Mr Kamal Vasram.”

CHAIRPERSON: I think maybe let us – maybe just to go straight to this. It would appear that prior to October Estina could not have – Estina's business or main business could not have been registered as agriculture, farming and related activities if this document is true.

MR MBANA PETER THABETHE: Is true that is correct Chair.

CHAIRPERSON: You accept that?

MR MBANA PETER THABETHE: I accept it Chair.

CHAIRPERSON: And you have said that you did not see the document at 586 yourself it was other people who would have looked at whatever
10 document needed to be looked at?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Is that right?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: But the question that arises is whether you were told by anybody that Estina's business was in the agricultural sector at the time the checking had to be done to find out who is Estina and what do they do? Were you told by somebody that or were you not told somebody that or were you told something else?

MR MBANA PETER THABETHE: No I was not told Chair the business
20 of the company but the compliance had to be checked if there was a problem with the compliance then I would have been told.

CHAIRPERSON: You – but were you told anything about whether it was tax compliant?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Were you told or were you not told about that part?

MR MBANA PETER THABETHE: Chair the – they would tell you if it is not compliant.

CHAIRPERSON: Oh if they did not tell you anything it would mean that it is compliant.

MR MBANA PETER THABETHE: It is compliant yes Chair.

CHAIRPERSON: Yes. But did you – were you not interested in understanding what Estina's business or main business is after you had been told that they would be involved in your Department's project?

MR MBANA PETER THABETHE: Not really Chair.

10 **CHAIRPERSON:** Why would you not be interested in that?

MR MBANA PETER THABETHE: Chair my interest was in Paras because that is where the expertise is.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Estina was being used as a company that is local.

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: That I would then be able to deal with. Because my interest was which I had verified was Paras. Paras was using Estina if I may mention it as a conduit to be able to do
20 business in South Africa.

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: That has been my key understanding Chair.

CHAIRPERSON: So your only interest in Estina was whether they were tax compliant?

MR MBANA PETER THABETHE: Yes because...

CHAIRPERSON: Nothing else?

MR MBANA PETER THABETHE: The expertise that I wanted was in Paras.

CHAIRPERSON: And what they were involved in you were not interested really that is Estina?

MR MBANA PETER THABETHE: Not really Chair.

CHAIRPERSON: And whether they were people who were doing illegal things and so on you were not interested in terms of their business?

10 **MR MBANA PETER THABETHE:** Chair it is a very difficult one to answer but...

CHAIRPERSON: Yes but I am interested. You are the head of a government department.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: The government department – this government department wants to engage in a very important project.

MR MBANA PETER THABETHE: Yes.

20 **CHAIRPERSON:** It has identified a company far away in India as the one that they want to be involved with but it is necessary that they should be a local company with which that Indian company gets involved. And I would have thought that to say the least you would be interested in whether this company is involved in the same sector and even if it is involved in the same sector what experience they – they have and what type of company are they and how are they run, who are their directors? Will you be dealing with a credible company? Will you

be dealing with credible people who run this company as a Provincial Government? Will your association – will the Provincial Government's association with this local company not embarrass the government? I would have thought that you would be interested in those types of things that is why I am asking.

MR MBANA PETER THABETHE: Ja thanks Chair. We have not done it because we had never done it with any other company that we have been dealing with. We have been dealing with companies we had never gone to that extent of researching requirements were that you check
10 compliance. So we – it did not come that we need to do that because we had never engaged in that exercise before.

CHAIRPERSON: But you – what you are confirming is that even if they were not – their business was not in the agricultural sector you did not mind getting them involved in this agricultural project?

MR MBANA PETER THABETHE: Yes Chair because they were not my main focus. I just needed them so that when – when we – if I may use an example? If we litigate we litigate a local company if we have got problems.

CHAIRPERSON: If you do not check what they do other than whether
20 they are tax compliant whether they are a credible company, whether they – they are run by credible people you might litigate with an entity that really you do not – you should not even be involved with because of the type of business they do or the type of people who run it. And you might litigate and find that they have got nothing. You might have lost a lot of money and now you litigate to – against them to recover

anything find that they have got nothing because you did not do your homework.

ADV LEAH GCABASHE SC: Chair we had never gone into the exercise before. That is why it is very difficult for me to respond. Because we had not done it before and it has never been a requirement.

CHAIRPERSON: Yes but put aside what a requirement is does it not make sense that you would need to do that. I mean if you as Mr Thabethe wanted to get into business with somebody and you were going to put a lot of your own money into a certain project would you
10 not want to do some homework on – on a person that was going to be your partner? Would you not want to do that?

MR MBANA PETER THABETHE: Chair.

CHAIRPERSON: To say what type of person is this? Will I be tainted if I am associated with him or her?

MR MBANA PETER THABETHE: Ja my response Chair would be we had dealt with companies in South Africa but we had done that research.

CHAIRPERSON: Yes but you are not answering my question. Would you as Mr Thabethe if you were wanting to go on a business project
20 and you were going to put your own money and a lot of your money in it would you not want to do a proper check on anybody that would be your partner in that project before you signed a deal to – to have that person into your project?

MR MBANA PETER THABETHE: I am not able to respond to the question Chair. I – because I...

CHAIRPERSON: What are you not able – well either – you can tell me that no, no as Mr Thabethe I am – if I want to go into business and I would just go into business with anybody I would not do any check. I would not check whether this person is credible. I would not check if this person has spent ten years in prison for fraud and so on. I would just go into business. If that is what you do you must tell me that is what you do.

MR MBANA PETER THABETHE: Chair I have...

CHAIRPERSON: I would not check if this person owns any property. I
10 would not check anything if we lose money because of decisions that he makes or things that he does in the project and I need to recover money from him he would have nothing. He does not own anything. You must tell me that is how you would do – do it if that is how you would do it.

MR MBANA PETER THABETHE: Chair personally in my business which I might have done it. I have never done it.

CHAIRPERSON: Yes but what I want here Mr Thabethe is your
assessment of what needs to be done before certain decisions are taken because remember in the example that I am talking about if you
20 were going to go into business as Mr Thabethe you would be needing to protect yourself. You would be needing to protect your money. You would be needing to protect maybe even your family in terms of financial security. Here you are using tax payers' money you are the head of a department. You have power to use millions of tax payers' money. You are put in that position as head of department because you

must be somebody who has a certain level of understanding of things. A certain level of experience maybe just in life but also about what the department is about, agriculture and you have got you know degrees in agriculture. Can you be trusted to make the right decisions and to do the right things before decisions are made in order to protect tax payers' money that is what it is about?

MR MBANA PETER THABETHE: Ja thank you Chair. In government there are regulations on how do you go about doing that and we limit ourselves to that and that is what we did.

10 **CHAIRPERSON**: So – so you

1. You did not do any such check and because you believe that it was not necessary to do the check – that kind of check.

Is that right?

MR MBANA PETER THABETHE: No, no, no Chair.

CHAIRPERSON: Ja it is important that you must – you must say if what I am saying I understand your evidence to be that you should say no, no that is not what I am saying. Yes.

MR MBANA PETER THABETHE: Yes I am not saying it was not necessary Chair I am saying it was not the requirement.

20 **CHAIRPERSON**: Yes but you see sometimes the law and government and regulations put requirements but sometimes particularly when you are in a senior position the people of South Africa must trust that you have the right judgment to say just complying with these requirements is not enough. I must ask for more particularly when there is a lot of tax payers' money that may be put into something.

MR MBANA PETER THABETHE: I hear you Chair. My difficulty is that I could not set my own requirements I had to live within what has been given. Hence we could not go beyond that because the difficulty in government you do less you have a problem. You do more you have a problem. You have to stay within the line do what is expected of you. So you never know when you will be wrong whether doing more or doing less so it is better to stay within what you are required to do.

CHAIRPERSON: So – so let us go back to necessary. You said you did not say it was not necessary you said it was not a requirement. As you
10 stand here, as you sit there now do you say it was necessary to have done the kind of check that I am talking about or do you say it was not necessary?

MR MBANA PETER THABETHE: I am trying to think Chair.

CHAIRPERSON: That is fine.

MR MBANA PETER THABETHE: Yes I am trying to think because I am trying to recollect on what basis would I say it was necessary or not necessary.

CHAIRPERSON: So your inclination is to say it was not necessary.

MR MBANA PETER THABETHE: I am trying to – yes I am trying to
20 think Chair on what basis would I – because if I say it was not necessary what informs my answer. That is why I say I would need to recollect properly and check whether the answer will be yes or no.

CHAIRPERSON: But your inclination is to think it was not necessary but that is not your final answer?

MR MBANA PETER THABETHE: No, no let me not respond to that

Chair.

CHAIRPERSON: Oh you would like time to think about it?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Okay. I see we have gone beyond Ms Gcabashe.

ADV LEAH GCABASHE SC: Yes Chairman.

CHAIRPERSON: I think let us take the lunch adjournment. We are at twenty past one we will resume at twenty past two. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

10 **INQUIRY RESUMES**:

CHAIRPERSON: Yes Ms Gcabashe are you ready?

ADV LEAH GCABASHE SC: Yes I am Chairman. Chairman before we - we resume I would like to indicate that when we broke at lunch time Mr Thabethe's attorneys - legal representatives approached me to say that they had objected or they were objecting to my use of the sentence that the reports - that the statement - that the affidavit was not written in the most elegant English.

20 They too felt that it was unnecessary. They explained that in fact their client had himself drafted that document. They had not drafted it - a lawyer had not drafted it. I accepted the explanation on who had drafted it Chairman. I also asked Mr Thabethe to come a little closer because I wanted to understand how he had received what I had said.

He indicated he had been hurt by the comment. Hence his reaction - his own reaction. I then unreservedly apologised to

Mr Thabethe because that was not the intention. It never is to make anybody uncomfortable about the manner in which they express themselves. I also asked him to please convey my apologies to his family because I live in a community of people Chairman and I assume he too lives in the community of family.

I then also made the offer that when we start I would publicly so that where his family is as well I would and whoever else heard the comment and interpreted it in the manner in which he did should know that it was not personal or intended to hurt and again Mr Thabethe my
10 apologies. I hear your sons are here as well.

Apologies because (African language) he is - he is an (African language) and really I am - I am not going to be soft as I indicated to you but the intention is not to use intemperate language or to affront your dignity in anyway and please if I do - if I do please object Mr Thabethe. I can only learn from it when I am corrected. It can only build my character. It cannot destroy me but I do apologise. Thank you Chairman.

CHAIRPERSON: Thank you Ms Gcabashe. I do not know whether you want to say anything Mr Thabethe or not really. I just do not want to
20 cut you off in case you wanted to say something in response.

MR MBANA PETER THABETHE: Chair I would only say I accept her apology.

CHAIRPERSON: Okay. Thank you very much.

ADV LEAH GCABASHE SC: Thank you.

CHAIRPERSON: Thank you Ms Gcabashe and thank you to

Mr Thabethe and his legal representatives. I am aware that the whole issue was handled in a very constructive manner from all sides. I just want to acknowledge that there is a lot of cooperation coming from all sides in regard to Mr Thabethe. His lawyers have been very cooperative throughout the proceedings. So Mr Thabethe has been helpful as well. Thank you.

ADV LEAH GCABASHE SC: Thank you Chair.

CHAIRPERSON: Thank you. We may proceed then.

ADV LEAH GCABASHE SC: Back to asking you some robust questions

10 Mr Thabethe. I know you are ready for them.

CHAIRPERSON: He has - he has never been readier.

ADV LEAH GCABASHE SC: No. He knows. No, no I did say to him and we agreed.

CHAIRPERSON: But before ...

ADV LEAH GCABASHE SC: Back to business as usual.

CHAIRPERSON: Before - before he - we continue he owes me an answer.

ADV LEAH GCABASHE SC: Oh, yes he does Chair.

20 **CHAIRPERSON:** Yes. Mr Thabethe you have had some time to reflect on the question I put before lunch. Have you got an answer?

MR MBANA PETER THABETHE: Ja, thank - thank you Chair. I - I would agree with you Chair that even over and above the requirement one would additionally do additional search of information. So there is nothing stopping anybody to do so.

CHAIRPERSON: Yes. No, thanks and looking back you would concede

that you should therefore have done much more than just checking whether Estina was tax compliant?

MR MBANA PETER THABETHE: Yes Chair. Given the current situation I would concede that we could have done an additional check.

CHAIRPERSON: Well could have done is one thing but should you have done that is - that is the more - one I am more interested in. So in other words do you - do you concede that you should have done more than just checking whether they were tax compliant?

MR MBANA PETER THABETHE: I agree Chair.

- 10 **CHAIRPERSON:** Yes and - and one reason why it would be important to do that because you - you referred to litigation for example earlier on you know. If you wanted to recover some money from Estina as a result of being involved with them in the project and you found that they have got nothing. Then the department would - will - would suffer a financial loss that may have been recoverable if it was a company that had the right financial base and so on. You - you appreciate that?

MR MBANA PETER THABETHE: Yes Chair.

CHAIRPERSON: Okay. Thank you.

- ADV LEAH GCABASHE SC:** Thank you Chairman. Mr Thabethe can I
20 just add my views on exactly the same topic and also it is something for you to - to reflect on and I hope give us a response. You see four issues arise for me in relation to the due diligence on Estina. The first issue is interrogating the nature of the business that they conducted.

If you want to have reference to the documentation you - you find the due reference on page 5-3-5 of the court record. I do not think

it is necessary. We dealt with it earlier. Unless you really want to look at that document and again at 5-4-1. The second issue that arises is the address of the Sole Director - Mr Kamal Vasram. It is a Sunninghill address.

So when you received the - the letter confirming they were the partners to Paras. What I would have thought would be you find the CIPC details or the Certificate of Incorporation and find that in fact the address of this Director appears to be one that is - could possibly be one he is running from home. I am not saying it is in fact one where he
10 lives but the address is not the same as the address that appears on the documents in October 2012.

The third issue Mr Thabethe is the - of course the change in Director. Mr Kamal Vasram changed and Su Jong took over as a Director. These issues are important because you have set up an Agri-BEE or you are intending to set up an Agri-BEE entity that would benefit emerging farmers.

So if Estina is as a company not completely above board number one, if you are putting something close to 500 million - well let us call it 300. Let me take the Paras bit off. 300 million into a project.
20 You want to be sure about who you are trading with, who you are dealing with. Am I making sense to you and this is only in terms of why I would have expected you to interrogate the issues. That is the only reason I give you the history.

MR MBANA PETER THABETHE: Chair I am - I am ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: It is a statement. I have not ...

CHAIRPERSON: Okay, alright. I was - I was thinking whether to say Ms Gcabashe maybe you should take those three one by one. Maybe it might be easier to - to follow. I was - I had forgotten which - which was the - I - I was - I had forgotten that which are the first and the second. So I am wondering whether that might ...

ADV LEAH GCABASHE SC: Have ...

CHAIRPERSON: Have helped - that might have also caused Mr Thabethe some uncertainty.

10 **ADV LEAH GCABASHE SC:** My apologies.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: It is because I am not trying to rush. The issues you - you have identified Chairman as you interrogate them with Mr Thabethe.

CHAIRPERSON: Yes, yes, yes.

ADV LEAH GCABASHE SC: I am simply confirming that as an evidence leader.

CHAIRPERSON: Yes, okay. Okay.

ADV LEAH GCABASHE SC: I make common cause with you.

20 **CHAIRPERSON:** And ...

ADV LEAH GCABASHE SC: That is really all.

CHAIRPERSON: And you are adding the figure - the amount that ...

ADV LEAH GCABASHE SC: And - and ...

CHAIRPERSON: He was - the department would put it in.

ADV LEAH GCABASHE SC: Ja.

CHAIRPERSON: So - so Mr Thabethe the - basically what Ms Gcabashe is saying is when you as the Head of Department were going to take - take R300-and something million of taxpayers money and put it into a project with this entity - Estina. She would also expect you to really check to a certain - check much more than what you did and she refers to the address of the Director and so on.

So - but she - she is following upon on what you and I discussed earlier. I take it that you - your answer would be having reflected you - you agree that when you are going to put so much of
10 taxpayers' money into a project you should do a better check than the one that you did.

MR MBANA PETER THABETHE: Ja. Chair - Chair I - I have agreed on - on that. The - the only input I would want to make is that it should not sound as if we were going to put this 300 million at a go and it disappears.

CHAIRPERSON: No, no that is - that - that is a point that you - you are entitled to make, ja.

MR MBANA PETER THABETHE: Yes Chair. I would - I would only say if there were to be anything wrong ...

20 **CHAIRPERSON:** Hm.

MR MBANA PETER THABETHE: It would not be that entire amount because ...

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: You would pay money, something done ...

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: If you are happy then you proceed.

CHAIRPERSON: Hm, hm, hm.

MR MBANA PETER THABETHE: So it could be a certain amount but not entirely the full amount.

CHAIRPERSON: Yes, *ja*. Okay.

ADV LEAH GCABASHE SC: And I accept that Mr Thabethe, *ja*.

MR MBANA PETER THABETHE: Thank you.

ADV LEAH GCABASHE SC: But let us go back to page 2-3-9 of HH10.

10 That is your statement - your affidavit. Page 2-3-9, your statement or affidavit. It is the 2017 one.

MR MBANA PETER THABETHE: Hm, the ...

CHAIRPERSON: That is the page that follows the one that has paragraph 12, hey?

ADV LEAH GCABASHE SC: Correct Chairman.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: In fact it is - most of paragraph 12 is on this page.

20 **CHAIRPERSON:** Is on that page, *ja*. It is the page that has got most of paragraph 12 that we have been dealing with - page 2-3-9 the red 2-3-9.

MR MBANA PETER THABETHE: I have got it Chair.

ADV LEAH GCABASHE SC: We have dealt with 12. We have dealt with paragraph 13.

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: We are now dealing with the agreement that Estina brought to you.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: And that is the agreement of 5 June 2012?

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: Please correct me if I am wrong my understanding is that the agreement as drafted was then taken to the State Law Advisors. Am I correct?

CHAIRPERSON: I am sorry. You are not referring to the contents of
10 the agreement. You are just - you are on page 2-3-9 but you are making reference to the agreement?

ADV LEAH GCABASHE SC: Yes and I am at page ...

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Paragraph 14 Chair.

CHAIRPERSON: Okay. Thank you.

ADV LEAH GCABASHE SC: I will point Mr Thabethe to the actual agreement in a few minutes.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: It is just understanding who drafted it.

20 **MR MBANA PETER THABETHE:** Ja. Chair the - the paragraph 14 she is referring to ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Is - is not taking all the - the steps that - I think it - it is at the end of what has happened.

CHAIRPERSON: Yes, yes.

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: *Ja.*

MR MBANA PETER THABETHE: It is at the end of what has happened.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: Leave ...

CHAIRPERSON: But her question is who drafted the agreement that paragraph 14 refers to.

MR MBANA PETER THABETHE: Chair the - the original agreement was drafted by Estina.

10 **CHAIRPERSON:** Okay.

ADV LEAH GCABASHE SC: Now Mr Thabethe help me with this one. I have always understood that where Government enters into contracts - into agreements - Government will draft it in a way - that agreement - in a way that will protect Government. The other party will not draft it. Am I wrong about that?

MR MBANA PETER THABETHE: Not all the time Chair. Where you have capacity you do draft and where you do not have the capacity the other party can also draft.

ADV LEAH GCABASHE SC: Was there an agreement between
20 yourselves and either Paras or Estina as to who would draft the original affidavit?

MR MBANA PETER THABETHE: They had indicated Chair that they would - they would assist in drafting the agreement and then present it to us.

ADV LEAH GCABASHE SC: Where ...?

CHAIRPERSON: Well I guess - I guess that must mean not that they would assist if they were going to present it to you. They would draft it ...

MR MBANA PETER THABETHE: They would draft, *ja*.

CHAIRPERSON: And then present it to you?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: *Ja*.

ADV LEAH GCABASHE SC: Now I am interested in your comment that this was really at the end of a process. I take it that you are indicating
10 that you would have had discussions with them about what should go into the agreement Mr Thabethe?

MR MBANA PETER THABETHE: That - that is correct Chair because we - we already both of us had documents at hand. That document would have been then in line with whatever documents that we - we were having.

ADV LEAH GCABASHE SC: When you speak of having documents in hand you would have had your own draft agreement and they would have had their own before the final agreement was generated by Estina?

20 **MR MBANA PETER THABETHE:** No Chair.

ADV LEAH GCABASHE SC: Please explain Mr Thabethe.

MR MBANA PETER THABETHE: Document - documents mean you - you all have (intervenes).

CHAIRPERSON: Notes?

MR MBANA PETER THABETHE: You ...

CHAIRPERSON: Notes you mean. Like your own notes ...

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: Of what should go into the agreement?

MR MBANA PETER THABETHE: Ja.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: We - we all know what the intention is and it is the same. Then the - the agreement can be drafted.

ADV LEAH GCABASHE SC: Did - do you know whether Paras had anything at all to do with the drafting of this original agreement of
10 5 June?

MR MBANA PETER THABETHE: Chair my - in - in all our documents my understanding of interacting with Estina was interacting with Paras because it was their company identified presented to us.

CHAIRPERSON: But the question is whether you knew whether this agreement was drafted by Paras without anybody from - no - by Estina without anybody from Paras being involved in that drafting or in - in the preparation of that document or is the position that you do not know but for your purposes as long as it came from Estina you took it as coming from Paras.

20 **MR MBANA PETER THABETHE:** Yes Chair. Your last explanation ...

CHAIRPERSON: Yes. That is the correct one?

MR MBANA PETER THABETHE: Is - is the correct one yes.

CHAIRPERSON: So you did not know whether anybody from Paras had been involved in the drafting of the agreement but as long as it - it came from Estina you took it that for all intents and purposes it was

coming from Paras?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: The reason that becomes an important consideration Mr Thabethe is because my reading of the Memorandum of Understanding between Paras and Estina is that it is a one year Memorandum of Understanding. Was that your understanding as well?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: The second issue arising from the
10 Memorandum of Understanding was that Estina would be the agent of Paras. Was that your understanding?

MR MBANA PETER THABETHE: That - that is correct Chair.

ADV LEAH GCABASHE SC: The third issue that arises from the agreement is that Estina would look for business opportunities including in the agricultural sector for Paras. Was that your understanding?

MR MBANA PETER THABETHE: I am - I am trying to think Chair. Not outside this agreement. I would not be interested in other businesses that they would have looked for Paras outside what we were doing.

20 **ADV LEAH GCABASHE SC:** Just for the sake of convenience the Memorandum of Agreement is in Reference Bundle A. So it is reference bundle - Reference Bundle A at page 284.

MR MBANA PETER THABETHE: (Indistinct).

ADV LEAH GCABASHE SC: Your mic Mr Thabethe. Thank you. I am looking at page 289 of that document where Clause 4 deals with the

duties and responsibilities of Estina. I will not go through all of them but simply highlight that the first one says:

“Estina shall identify and secure opportunities whereby the company can participate for the project implementation in both Government and private sector.”

You agree that is what is recorded here?

MR MBANA PETER THABETHE: That - that is correct.

ADV LEAH GCABASHE SC: I really do not want to go into all of them
10 because I do not believe it is necessary. I am just illustrating the point I make about Estina being an agent looking for business opportunities for Paras - the company being Paras.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: But let us move beyond this document and of course this particular document - I beg your pardon Mr Thabethe. I am looking at page 2-9-5 right now and you have Ms Sanjeev Gautam who signed on behalf of Estina and you have Mr Gajinder Kumar who signed on behalf of Paras and though my copy is a poor copy I believe this document was signed in May 2012 but I will correct that if I am
20 wrong if we find a better copy. The copy I have is rather poor.

CHAIRPERSON: Mr Thabethe might be able to say whether that was the correct month. Do you have any recollection ...

MR MBANA PETER THABETHE: (Intervenes).

CHAIRPERSON: Whether it was signed in May?

MR MBANA PETER THABETHE: I - I think it is correct Chair.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Yes. The copy is very poor but I - I think it is correct.

CHAIRPERSON: Okay, alright.

ADV LEAH GCABASHE SC: In fact if I might correct myself my colleague ...

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: Has just pointed out that if we look at page 285 Chairman.

10 **CHAIRPERSON:** Huh-uh.

ADV LEAH GCABASHE SC: It says that the Memorandum of Understanding is dated 11 April 2012.

MR MBANA PETER THABETHE: Oh, okay.

ADV LEAH GCABASHE SC: So at least it is in the same - more or less same ballpark period.

CHAIRPERSON: Yes. Well that - would - would that necessarily have been the date of signature or it could be a date of the preparation of the document and - and it does not matter probably for our purposes but I am just saying there may - may well be correct if maybe if there
20 are different dates for preparation and signature?

ADV LEAH GCABASHE SC: Yes Chair.

CHAIRPERSON: It really does not matter.

ADV LEAH GCABASHE SC: We will bring it to your attention ...

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: If we do find a better copy.

CHAIRPERSON: Ja. Okay.

ADV LEAH GCABASHE SC: Thank you. So again my colleague is making the - the point that at page 286 just to deal with the date.

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: At page 286 you have under definitions MOU date as meaning and referring to 11 April 2011 being the date of execution of this MOU.

CHAIRPERSON: Okay, okay.

ADV LEAH GCABASHE SC: So at least we - we do not need to debate
10 that date. The agreement - the very first agreement - I am just looking
at the cover page which is page 6-1-9 Mr Thabethe. It is called a
Partnership Agreement between the Department of Agriculture Free
State Province South Africa and Estina (Pty) Ltd. Are you there?

CHAIRPERSON: I am sorry. I also want to get there. 6-1-9?

ADV LEAH GCABASHE SC: Of Reference ...

CHAIRPERSON: A, Reference Bundle A?

ADV LEAH GCABASHE SC: B, Chairman.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: 6-1-9 of Reference B.

20 **CHAIRPERSON:** Okay. Did - did you know whether we will still need
the court record bundles ...

ADV LEAH GCABASHE SC: It is actually ...

CHAIRPERSON: This afternoon?

ADV LEAH GCABASHE SC: Yes please Chairman.

CHAIRPERSON: Oh.

ADV LEAH GCABASHE SC: Do not put them too far away.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Thank you.

CHAIRPERSON: Okay. Bring it to me. I will - must the - I will find the page.

MR MBANA PETER THABETHE: if - if you can repeat the page sir.

ADV LEAH GCABASHE SC: The page number is 6-1-9.

CHAIRPERSON: Ja. 6-1-9 on Reference Bundle B.

ADV LEAH GCABASHE SC: Correct Chairman. 6-1-9 is written on the
10 top right hand corner. Can I ask my colleague - are you good?

MR MBANA PETER THABETHE: I have - I have got it Chair.

ADV LEAH GCABASHE SC: Are you good? Thank you. So I was just reading the first two entries there. So it is a confidential document. It is a Partnership Agreement between the Department of Agriculture Free State Province South Africa and Estina (Pty) Ltd. I would like to pause there and ask was this by agreement that you would have Estina (Pty) Ltd written here rather than Paras.

MR MBANA PETER THABETHE: Yes. Yes Chair. Remember my - my original explanation that if - if you go to this kind of agreement you
20 would not then include the international company. You will only then put it with the local company.

ADV LEAH GCABASHE SC: And you explained then that because of jurisdictional issues you want to be sue the local partner?

MR MBANA PETER THABETHE: That is - that is correct.

ADV LEAH GCABASHE SC: And that is why by agreement you then

had ...

MR MBANA PETER THABETHE: With Estina.

ADV LEAH GCABASHE SC: Formulated it this way?

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: I am going further down and you say here:

“In relation to the implementation of a dairy project
at Vrede.”

Can I pause again at Vrede? Now I know that the - the broad
discussions you had had identified Vrede.

10 **MR MBANA PETER THABETHE:** That is correct Chair.

ADV LEAH GCABASHE SC: I am - that is correct; but you had not
identified the land that you wanted to allocate to this farm or had you?

MR MBANA PETER THABETHE: We - we had already done so Chair.

ADV LEAH GCABASHE SC: You had not gone through the formalities
of acquiring that land as at June 2012?

MR MBANA PETER THABETHE: Not - not yet Chair. It - it has not yet
been formally made available to us but - I - I want to use the correct
word. In - in discussion there - there was - there were no objection to
us having the land.

20 **ADV LEAH GCABASHE SC:** Who would you have had this discussions
with Mr Thabethe and please I ask you this because on my record your
visit to the Phumelela Local Municipality was on 12 June 2012? I do
not want to confuse you. So who did you have these discussions with
prior to signing this 5 June agreement?

MR MBANA PETER THABETHE: Chair, we - we had already been

having interaction with the municipality and the intended beneficiaries prior to this because by the time we were formalising we had already done a lot of meetings. Going into Vrede Municipality organising meetings for us, talking also to the beneficiaries.

So already the - the land in question was already available but the formalisation of the release of the land had not been done which we then later requested that it be formalised.

ADV LEAH GCABASHE SC: Two - two things arise Mr Thabethe and I am going to chop them up.

10 **MR MBANA PETER THABETHE:** Okay.

ADV LEAH GCABASHE SC: I will start with the beneficiary issue. My understanding is that as at 5 June there was no formality with regard to who the list of beneficiaries might be. Please correct me if I am wrong.

MR MBANA PETER THABETHE: Chair we had had the - the list of - of who will be the - the beneficiaries of the project because we had interacted with them. We had categorised them into groups. There were those that were interested in pigs. There were those that were interested in vegetables and so on. So we had had meetings before.

So we had already known which of those that would have interest and
20 we had a list of all of them even before we had formally went back to them to say now give us your names and ID numbers for the purpose of financing.

ADV LEAH GCABASHE SC: Mr Thabethe I want to interrogate the informality of that, I agree with you, you had been to Thembalishe township.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: With MEC Zwane at the time and other officials.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: To speak with beneficiaries, I agree.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: You have had asked them to indicate their areas of interest as you have just said, who wanted cattle, farming, who was interested in poultry etcetera, etcetera.

10 **MR MBANA PETER THABETHE:** That is correct Chair.

ADV LEAH GCABASHE SC: So this is why I say I am taking issue with the informality of the approach and the status of those people as beneficiaries of a rather important agreement where the formality of registering them as beneficiaries had not been completed. Are you with me?

MR MBANA PETER THABETHE: Ja, Chair we had the list of the beneficiaries, my understanding of formally registering them should only come when the National Department says to us we agree in financing this endeavour with you, provide us then with your list of
20 beneficiaries with the following details. It is only then that you go and collect, it does not mean that we did not know that, we knew them but in the form required we had then to go back and collect that additional information, they knew themselves also, so it was easy for us to call them and collect the required information.

ADV LEAH GCABASHE SC: You see Mr Thabethe my difficulty with

that proposition is that fortunately one can look at the history now and find that to date in law they have never been beneficiaries, yet your intention when you went to see them was to make them beneficiaries of this program.

CHAIRPERSON: Well maybe before he responds maybe the in law part might confuse because he is not a lawyer, I am saying you are not a lawyer Mr Thabethe even though you did not tell me you are not one, maybe you are, but can I take it that you are not?

MR MBANA PETER THABETHE: No I am not Chair.

10 **CHAIRPERSON:** Yes, so he might not be able to say whether you are correct or not correct when you say in law there have never been beneficiaries, so you might wish to put it differently.

ADV LEAH GCABASHE SC: Thank you Chairman. I will do that. All I am communicating Mr Thabethe is they have no legal recourse as beneficiaries, they did not when you were there in June of 2012 and earlier actually today they do not have a legal document that makes them beneficiaries, but I know your intention from what I have read was that you wanted emerging farmers to be beneficiaries.

MR MBANA PETER THABETHE: Ja Chair the processes that should
20 have unfolded maybe to achieve what is called in law.

CHAIRPERSON: The in law part?

MR MBANA PETER THABETHE: The in law part.

CHAIRPERSON: Ja.

MR MBANA PETER THABETHE: Did not happen because we were in the beginning of the project and one of the responsibilities that we had

requested Estina to do was to register a company on their behalf where you will then put them in and officially then make them beneficiaries, but we did not get to that stage. The intention was correct but we did not get there.

ADV LEAH GCABASHE SC: You see Mr Thabethe when I look at the face of this document the only beneficiary here is Estina because it is the registered company that is in business with the Department of Agriculture, you would agree with that?

MR MBANA PETER THABETHE: Chair I would not agree, because we
10 have just agreed now that the relationship was to stand for a year, after that the company of the beneficiaries will take over, but what I am explaining is that we did not get to the – the interventions were before we could get there, then the projects came to a stall.

CHAIRPERSON: Yes but what counsel is saying is as at the 5th of June 2012 when you on behalf of the Department of Agriculture signed – well one of you I think may have signed later, but at any rate as at the time of the signing of this agreement between the Department of Agriculture and Estina beyond the beneficiary in terms of this agreement, maybe I should not say beneficiary.

20 The only entity or person that really stood to benefit in terms of this agreement was Estina, and not anybody that you may have contemplated would ultimately benefit, simply on the face of the agreement, but I think that – I hope I have put it accurately ,that that is the gist of the proposition.

MR MBANA PETER THABETHE: I would agree Chair with your

statement if it was not covered in the agreements side with Estina.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: But that was covered in the agreement that they would not be the only beneficiaries, but they would be ...[intervenes]

CHAIRPERSON: Yes, in the future.

MR MBANA PETER THABETHE: In future yes, so it has been covered in the agreement signed by that time.

CHAIRPERSON: Ja, for the future.

10 **MR MBANA PETER THABETHE:** For the future yes.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: You see Mr Thabethe I am again still looking at the front cover page of the agreement, you have a company called Zana Investments Pty Limited trading as Mahoma Mobung Dairy Project. I don't know if you are able to explain who Zana would have been and what the intention was in setting out the last bit trading Mahoma Mobung Dairy Project. I fail to understand exactly what this is about.

20 **MR MBANA PETER THABETHE:** Chair this is exactly what I have been explaining, because we wanted to make sure that this company becomes the beneficiaries' company so hence I was saying we register this company so that we include it, so that Estina do not become the sole shareholder but we are saying in this agreement Zana Investment become the stipulated aggregate BEE where we are going to put the beneficiaries.

CHAIRPERSON: Is that Zana Investment Pty Limited that you say would be the vehicle to benefit the beneficiaries?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Mmm.

ADV LEAH GCABASHE SC: Can you recall Mr Thabethe who the director or directors in the plural of Zana Investments might have been?

MR MBANA PETER THABETHE: Chair it was a shell company, we wanted it registered so that once we have completed all the processes then we will take all the beneficiaries and register them into the
10 company, so it – like we have indicated it is a shell company, it is not yet completed.

ADV LEAH GCABASHE SC: Mr Thabethe the interest I have in this shareholding structure really is quite important and it is important because fortunately we have the benefit of the history what is now – what happened over the years. As you correctly pointed out earlier government put in money in phases into this project, that is correct?

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: And the idea was to put 114million into this particular project over a three year period?

20 **MR MBANA PETER THABETHE:** That is correct Chair.

ADV LEAH GCABASHE SC: The beneficiaries, the 100 beneficiaries of Vrede, Memele and Warden who have no legal standing at all have not seen any benefit from the 114million that you put in, in the first year or the second. You would agree with that?

MR MBANA PETER THABETHE: Chair let me go back again.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: This agreement in front of us was the original proposed agreement that I had agreed on. We had already interacted with the farmers so that they have an understanding that they are going to become beneficiaries, and we had registered the company and we had incorporated the company into the agreement.

CHAIRPERSON: That is Zana?

MR MBANA PETER THABETHE: That is Zana. The second agreement Chair, I want to get to that.

10 **ADV LEAH GCABASHE SC:** I am happy with that.

MR MBANA PETER THABETHE: I want to get to that. When we were activating the process this agreement was then given to the State Law Advisors which were not comfortable with this agreement. A new agreement was drafted that I then signed from the State Law Advisors. That agreement does not look like, I was very comfortable with this first agreement because it covered all the elements that I was looking at, but if the legal people advise you this is the correct one to sign then I signed that one, but still with the intent, purpose, of achieving this, because I have been advised legally that this agreement did not protect
20 the State, hence the second agreement.

CHAIRPERSON: Well Ms Gcabashe said she was happy that you were going to the second agreement and that might be because she plans to go there.

ADV LEAH GCABASHE SC: It is because the issue I want to raise DCJ ...[intervenes]

CHAIRPERSON: Goes with that.

ADV LEAH GCABASHE SC: It is really related to both agreements.

CHAIRPERSON: Yes, let me allow you to ask and then – ja.

ADV LEAH GCABASHE SC: Thank you DCJ. And that is really the issue around the deviation, because this arrangement, I am still on my page 619, the cover page, which sets out the parties, this arrangement was not done in terms of the SCM policy document that we discussed yesterday. Your view please?

MR MBANA PETER THABETHE: Hence Chair I wanted to object
10 yesterday because I saw it was coming.

CHAIRPERSON: No you did not want to object, you wanted to put your views and we said you would get a chance.

MR MBANA PETER THABETHE: Yes, yesterday I was told I should not go there yet.

CHAIRPERSON: Yes, so you have been ...[intervenes]

MR MBANA PETER THABETHE: Now I see it's going there.

CHAIRPERSON: So you have been waiting for the opportunity.

MR MBANA PETER THABETHE: Yes Chair.

CHAIRPERSON: Ja, it is your opportunity, use it.

20 **ADV LEAH GCABASHE SC:** Please.

MR MBANA PETER THABETHE: Yes Chair because I wanted to take you through this, we have gone through a number of processes in the supply chain processes of providing support to farmers. I will be very short in this.

CHAIRPERSON: Just one second, I am debating in my own mind with

myself Ms Gcabashe, whether what I wanted to deal with I should deal with now, because once you go to the issue of the deviation that's quite a very important part and it might take us some time, or what is your feeling?

ADV LEAH GCABASHE SC: Please ask your question Chairman because I know that Mr Thabethe has been waiting for mine since yesterday.

CHAIRPERSON: So I will give you the chance to the deal with that, but let me ask a few questions on the first agreement first. Am I right to
10 think that this agreement of the 5th of July, I think one of you signed it on the 7th.

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: Ja, one of you signed on the 5th, the other one on the 7th, but I will refer to it as ...[intervenes]

ADV LEAH GCABASHE SC: That is correct Chair.

CHAIRPERSON: Yes, the agreement of the 5th. Is the position that you signed it without getting a lawyer to look at it and see whether it is an order if you sign it for the purpose for which you were seeking to sign it, that would be okay.

20 **MR MBANA PETER THABETHE:** Chair in departments you have legal people but not at a level that you may require, but when I went through it, it covered the intent of what we have been looking for. We could not see any major issue, I also asked this to the State Law Advisors if there was anything in particular that they would have raised which was a challenge.

The only issue that they raised to us was that it did not protect the State, that was the issue that they had raised to me.

CHAIRPERSON: But ...[intervenes]

ADV LEAH GCABASHE SC: The mic Chairman.

CHAIRPERSON: Of course that is a major issue, is it not?

MR MBANA PETER THABETHE: It is Chair but given the position that we did not want this to run very long, because we wanted a special purpose vehicle which is Zana to eventually take over, because that will be the company where the money would go, so this was about initiating
10 the process, get it going, getting the company registered, so that when we do finances of the farmers it goes to the correct place.

CHAIRPERSON: But was there no money that the Department was going to put into this before that vehicle was put in place?

MR MBANA PETER THABETHE: There was Chair.

CHAIRPERSON: A lot of money is it not?

MR MBANA PETER THABETHE: It was money but not a substantial part of the money.

CHAIRPERSON: How much was it?

MR MBANA PETER THABETHE: There was R30million that we wanted
20 to put in so that it sets up the process going.

CHAIRPERSON: You say that is not a lot of money?

MR MBANA PETER THABETHE: In comparison with the total cost of the project Chair.

CHAIRPERSON: Okay, okay, alright, yes, but the issue of the interest of the government in the agreement would be a major issue because

what it could mean is that Government, if the agreement were to continue as is it could mean that Government could lose millions of money because the agreement does not protect Government's interests is it not?

MR MBANA PETER THABETHE: That ...[intervenes]

CHAIRPERSON: Is that proposition correct?

MR MBANA PETER THABETHE: Chair that was the advice that I was given.

CHAIRPERSON: Yes, and you accepted the advice?

10 **MR MBANA PETER THABETHE:** I accepted the advice Chair.

CHAIRPERSON: Yes, but you say now you are at the point where you are interacting with the State Law Advisors after you have signed the agreement. I am at the time when – before you signed the agreement, so my question is did it not occur to you that before I sign such an agreement that could see Government put in millions of money I should get advice from maybe much more senior lawyers than the ones you had, maybe let me ask the internal lawyer or legal person that dealt with the matter in your department are you able to indicate what kind of seniority he had or she had at the time?

20 **MR MBANA PETER THABETHE:** The lawyer was at a Deputy Director level Chair.

CHAIRPERSON: A Deputy Director level?

MR MBANA PETER THABETHE: Yes and the lawyer, the State Law Advisors in the office of the Premier was at the DDG level.

CHAIRPERSON: Deputy Director General level?

MR MBANA PETER THABETHE: Deputy Director General level yes.

CHAIRPERSON: So the difference was quite huge.

MR MBANA PETER THABETHE: It was quite big Chair.

CHAIRPERSON: And the lawyer that you had internally was it somebody who was an admitted attorney, an admitted advocate, was it somebody who had practiced, who had not practiced or – do you know?

MR MBANA PETER THABETHE: No I do not know Chair.

CHAIRPERSON: You do not know?

MR MBANA PETER THABETHE: Yes.

10 **CHAIRPERSON:** Do you know how long he had been or she had been a lawyer?

MR MBANA PETER THABETHE: Normally Chair although I will not be precise the people that will be serving in government would be those that are fresh from school.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: So I would not be familiar with their process.

CHAIRPERSON: The particular one, but you – but it is fair to say that person would have been quite junior?

20 **MR MBANA PETER THABETHE:** That's correct Chair.

CHAIRPERSON: Yes. My concern therefore is why as head of department you would have seen it as fine to rely on the advice of such a junior person for such an important project involving millions of Rands and not go to an experienced lawyer, maybe the State Law Advisors who were quite senior?

MR MBANA PETER THABETHE: Chair even though I would not have followed the process at some stage you have an understanding that if a lawyer does not feel comfortable they consult, that's what I know, a number of times they will tell me that we are busy consulting, sometimes they will consult senior advocates and so on and so on. I was not sure in this case if they would have done the consultation or not, but my belief is that if they feel uncomfortable with any activity they do consultation.

CHAIRPERSON: You see that presents me with a difficulty Mr
10 Thabethe because it says to me you may have consulted somebody who may have left varsity just a few years before, had not practiced law, and that person may not even have consulted any more experienced lawyer and you gave this person this very important agreement, they looked at it, just because they did not convey to you that they were uncomfortable you were comfortable.

I would have thought that the important thing would not be whether the lawyer is comfortable, it is whether you, the client, is comfortable that this person is the type of person who has got the knowledge, experience and expertise that would make you comfortable
20 to base your decisions on his or her advice.

Do you understand where I am coming from?

MR MBANA PETER THABETHE: I understand Chair.

CHAIRPERSON: Yes so in other words I should not say look at this agreement tell me if it is fine and if the person says I think it is fine and does not indicate any discomfort then I am very comfortable. No, I

want to know about how much does that person know in this field for me to be able to be comfortable.

If I do not know how much the person knows I have no grounds to be comfortable, but if I speak to other people whose opinion I trust in the area and they say no, no, so and so is a very good lawyer, he is experienced in these matters, he has been around for a long time, then you might have comfort, or if you know more about that person, but where it is somebody you don't know, you just know they are in the department, you know they very junior, that you know, and this
10 agreement relates to a very important project in the department and in the Province, but you are happy to rely on their advice. That is my difficulty.

I would have thought that your judgment would have said this is a very important project, if I am going to sign agreement I must have advice from senior and experienced lawyers, do you want to comment on that?

MR MBANA PETER THABETHE: Yes, thank you Chair. I agree with you Chair, that would have been a good thing to do, in a number of instances we had referred some work, the lawyers have indicated that
20 they would need an external lawyer to assist them.

Then I developed this understanding that the lawyer would indicate to you if I am not comfortable with this I need additional help. A number of them where they have been comfortable we proceeded with that, so I trusted the judgment that they would then provide to me, but I agree with you I could have also used my own judgment.

CHAIRPERSON: And you accept, don't you, that looking back it was wrong to entrust something so important or to base your decisions to sign or not to sign this agreement on the basis of the advice of somebody so junior and somebody whose experience and expertise really in the legal field you did not know?

MR MBANA PETER THABETHE: I agree Chair, I already accepted it when the State Law Advisors advised me in this regard.

CHAIRPERSON: Yes, okay thank you.

ADV LEAH GCABASHE SC: Thank you Chairman. Mr Thabethe you
10 were in the process of giving an explanation on the deviation, just as an opening gambit, there are a number of issues that arise.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: But you were about to start explaining the deviation.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Yes, go ahead sir.

MR MBANA PETER THABETHE: Because this practice Chair was not only the practice in the Vrede Dairy project, this was the general practice.

20 **CHAIRPERSON:** Okay, please remind me what practice you are referring to, I may have missed something?

MR MBANA PETER THABETHE: The one that I want to explain Chair.

CHAIRPERSON: Oh, okay, alright.

MR MBANA PETER THABETHE: Yes, yes.

CHAIRPERSON: Okay.

MR MBANA PETER THABETHE: Money gets allocated to the Department to provide support to farmers, we ...[intervenes]

ADV LEAH GCABASHE SC: I'm sorry Mr Thabethe, if you could just, we know that there are different sources, it will help us if you are specific about which monies would come for farmers, just with each allocation just explain where it comes from, sorry to interrupt.

MR MBANA PETER THABETHE: We – there were three kinds of allocations Chair, the Provincial equitable share, which was termed Mahoma Mobung, would be allocated to the Department for farmer support.

10

From the National Department of Agriculture we were receiving conditional grant. The one called CASP which was the Conditional Agricultural Support Programme – Comprehensive Agricultural Support Programme. And there was another conditional grant which was called Ilima Letsema. These two were part of the DoRA allocations that will then come with conditions to us. A very strict condition that will be earmarked only for the benefit of the farmer. We would then in the Department allocate this money under transfers.

ADV LEAH GCABASHE SC: Why would you allocate it under transfers? I do not want you to lose your train of thought sorry but it is important for us to understand that.

20

MR MBANA PETER THABETHE: Thank you Chair. We – we had allocated the money before in the Department under transfers and we will then receive the money as approved by National and the Province then we transfer the money directly to the beneficiary to implement the

project. I do not want to go into details but we struggled. We moved to the next as advised. We allocated the money...

CHAIRPERSON: Okay – okay I am sorry Mr Thabethe I do not want to – you to go too far without me understanding this part. There were funds that you would receive from different sources or maybe from one source. There were funds that you received from Treasury and were there funds that you received also from the National Department of Agriculture?

MR MBANA PETER THABETHE: The – Chair...

10 **CHAIRPERSON**: Generally speaking.

MR MBANA PETER THABETHE: Ja there were three...

CHAIRPERSON: Sources.

MR MBANA PETER THABETHE: Sources of the funds of support of farmers.

CHAIRPERSON: Oh in particular funds provided to give support to farmers?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Okay ja three sources.

MR MBANA PETER THABETHE: Three sources yes.

20 **CHAIRPERSON**: Ja is the ones I have mentioned Treasury, National Treasury, Provincial Treasury and National Department of Agriculture?

MR MBANA PETER THABETHE: No only two Chair.

CHAIRPERSON: Only two?

MR MBANA PETER THABETHE: The two will come from the National Department of Agriculture.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: The two conditional grants.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: And the one that comes from the Provincial Treasury comes from the Equitable Share.

CHAIRPERSON: Okay so – but those are the three sources you talk about?

MR MBANA PETER THABETHE: Those are the three sources Chair.

CHAIRPERSON: Okay alright. And you were saying that you would
10 receive those funds and put them under transfer, is that correct?

MR MBANA PETER THABETHE: Yes as we receive them they already come – they already get allocated to specific projects.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: So you know when you receive the lump sum you know where it should go.

CHAIRPERSON: Ja okay, okay.

MR MBANA PETER THABETHE: So originally then as we receive the money we will then disperse it.

CHAIRPERSON: Yes.

20 **MR MBANA PETER THABETHE:** And send it to the project for implementation. It means from us – from transferred we send the money to the account of the beneficiary.

CHAIRPERSON: Okay.

MR MBANA PETER THABETHE: And our responsibility will be then to assist the beneficiary.

CHAIRPERSON: And in this – in this instance when you say beneficiary you not talking about a person or a farmer you are talking about the project for which it is intended or not really?

MR MBANA PETER THABETHE: It is both Chair. In some instances the project will be registered in the name of a company or a CC or whatever form, a trust and so on.

CHAIRPERSON: Entity ja.

MR MBANA PETER THABETHE: Yes. In some instances the project will be registered in the name of an individual farmer.

10 **CHAIRPERSON:** Okay, okay. Okay thank you.

MR MBANA PETER THABETHE: Yes but...

CHAIRPERSON: I just wanted clarification I interrupted you. You may proceed unless Ms Gcabashe wants to ask something before but I know interrupted you while you were continuing.

ADV LEAH GCABASHE SC: No please continue.

MR MBANA PETER THABETHE: Ja thank you Chair. We – we had problems with that because the beneficiaries were not sticking to the business plan. Then we had discussions with Provincial Treasury. We changed the gazetting from transfers to goods and services. Now
20 hence yesterday I was saying there is a difference between transfers and – we allocated the money to goods and services. Goods and services...

ADV LEAH GCABASHE SC: But can I – yes you are about to explain what those are.

MR MBANA PETER THABETHE: Yes. Goods and services then meant

to us to say the Department is responsible for the procurement process, you cannot transfer the money. If you want to spend the money you have to spend the money through the Department. It means you must do the project on behalf of the farmer and hand it over to the farmer. It means you must advertise a tender. If say for an example you had to build a dairy for this farmer then you must go and advertise a tender, you must get bidders and then they must go and erect the – on the farmers land. Now once you have completed you must enter that into the asset register. It is a requirement. Any money you have spent in

10 government under goods and services it must go into your asset register. Now you have a problem of having an asset in a land that does not belong to government. You have that problem number 1. And after you have done so you have to dispose that asset to the farmer and you cannot dispose it as a government because you have gazetted this money under goods and services it means you have to dispose these assets any – any asset that has a certain amount of value you have to dispose it through the legislature. You go through Treasury and it goes to the legislature. Looking at the number of projects that we were giving support to the farmers we felt that it – it gave us a

20 problem because we had a very huge asset register of assets that did not belong to government. Secondly we had a problem on the grant itself. Because the grant was saying this is not meant for the benefit of government. So you cannot take money that has been given to a farmer and you put it in the asset register of government that you cannot do that. Then we move back to transfer given those challenges

that we had. You cannot register – it was a condition of the grant. You cannot register that asset in government. But if you have registered that money under goods and services you cannot escape from not registering that asset under government and then dispose it to the beneficiary. We had a huge problem with the audit after we have done – because the reconciliation became a problem. You go to a private farmer, you have bought a tractor for this farmer and this thing is in your asset. You go there you arrive the farmer has sold the tractor. Now that is in your asset but you have told the farmer this is your

10 tractor. He has sold the tractor and you cannot account on the tractor because it is not – you were not in control of that tractor. So we decided we have a problem again. We have to go back to transfers. Because transfers actually says this money is not yours. We are giving it to you to pass it onto the farmer. But this time we are not going to transfer the money to the farmer. We will develop an agreement as a Department and find service providers who will assist the farmer. Because if you give the money to the farmer the money does not get spent what we want to do. We will get a service provider that we will then – we will implement the project on behalf of the farmer but we

20 protect the farmer by us as government signing an agreement with the service provider.

CHAIRPERSON: So you say to the service provider we are appointing you but actually you are acting on behalf of the farmer.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Now we – we sign.

CHAIRPERSON: Of course you appreciate what I am finding tricky.

MR MBANA PETER THABETHE: I hear you Chair. I hear you.

CHAIRPERSON: You appoint – you appoint representatives of the farmers on their behalf.

MR MBANA PETER THABETHE: Yes Chair.

CHAIRPERSON: YEs.

MR MBANA PETER THABETHE: But they – they sign an agreement with us that they agree.

10 **CHAIRPERSON:** Okay. You make sure they give you the mandate to...

MR MBANA PETER THABETHE: The mandate yes.

CHAIRPERSON: Okay.

MR MBANA PETER THABETHE: We sign the agreement with the service provider but they sign an agreement with us to say we are agree that you appoint somebody to implement the project or not now.

CHAIRPERSON: Okay.

MR MBANA PETER THABETHE: Then we had the control

CHAIRPERSON: Yes.

20 **MR MBANA PETER THABETHE:** Now that is what we did. Now coming now to – to this process. Now all the other projects that we had done we as government we had been advertising and saying we need implementing agents to assist our farmers. Then they would tender and then we will then go back to the farmers and say we have the following implementing agent. Implementing agent A we believe we can put in this district to assist the farmers of this district and so on and so on.

We will then transfer the money to the implementing agent then they do the work and they report. We will not transfer all of it we will transfer it so that we also safeguard ourselves that if anything happens to this implement agent we have not lost all the money. So they will and do the implementation.

ADV LEAH GCABASHE SC: But can you pause just there please Mr Thabethe. The process you are describing would have followed on in terms of the SCM Policy in that there would be a bid process, a competitive process etcetera, etcetera.

10 **MR MBANA PETER THABETHE:** The – Chair the money that is allocated under transferred does not require that process. Once the money is under transfers you pass it on. You do not go through a bidding process. That is the allocation. It is a transfer it is not – you are not supposed to go through the bidding process. So you receive a transfer. It comes with the condition that it is for this particular project you transfer the money to that particular project. We – we had – why we did that it was because of the previous experience. We then – we came up with a system that will help us to make sure that this money goes to the intended purpose.

20 **ADV LEAH GCABASHE SC:** Again I am going to ask you to pause. So you are here referring strictly to CASP grants and to Ilima grants. Are those the ones you are illustrating now? Where it would come in on – with certain conditions and you simply pass it on?

MR MBANA PETER THABETHE: Yes. Also the money that we had received from the Provincial Equitable Share we gazetted it under

transfers because our understanding is that it will serve exactly the same purpose.

ADV LEAH GCABASHE SC: Which – which part of the PFMA/Treasury Regulations permitted you to gazette it? I understand the first two the CASP and the Ilima. The third one I do not quite understand. It is in terms of which particular regulation that you could do that or provision in the PFMA?

MR MBANA PETER THABETHE: No Chair the allocation of the budget.

ADV LEAH GCABASHE SC: Oh I see.

10 **MR MBANA PETER THABETHE:** Is done by the Department.

ADV LEAH GCABASHE SC: Yes.

MR MBANA PETER THABETHE: You decide how much you want to put where as you present your budget to Treasury.

ADV LEAH GCABASHE SC: So it is the broader exercise of how you are allocating your budget as a department?

MR MBANA PETER THABETHE: As a department that is correct Chair.

ADV LEAH GCABASHE SC: Okay.

CHAIRPERSON: So – excuse me. Let me go back to the two I think they are grants Ilima and CASP.

20 **MR MBANA PETER THABETHE:** Yes Chair.

CHAIRPERSON: Were you saying that Supply Chain Management prescripts do not apply to those ones because you are not procuring services or goods, is that what you are saying?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Okay so – okay so for those ones those two types

those goes to a transfer – I guess when you say transfer it means transfer account?

MR MBANA PETER THABETHE: It is an item.

CHAIRPERSON: It is an item oh.

MR MBANA PETER THABETHE: Yes Chair where you then gazette the money.

CHAIRPERSON: Oh okay. So – so it is not your money?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: You are supposed to transfer it to somebody?

10 **MR MBANA PETER THABETHE:** To somebody that is correct Chair.

CHAIRPERSON: Yes okay and you say in regard to that Supply Chain Management does not apply?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: But the checks and balances that relate to that type of transfer the CASP and the Ilima transfer is that the National Department monitors and can withdraw?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Those grants.

20 **MR MBANA PETER THABETHE:** That is correct Chair. What – hence in the past we had problems. When the National Department comes and say we have allocated to the Province the approval of these projects we want to go and see them. You said to us you were supposed to buy a tractor, you were supposed to put a windmill or fences whatever that was approved can we go and see. Then when you

had done a transfer you go there and you do not find those things. You cannot explain. Then we said but the problem is that we should have put controls in place and those were the controls that we had put in place to make sure that the money that has been invested we are under control we will be able to get those assets. And I can confirm Chair it improved. We were able even when the Portfolio Committee comes and say how far have you gone with your [indistinct] can you show us those projects we were able to show.

ADV LEAH GCABASHE SC: But let us then talk about the DoRA
10 allocation that would come into Province the vote of the Department of Agriculture and Rural Development would be Vote 11, am I right?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Now from Vote 11 you would then have to budget and decide on where you are allocating what you have?

MR MBANA PETER THABETHE: No Chair by the time the DoRA allocation from National Department comes you – we as a department on the Province we had already gone there and presented the projects and the names and the amounts. If then there was what we called the National Assessment Panel at National.

20 **ADV LEAH GCABASHE SC:** Yes.

MR MBANA PETER THABETHE: Now the National Assessment Panel will then approve those projects. Then money will be allocated to the province as per those approved projects. If the value.....

ADV LEAH GCABASHE SC: Can ..

MR MBANA PETER THABETHE: If the value of the projects that we

had submitted and got approved was equivalent to R100 million we will then receive the R100 million. We would then have gazetted that money under transfers in the Province. So when the MEC goes and reads his budget speech he will then be able to say under farmer support we have this amount of money and this is the list of the projects that we are going to support.

ADV LEAH GCABASHE SC: Now the intention of Section 217 of The Constitution coming down to PFMA Treasury Regulations as we discussed yesterday is to introduce equity into the system.

10 **MR MBANA PETER THABETHE:** That is correct Chair.

ADV LEAH GCABASHE SC: Transparency into the system, competitiveness in terms of just making sure there is value for money.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: With DoRA grant help me with that one? Because I think I more or less grasp the conditional grants. How – with the DoRA Equitable portion grant how do you monitor the manner in which that money is spent?

MR MBANA PETER THABETHE: Chair when that budget gets released you already know to whom is it going. So there is no competition
20 because if the money gets allocated to us and we know from this total amount of this budget so much is for that project for so and so, this one is for so and so. We received it and under strict conditions from National that you can only use it for the intended purpose. Now that – that is what we have. Now the correct thing to do is just to pass it on to the project and to the owner but we wanted to make sure that it is

used for the purpose intended. So we were putting systems in place to make sure that this money get used for the intended purpose.

ADV LEAH GCABASHE SC: Describe any one of those systems that you are referring to? To help – just to illustrate the point.

MR MBANA PETER THABETHE: The one that I have explained Chair was that we will then identify an implementing agent. We will appoint an implementing agent then make the implementing agent implement the project on behalf of the farmer and the Department will then be satisfied to be able to report to say yes indeed this money was
10 allocated to this particular farmer and this is what has been achieved.

ADV LEAH GCABASHE SC: I am back at my issue that I raised with you yesterday in a different context about form over substance. The form being you have done your part. You have appointed an implementing agent. You have transferred the money to the implementing agent. And this is a very good example the agreement with Estina.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: They were an implementing agent. We can deal with the other issues later.

20 **MR MBANA PETER THABETHE:** Okay Chair.

ADV LEAH GCABASHE SC: But in this agreement by way of example you then have sub-contractors who can be employed.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: What control would the Department have over not only the appointment of sub-contractors but the payment of

those sub-contractors? The verification of their invoices etcetera, etcetera? You see Mr Doctor Masiteng described this as a something similar to a turnkey project.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Please explain I just want to understand the monitoring how you know you got value for money from that implementing agent you appointed and that your beneficiaries are satisfied customers of the Department?

MR MBANA PETER THABETHE: Ja thank you Chair. We have to
10 receive monthly reports from the implementing agent in terms of the progress. We normally say – we say to them you must use our systems but we cannot take those systems into government. We say before you buy do three quotations. Do compares do not just go to a shop and say because they want a tractor I am therefore buying this tractor and I am delivering to the farmer. We say to them do your due diligence. When we do our monitoring we come in and we say you have bought this tractor the farmer where are the quotes that you have got? Then they will be able then to provide it to us and say we have done a quotation here and here hence we have bought this tractor.

20 **ADV LEAH GCABASHE SC:** In the Department whose job was it to monitor that expenditure? I know it could not be the HOD because he sits right at the top?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: On the ground whose function was it to monitor that expenditure?

MR MBANA PETER THABETHE: That becomes the responsibility of the Chief Director but he has got extension officers on the ground that works directly with the project that interact on a daily basis with the implementing agent to assist the implementing agents to make sure that projects gets delivered. So on a daily basis when they do not – they go and do quotations the extension officer is there; is able to advise both the farmer and the implementing agent. In certain instances for an example if you are to acquire cattle for the farmer they also bring the farmer along to look at the cattle that they are buying for him if he
10 agrees he says yes these are the cattle I want then the procurement process goes on. So there has been checks and balances on the ground done by the extension officer and also the Chief Director has that responsibility. Because he is responsible – there are directors in the district, extension officers and then the Chief Director overseas the whole process.

ADV LEAH GCABASHE SC: I know I am moving forward rather rapidly I am still going to come back to the technicality around the deviation. But can I debate this checks and balances issue.

CHAIRPERSON: Well hang on Ms Gcabashe I also still want to stay on
20 these.

ADV LEAH GCABASHE SC: Ja.

CHAIRPERSON: Maybe we call it deviation maybe we do not call it deviation that he was talking about. Let me ask some questions before you move on. When you said in respect of the two I think grants CASP grants and the other one.

MR MBANA PETER THABETHE: Ilima Letsema Chair.

CHAIRPERSON: Ilima ja. When you said you would then – you would get a service provider who would then effectively assist the farmer but you get an agreement from the farmer that a mandate that you can appoint the service provider. That was in regard to Ilima and CASP or did I misunderstand?

MR MBANA PETER THABETHE: It was with regard to...

CHAIRPERSON: That example did it apply to that or did it apply to more than those two?

10 **MR MBANA PETER THABETHE:** It applied to all the three.

CHAIRPERSON: All the three?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Okay. Now the third one being the one you get from Treasury.

MR MBANA PETER THABETHE: The one – that is correct Chair.

CHAIRPERSON: Yes. Is that the one you said is from DoRA is DoRA?

ADV LEAH GCABASHE SC: Correct Chairman.

CHAIRPERSON: DoRA just remind me I – the DoRA.

20 **MR MBANA PETER THABETHE:** It is not the DoRA one Chair. The DoRA is the two that comes from National.

CHAIRPERSON: Oh okay.

MR MBANA PETER THABETHE: It is from the division.

CHAIRPERSON: So the DoRA one this does not apply to the DoRA this example does not apply to the DoRA?

MR MBANA PETER THABETHE: It applies to all of them.

CHAIRPERSON: To all of them.

MR MBANA PETER THABETHE: To all of them but the one that comes from the Province is the Provincial Equitable Share.

CHAIRPERSON: Equitable Share.

MR MBANA PETER THABETHE: Ja it is not the one that comes from National.

CHAIRPERSON: Yes. Now were you saying that the Supply Chain Management prescripts and policies and procurement policies apply when you are going to use the Equitable the one from the Equitable
10 Share but not to those that come from CASP and Ilima and DoRA is that what you are saying or have I misunderstood?

MR MBANA PETER THABETHE: No Chair. What applies is where you have gazetted it. It does not matter where it comes from but when you do your budget gazetting where did you allocate the money?

CHAIRPERSON: Okay so you talk about gazetting.

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: Is – I take it that means publish what you said in a government gazette, is that right?

MR MBANA PETER THABETHE: That is correct Chair. The MEC has –
20 you submit that the MEC goes and present the budget Vote and then the legislature must pass it.

CHAIRPERSON: YEs.

MR MBANA PETER THABETHE: And then it goes to the gazette.

CHAIRPERSON: And in his budget vote the MEC would indicate what would fall under transfers?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: And you say if funds fall under transfers then procurement prescripts do not apply?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: That is what you saying?

MR MBANA PETER THABETHE: Ja that was – that was correct until April 2018.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Then National Treasury released a
10 new instruction.

CHAIRPERSON: Instruction Note.

MR MBANA PETER THABETHE: Yes Chair.

CHAIRPERSON: And saying actually does apply.

MR MBANA PETER THABETHE: The new instruction notes was then saying this is now the way it has changed now since May 2018 but they have said it was retrospective from 2016.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: And then that has now changed.

CHAIRPERSON: Yes.

20 **MR MBANA PETER THABETHE:** There are systems that they have been put in place now to say even if the money has been put under transfer these are the following processes that you need to follow.

CHAIRPERSON: Yes. Now what is it that excluded the requirement for procurement procedures from application if funds that were going to be used fell under transfers where – what is it that was the basis for the

view that if funds have been put under transfers then procurement processes do not apply?

MR MBANA PETER THABETHE: Chair there - there were kinds of enterprises that you would not go and bid for. Like when you transfer money to a farmer. Like for example you transferring Government money to an NGO to implement a process for you. You will gazette that money under transfer and - and you note which NGO you want to - to transfer the money.

10 So you will not go and publish a tender to say I - I need - I need somebody to come and bid for this money for this particular purpose. You had already - it is - it is for example like you have got - I - I want to use another example ...

CHAIRPERSON: Well obviously ...

MR MBANA PETER THABETHE: Outside.

CHAIRPERSON: You - you invite bids when you have not made any decision ...

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: About who the person is that you want to be involved in the project?

20 **MR MBANA PETER THABETHE:** That is correct Chair.

CHAIRPERSON: Yes. So if you already know then going - doing bids even if the procurement processes are applicable would be just going through the motions?

MR MBANA PETER THABETHE: That - that is our understanding sir because as - as the money came we - we had already approved

projects to say this money is going to this particular farmer.

CHAIRPERSON: Yes; but if you are going to appoint an implementing agent even in the example of a farmer. You - you might - the funds - if you are going to transfer the funds to the farmer you might not be buying goods or services from the farmer.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: But if you are going to appoint an implementing agent who is going to do certain things in order for something to be successful. You are going to be getting services. Is it not?

10 **MR MBANA PETER THABETHE:** Chair there - there is no direct benefit from Government.

CHAIRPERSON: So why do you appoint the agent then ...

MR MBANA PETER THABETHE: Because of ...

CHAIRPERSON: If - if you - if there is no benefit for - for you?

MR MBANA PETER THABETHE: Because our previous experience of giving the money directly to the farmer we had experienced problems. So we had to come with a - a solution.

CHAIRPERSON: Well why do you not leave it to the farmer to appoint whoever they want to appoint? Why do you insist that you must be the
20 ones who - who appoint?

MR MBANA PETER THABETHE: Chair - Chair exactly the problem of accountability. Now ...

CHAIRPERSON: So do you get a benefit or do you not get a benefit from the agent?

MR MBANA PETER THABETHE: I - I - direct - the department does not

get any benefit Chair.

CHAIRPERSON: So you can do without them?

MR MBANA PETER THABETHE: We can do without them.

CHAIRPERSON: And there would be no problem?

MR MBANA PETER THABETHE: There will be problems Chair because you are not going to - to have a project that we intend ...

CHAIRPERSON: Well is the position not that you - you want farmers to be assisted in a certain way. You want to assist the farmers actually yourself.

10 **MR MBANA PETER THABETHE:** That - that is correct Chair.

CHAIRPERSON: Indeed under a certain regime you could have personnel in your department that you can send and say go and assist these farmers to be successful with what they are doing and you pay those people yourselves.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: That is one regime in which you - you could do this but another regime is that you get somebody from outside the Government who has the skills that you believe are necessary in order to make the farmers successful. So you - you say this person has got
20 good skills. So this person must be - must provide - must provide the assistance and is the position not that you pay them for their services?

MR MBANA PETER THABETHE: Ja. Chair - Chair you are correct that we had personnel in the department which we have used to assist the farmer. The only difference is that if you do that then you must gazette the money under goods and services. Then (intervenes).

CHAIRPERSON: And why do you not want to do that?

MR MBANA PETER THABETHE: Then we had the problem Chair of having to register those assets you have bought for the farmer into your asset register.

CHAIRPERSON: It maybe that we might need to - to look at this later on much more but as things stand from what you have said to me. It does seem that you have a project which you want to be successful and you need certain services in order for it to be successful and you bring in an agent. You call them an implementing agent. They - they
10 implement your project and unto the one who pays them.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: You pay them?

MR MBANA PETER THABETHE: Yes Chair.

CHAIRPERSON: Why - what do you pay them for?

MR MBANA PETER THABETHE: Chair, we - we transfer the money for them to implement the project. It is - it is not like we are paying them.

CHAIRPERSON: But you - you have something that you want them to do ...

MR MBANA PETER THABETHE: That is correct Chair.

20 **CHAIRPERSON:** And that is providing certain services ...

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: And you transfer the money from which they get paid.

MR MBANA PETER THABETHE: Yes Chair. They get paid - even if it is them or the farmer has appointed somebody else to come and implement. That payment still happens. Whoever you have appointed

to come and do the job.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: You still do the payment.

CHAIRPERSON: Okay. We might have to deal with it - at some other time. Ms Gcabashe let me allow you to move to the area that you wanted to move to.

ADV LEAH GCABASHE SC: Thank you Chairman. I was actually going to deal with some of the issues ...

CHAIRPERSON: Oh.

10 **ADV LEAH GCABASHE SC:** That you have been dealing with but that is fine. I still have more.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Yes. So the first one Mr Thabethe relates to the question of goods and services and where that asset sits if you are going to comply with the SCM Policy.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: Let us take the example one of the witnesses may have mentioned it or I - I might have read about this. Let us take the example of the Free State Development Corporation.

20 **MR MBANA PETER THABETHE:** That is correct.

CHAIRPERSON: I am - I am sorry Ms Gcabashe. We forgot to mention something. We have arranged to proceed - continue until 5 o' clock. I take it you have no problem Mr Thabethe with this.

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: So I just wanted to mention that because ordinarily

people expect that we would - we would stop at four. So we will continue until 5 o' clock. Okay.

ADV LEAH GCABASHE SC: Thank you Chairman and you will correct me in my interpretation because this is how I understood the situation. So you - you have the Free State Development Corporation. We call it the FDC. Taking over the running of the Vrede Dairy Farm. I know there is a lot we are still going to discuss but allow me to use this example.

MR MBANA PETER THABETHE: Yes.

- 10 **ADV LEAH GCABASHE SC:** The assets that sit on an and at that dairy farm who do those then belong to because as I understand your evidence they would not belong to the department the goods and services. So those cattle, the feed, the machinery, the equipment FDC is compelled - my word - to register those items as FDC items but they do not belong to the FDC.

Is that not a problem in itself in - in not having a way of dealing with those goods and services as the department - as the department that would own them?

- MR MBANA PETER THABETHE:** We - we would not owe them Chair
20 because of the conditions of the grant. So you cannot deviate from the condition of the grant because the condition of the grant says the beneficiary of all assets that comes from this allocation is the farmer. So you would not then take these assets and pay - the condition says if you do that then you must repay the money back because the department has benefited.

It is not intended for the benefit of the State. It is intended for the benefit of the farmer. So you would not take those assets and register them in the asset register of the department.

ADV LEAH GCABASHE SC: However if you had used part of the provincial allocation to capitalise the project. So I accept your explanation for (indistinct). If you had used other money to capitalise the project that money is then used to buy cattle and tractors etcetera. Those things would normally be called goods and services.

MR MBANA PETER THABETHE: Yes.

- 10 **ADV LEAH GCABASHE SC:** Who owns - and I suppose I am also looking at the context of their being no beneficiaries really for the Estina Project - who owns those items Mr Thabethe between the time that they are purchased and the time the beneficiaries are ultimately registered formally so as beneficiaries?

- MR MBANA PETER THABETHE:** Chair hence the National Department of Agriculture makes it a condition that before they release the money you must provide them with the list of beneficiaries. That is the requirement. They need to know as they release the money it is intended for the following people. Then we will - they - they have a
20 specific requirement to say we need the names.

We need their ID numbers so that as they release the money then they know to whom it belongs.

CHAIRPERSON: Well the question was from the time they are purchased to the time they - I think - given to the beneficiary who is the owner. Now you - you from the perspective of lawyers they may be

thinking a lot of things arising from that question but I think you are supposed to just answer it as a non-lawyer. What would be your understanding at a factual level? Who would claim rights to that - to them during that period?

MR MBANA PETER THABETHE: The farmer is the owner Chair.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: In circumstances where you have an implementing agent are you calling that person the farmer?

MR MBANA PETER THABETHE: No - no Chair. The - the
10 implementing agent is not the owner of the asset. His job is to implement the project on behalf of the farmer. Hence we - we appoint the implementing - so we he is not the owner of the asset.

ADV LEAH GCABASHE SC: I - I hear you and I will think about what you are saying. Just to digest and - and try and understand it. I will grapple with it because I know I can come back and ask again where I still do not have clarity but can I ask a related question? You see the difficulty with implementing agents is that it is very difficult - it is very difficult to monitor them closely because they are the persons who you transfer the lump sum to. Am I right?

20 **MR MBANA PETER THABETHE:** That is correct Chair.

ADV LEAH GCABASHE SC: The lump sum is then used to pay not only for goods. I will call those the cattle, the tractors etcetera but for services as well. Where those services are inflated what remedy do you have? How do you monitor the payment of monies for services that have been inflated? Now you being the department of course.

MR MBANA PETER THABETHE: *Ja.* I am - I am trying to think Chair of - of services because there - there - a service could be something that you want somebody to come and - and do - soil samples and the person comes on the farm and - and does soil samples and then the person invoices you to say this is what I want you to pay me for the samples that I have done and this is what - and these are your soil samples.

Then - then the - the implementing agent pays the person for - for that service. If I were a farmer and somebody comes to my farm
10 and - and invoices me for soil samples I will have an indication an understanding that but I have never seen soil samples this expensive. Then I will be able to say but there is something not right here. These soil samples are too expensive.

So that - that is my understanding that I have. That if you inflate then it will be no. That this is too expensive.

ADV LEAH GCABASHE SC: Well let us go to a real example and again I am still skirting around the whole Vrede Dairy issue. We - we will get there. If you go to the reference bundle page 1-3-7-5.

CHAIRPERSON: A or B?

20 **ADV LEAH GCABASHE SC:** Oh. It is D. It is the last one.

CHAIRPERSON: D?

ADV LEAH GCABASHE SC: *Ja*, D.

CHAIRPERSON: For Doris.

ADV LEAH GCABASHE SC: Are you there?

MR MBANA PETER THABETHE: I am - I am trying to find it Chair.

ADV LEAH GCABASHE SC: No - no problem. It is D for Donald. You have got it?

MR MBANA PETER THABETHE: Ja. I have got it.

ADV LEAH GCABASHE SC: If you go to page 1-3-7-5. You have that?

MR MBANA PETER THABETHE: I have got it Chair.

ADV LEAH GCABASHE SC: We will read it in a minute but can you also page across to 1-3-7-8 and then keep your finger on both, if you can keep them both there open. I have just put my fingers between the pages to keep both open.

10 **MR MBANA PETER THABETHE:** 1-3-7-5.

ADV LEAH GCABASHE SC: And 1-3-7-8.

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: Because I will go from one to the other.

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: You recognise of course 1-3-7-8?

MR MBANA PETER THABETHE: Yes. I see it Chair.

ADV LEAH GCABASHE SC: You - you see your signature on 1-3-7-5?

MR MBANA PETER THABETHE: 1-3-7-8 yes I see it Chair.

ADV LEAH GCABASHE SC: Yes. Maybe we should just start there
20 because it is your document and say that this document was the Confirmation of Completion of Phase 1 of the Project ...

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: In relation to the Vrede Dairy Farm?

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: And what you have here I think it is better

to read this into the record just to be absolutely accurate. Is you - you write on 18 January 2013 to Estina (Pty) Ltd in Vrede.

10 “Subject: Confirmation of Completion of Phase 1 of the Project. Reference: Contract signed between the department and Estina dated July 2012. We refer to the above contract signed between the department and Estina with regard to setting up of an integrated diary project in Vrede Phumelela Municipality. We are pleased to confirm that we have been receiving regularly monthly and quarterly reports from Estina and are satisfied with the progress made so far. With regard to the obligations of Estina for completion of Phase 1 of the Project by December, the 31st 2012 we are also pleased to confirm that all the obligations as required by the contract have been met as per details below.”

20 So you set out the details below. Estina obligations for First Phase. So you have a number of items on the left hand column one to nine. Then you have the obligation that rested with Estina in the next column and then on the far right hand side you have got remarks. Who makes these remarks on the far right hand side Mr Thabethe?

MR MBANA PETER THABETHE: Chair - Chair these remarks on the right should be remarks of the department.

ADV LEAH GCABASHE SC: Huh-uh. So you - you would have if not

prepared this you would have read this because you signed this document?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: What you have said here is in terms of land acquisition - this is January the 18th 2013.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Your remark is:

“Land has been registered at the Deeds Office.”

MR MBANA PETER THABETHE: That is correct Chair.

10 **ADV LEAH GCABASHE SC:** Factually what had been registered at the Deeds Office? Can I give you the context just to remind you because you have not looked at these documents in a while? Unless you know - you know what - you know it anyway?

MR MBANA PETER THABETHE: Yes I know Chair.

ADV LEAH GCABASHE SC: No. Then let me listen.

MR MBANA PETER THABETHE: Yes. The registration was the lease agreement.

ADV LEAH GCABASHE SC: The lease agreement between?

20 **MR MBANA PETER THABETHE:** Between the - the department and Estina.

ADV LEAH GCABASHE SC: Okay. We will come back to that when we deal with the Vrede issues. Second:

“Environmental impact assessment.”

Please read the entry.

MR MBANA PETER THABETHE: “Environmental impact

assessment.”

ADV LEAH GCABASHE SC: And then on the right hand side.

MR MBANA PETER THABETHE: It says:

“Applied and confirmation received from EDTEA.”

Which is the Department of Environmental Affairs - Economic,
Tourism and Environmental Affairs. I am sorry.

ADV LEAH GCABASHE SC: What is meant by applied and
confirmation?

MR MBANA PETER THABETHE: Chair my - my understanding of
10 applied and confirmation it means the - the environmental impact
assessment has - has been registered.

ADV LEAH GCABASHE SC: What does registration mean? Does it
mean it has been conducted and concluded or that simply application
has been filed to do an EIA?

MR MBANA PETER THABETHE: Applied and confirmation received, it
means it - it has been - it has been done by the company that was
appointed and it has been tabled to the relevant authority that needs to
say yes or no.

ADV LEAH GCABASHE SC: And that is the confirmation that you
20 await?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: But there is no further work to be done
unless of course there are adverse comments from the regulatory
authority.

MR MBANA PETER THABETHE: That is correct Chair. Either they say

no the information is incomplete. We need one, two, three or no we decline or yes we agree.

ADV LEAH GCABASHE SC: Okay. Then the feasibility study we will - which we will talk about in greater detail when we find time. That had been received by the department.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Now we referred to this yesterday and said as - on our records there is the October 2012 feasibility study.

MR MBANA PETER THABETHE: That is correct.

10 **ADV LEAH GCABASHE SC:** Is that the one you know about?

MR MBANA PETER THABETHE: That is - that is what we when we were talking we referred to is as pre-feasibility study.

ADV LEAH GCABASHE SC: Oh.

MR MBANA PETER THABETHE: Because there was then the second one which was detailed.

ADV LEAH GCABASHE SC: What is the date of the second one?

MR MBANA PETER THABETHE: Hm.

ADV LEAH GCABASHE SC: Just roughly because the only one I have seen in the bundles is the one of October 2012.

20 **MR MBANA PETER THABETHE:** Is it - is the small one or the big one Chair because they ...

ADV LEAH GCABASHE SC: This is actually important.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: Can we just find it for you and ask you to look at it?

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: Because we are going to be talking about what monies were paid ...

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: For these services that were rendered.

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: My apologies Chair. We will find it in a minute. Let us continue while my colleagues look for it Chairman.

CHAIRPERSON: Yes, okay.

10 **ADV LEAH GCABASHE SC:** We will come back to it in a minute.

MR MBANA PETER THABETHE: Ja.

ADV LEAH GCABASHE SC: Let us go to the next item.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: The water reticulation, tell us what that is about in the - just read - if you can read the entry on the right hand side.

MR MBANA PETER THABETHE: That is the permission Chair that you get to - it is - it is your water rights that you receive to be able to use water.

20 **ADV LEAH GCABASHE SC:** And who would be applying for those?

MR MBANA PETER THABETHE: The - the farm applies for - for it and then you then give a copy to the municipality that you have got the rights.

ADV LEAH GCABASHE SC: So in this instance the implementing agent would have applied for these.

MR MBANA PETER THABETHE: (Intervenes).

ADV LEAH GCABASHE SC: In fact I am - I think I have seen it as a term in the contract.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Then the next item is:

“Include ...”

Thank you.

“Include identifying beneficiaries in Agri-BEE entity.”

10 Please read what is on the right hand side.

MR MBANA PETER THABETHE: Chair can I ask to repeat?

ADV LEAH GCABASHE SC: Item number ...

CHAIRPERSON: Oh she is asking you to read what is written on the right hand column on item six where it says:

“Include identifying beneficiaries in Agri-BEE entity.”

Then there is something written under remarks. That is what she is asking you to read.

MR MBANA PETER THABETHE: It says:

20 “Done.”

ADV LEAH GCABASHE SC: Please explain “done” to the Chairman.

MR MBANA PETER THABETHE: “Done” it means we - we have the beneficiaries and the Agri-BEE company has been registered which is Zayna trading as Mohuma Mobung.

ADV LEAH GCABASHE SC: Yes, but the beneficiary - this is in

January 2013.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: And the beneficiaries had not been registered yet as at January, the 18th 2013. You had the list but you certainly had not told them what their allocations were or anything like that. That is the - the substantive issue I keep raising.

MR MBANA PETER THABETHE: *Ja.* That - that is correct Chair. Let me - let me go back. You - you remember that it what we wanted to do but we were advised by the State Law Advisors not to do it at that time
10 (intervenes).

ADV LEAH GCABASHE SC: What was their reasoning? What explanation did they give you?

MR MBANA PETER THABETHE: Chair when - when we were advised was that the - the beneficiaries would get into the entity as we complete the project. We should not do it before the project is complete because there is nothing to handover to them. We are still in the process of construction.

We should know them, who they are but then we will enter them into the - into the entity because you will remember that originally
20 we - we even wanted that it should be the - the company that signs the agreement because the intention Chair was eventually also disposed the land to them through the Land Reform Program. So that the projects becomes entirely theirs.

So we - we were advised not to proceed in that process. To register it under the Government. The land first to become State land.

We implement the project. Once completed, we then transfer them into the entity which is the - the farmers' holding company. That - that is what I understood I was advised to do.

ADV LEAH GCABASHE SC: But would it not have been more correct than to say something - you know we like saying work in progress when something is being done but has not been completed. There could be a better - better way of phrasing it. Would that not be more accurate because done means you know I have delivered on that particular milestone?

- 10 **MR MBANA PETER THABETHE:** Yes Chair because what remained would be paperwork to put the names in because what we had asked them to do. It has been done. What remained was our responsibility. Remember we are writing this to them and say what we had asked you to do has been done. What remains became our responsibility to do.

ADV LEAH GCABASHE SC: I - can I just debate that with you for one minute? What had been done? This is the evidence that has been tendered here at the Commission. What had been done is that the department had been to Thembalihle and collected a list of beneficiaries. Then they had also appointed a committee of three ...

- 20 **MR MBANA PETER THABETHE:** Hm.

ADV LEAH GCABASHE SC: Who would be representing the beneficiaries. Estina did not do that work. It is the department that did that work but why is it that when you tick done here it would appear as if you are now attributing the work that the department actually did to your implementing agent and then paying the implementing agent for it?

Have I got it wrong?

MR MBANA PETER THABETHE: *Ja.* Maybe Chair we would have needed the - the requirements that we said Estina should do in Phase 1 because that will be very clear because this is in response to - to what we said they should do.

ADV LEAH GCABASHE SC: *Ja.*

MR MBANA PETER THABETHE: Then once they have done what we have asked the to do, maybe this might not have been the details of what we had said they should do, then if we compare the then if we
10 compare the two, then we will be able to say, but you gave them the work that they did not do, that you did. Because my understanding was that the identification of beneficiaries becomes the responsibility of the Department together with the Municipality.

CHAIRPERSON: But you see, and this might just be my own question, item 6 doesn't say identify beneficiaries, it says include identified beneficiaries in Agri BE entity, what did that mean, include them in the entity?

MR MBANA PETER THABETHE: Chair that means you must then take the names of the beneficiaries into the company.

20 **CHAIRPERSON:** Make them Shareholders, make them directors, make them – what does mean take them to the company?

MR MBANA PETER THABETHE: That's correct Chair.

CHAIRPERSON: The remark on the right-hand column, "done", do you mean that you were saying it had been done?

MR MBANA PETER THABETHE: Hence Chair I was making the

request that we need to go back to the original obligation that was given, because this might not have been correctly captured, so that if we check if it was in line with what we gave them as an obligation.

CHAIRPERSON: Well but here in this letter, in the left-hand column you've written – well above that those two columns you write Estina obligations for first phase and then you write at the top, obligation – well you write number and say obligation and then you've got number 1, 2 3, 4, up to 9 and under obligation you have set out what the obligation is, the first one is land acquisition, so that means Estina had
10 the obligation to acquire land. Then under six, the obligation under six, like all the other obligations must mean you are setting out Estina's obligations for first phase and under six you are, in effect saying Estina had an obligation to include identified beneficiaries in Agri Bee entity and your remark on the right-hand column is, Estina had done that. So it is correct that one of Estina's obligations for the first phase was to include identified in Agri BEE entity?

MR MBANA PETER THABETHE: Hence Chair before I confirm on it, I would want to check the original obligation.

ADV LEAH GCABASHE SC: Chairman, I have found it, is in Bundle A
20 it is the July agreement, so it's reference Bundle A page 11 and then there's an Annexure as well Mr Thabethe on page 24, please indicate if that's the document that you think will assist in clarifying this matter. Page 11 and its clause six of he agreement, of the July agreement.

MR MBANA PETER THABETHE: Chair this is not the...[intervention].

CHAIRPERSON: It's not the document that you are looking for.

MR MBANA PETER THABETHE: Yes there's the document that has the milestones and the phases.

CHAIRPERSON: Yes and it's not the form of agreement or...[intervention].

MR MBANA PETER THABETHE: It's in a table form.

ADV LEAH GCABASHE SC: Can I ask you to go to page 24 because this is the agreement that you signed in July of 2012, 5th and 7th of July.

MR MBANA PETER THABETHE: Ja Chair there is a document that we
10 gave them, which in response a costing of all those activities was done, that was the document I was looking for.

ADV LEAH GCABASHE SC: Chairman we'll find that, if not today we'll deal with it next time.

CHAIRPERSON: But coming back to the – your letter on page 1378 are you able to say whether you were correct in that letter to reflect that one of Estina's obligation for phase one was to include identified beneficiaries in Agri BEE entity or are you saying you are not sure you were correct in saying that?

MR MBANA PETER THABETHE: I don't think I was correct Chair,
20 because although the original intention of registering the company and identifying the beneficiaries as complete but this process of including them in the shell company had not been achieved Chair.

CHAIRPERSON: Okay had not been achieved?

MR MBANA PETER THABETHE: Had not been achieved as we were advised differently by the State Law Advisors.

CHAIRPERSON: Yes okay so it's a matter that will be dealt with once the document has been found.

ADV LEAH GCABASHE SC: The next item is number eight, item number eight. No actually we just skipped number seven, so number six said include identified beneficiaries in Agri BEE entity, number seven reads,

"Set-up of Agri BEE entity and clarify roles of stakeholders, these being the Department the Agri BEE entity and Estina. In the right-hand side, what's your remark there Mr Thabethe?

10 **MR MBANA PETER THABETHE:** Chair I think the one that I've been referring to has been item number seven.

CHAIRPERSON: Oh the one where you need a certain document where you need a certain document to answer.

MR MBANA PETER THABETHE: To answer that one Chair.

CHAIRPERSON: Oh so that means we can go back to number six?

MR MBANA PETER THABETHE: Yes that's correct Chair.

CHAIRPERSON: Oh alright, so let's go back to six then, is it correct then that one of Estina's obligations for first – for the first phase was to include identified beneficiaries in Agri BEE entity?

20 **MR MBANA PETER THABETHE:** It's correct Chair that we wanted them to do that responsibility but it was ourselves that put it on hold, therefore the remark on the right is not correct.

CHAIRPERSON: That it was done?

MR MBANA PETER THABETHE: That is was done.

CHAIRPERSON: Yes now including them – so you still say including

identified beneficiaries means what you said a few minutes ago?

MR MBANA PETER THABETHE: That's correct Chair.

CHAIRPERSON: Okay that had not been done?

MR MBANA PETER THABETHE: No that's true Chair.

CHAIRPERSON: Because You had put it on hold?

MR MBANA PETER THABETHE: That's correct.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Then we get to number eight, draw a project plan, in line with Estina proposals with milestones and timelines
10 for phase two as approved by the Department.

MR MBANA PETER THABETHE: That's correct Chair, that is actually the document that I'm looking for.

ADV LEAH GCABASHE SC: Now is that the project proposal or the project – or the business plan?

MR MBANA PETER THABETHE: It's a project plan with milestones and dates of each of the activities that should happen with a budget allocation to each item.

ADV LEAH GCABASHE SC: Then the last item, we'll come back to you on that one as well, the last item, determine the dates for capital
20 injection by Estina. What's the comment or remark on the right-hand side?

MR MBANA PETER THABETHE: Chair it says Estina has already commenced investment.

ADV LEAH GCABASHE SC: Could you explain that and this is as at January 18, 2013?

MR MBANA PETER THABETHE: Yes Chair, in the previous reports that we've been receiving on a monthly basis. In the tables that we have been provided there were already indications of how much Estina has spent, they had already provided that to us, so hence they've already commenced.

ADV LEAH GCABASHE SC: We can deal with this now or later, what Estina had spent in relation to what you had advanced or in relation to their own contribution of R228million?

MR MBANA PETER THABETHE: In relation to their own Chair.

10 **ADV LEAH GCABASHE SC:** Okay we'll explore that in due course.

CHAIRPERSON: Well let's – you say in your remark, Estina has already commenced investments and we know that one of the two things that you said you wanted Paras for, was direct investments.

MR MBANA PETER THABETHE: That's correct

CHAIRPERSON: Is that what you are talking about or investment being used for – in a different context here.

MR MBANA PETER THABETHE: Chair they were already putting money into the project.

CHAIRPERSON: In what way?

20 **MR MBANA PETER THABETHE:** There was a phase in which they were to do the implementation but that phase, dependent on the progress that we've been making, as the progress was moving then they then started their part in preparation with the investment that they had to do.

CHAIRPERSON: So they were spending their money to advance the

project?

MR MBANA PETER THABETHE: That's correct.

CHAIRPERSON: That's what you mean?

MR MBANA PETER THABETHE: That's correct Chair.

CHAIRPERSON: But do you know by any chance, more or less, how much they may have spent by this time around by this time, January 2013 or is that something that needs checking some documents?

MR MBANA PETER THABETHE: Chair we have monthly reports of the amounts they had spent and going to those reports we will be able to
10 see how much...[intervention].

CHAIRPERSON: What they had spent?

MR MBANA PETER THABETHE: That's correct.

CHAIRPERSON: What's your rough sense of what they may have spent by then bearing in mind what you had seen in the reports – in the monthly reports, obviously I'm not expecting you to be exact, I'm just, you know, wanting to have a sense from – are we talking about somebody who had spent some millions already by January 2013 or it was less than R100 000, less than R500 000, are you able to give me some sense on that without having to go look at the documents or is it
20 something that would require you to look at the documents?

MR MBANA PETER THABETHE: Ja Chair I would need to go to the document, what I would want to mention here Chair is that we had discussed, I think, yesterday that the Department wanted to make an advance payment which did not happen but the work on the ground continued. The work on the ground that we were acknowledging had

happened. The Department had not spent money yet which we had intended to do. The payment from the Department came later but what we had asked them was to say from this obligation you must differentiate from what you have done, which was supposed to have been done by us and what you have done which was supposed to have been done by you. So that was clearly indicted in that report.

CHAIRPERSON: Okay thank you.

ADV LEAH GCABASHE SC: Can I interrogate your last statement, R30million was paid in or around July, if it's not the 9th of July it's the
10 20th of July, do you agree with that?

MR MBANA PETER THABETHE: 2013?

ADV LEAH GCABASHE SC: No 2012, the first R30million was paid in July of 2012, there was a shortfall of R84million to make up the R114million, would you agree with that?

MR MBANA PETER THABETHE: No Chair I think if you go back to the report of the investigation of Treasury they've raised that, that in the system the R30million was captured but never paid.

ADV LEAH GCABASHE SC: No, no the R84million was captured but never paid, the R30million was paid but the R84million – you're correct
20 if you were saying the R84million...[intervention].

CHAIRPERSON: Is there a page which might refresh his memory that you want him to refer him to or document?

ADV LEAH GCABASHE SC: I must apologise Mr Chairman, and really Mr Thabethe I'm sorry I wasn't going to be dealing with the monies now but my juniors are busy feeding me with – here we go, have two

sources. Mr Thabethe I have got actually more than I expected, I think the first one we should look at is reference Bundle B page 458 which is a BCT payment list.

CHAIRPERSON: Did you say 458?

ADV LEAH GCABASHE SC: 458 Chairman, it's in Bundle B, the reference bundle, but Bundle B.

CHAIRPERSON: Have you found it Mr Thabethe?

MR MBANA PETER THABETHE: I'm getting closer Chair, that's correct Chair.

10 **ADV LEAH GCABASHE SC:** You will see you have at the top Estina, the amount that was paid on the 14th of June 2012 was R30million are you convinced now or is there something you think is not quite right with the document I'm holding.

MR MBANA PETER THABETHE: Exactly Chair, this is not the proof of payment, this is what gets approved so that you register the payment into the system, the proof of payment I a different document.

CHAIRPERSON: And you are certain that it had not been – it wasn't paid, all that we are looking for is proof but - or is the position that you are doubtful that it was paid?

20 **MR MBANA PETER THABETHE:** Until I'm proven otherwise Chair.

CHAIRPERSON: Ja but your recollection is that it was not paid?

MR MBANA PETER THABETHE: It wasn't paid, that's my recollection.

CHAIRPERSON: Okay but this kind of document, would this kind of document exist if the payment had not been made?

MR MBANA PETER THABETHE: Yes Chair.

CHAIRPERSON: It's done before the actual payment was made?

MR MBANA PETER THABETHE: It's done before the actual payment is made.

CHAIRPERSON: So it may have been done in anticipation of payment?

MR MBANA PETER THABETHE: That's correct Chair.

CHAIRPERSON: And then payment might not actually have followed?

MR MBANA PETER THABETHE: Yes Chair.

ADV LEAH GCABASHE SC: Chairman with your leave, we have
10 divided the work that we're doing on this stream, Mr Thabethe so we have a related stream that we call, money flows, we have not put those documents before the Chairman because we're still working with the broader concept of money flows. However Chairman I've got a Standard Bank entry here from that stream of work, it's just not in any of our bundles.

CHAIRPERSON: Yes, but it exists.

ADV LEAH GCABASHE SC: But I'm happy to show is and the entry to Mr Thabethe just so he can refresh his memory and understand, it's highlighted Mr Thabethe, my colleague will bring it to you, don't worry.

20 **CHAIRPERSON:** Ja okay.

ADV LEAH GCABASHE SC: That's really just to assist you. That what's highlighted at the bottom, please read that at the bottom and we will place it before the Chairman, more appropriately next time we come in. These are records that were summonsed from the banks and that's just one of them?

MR MBANA PETER THABETHE: Ja Chair, I may need to go back and do the re-check.

CHAIRPERSON: Yes okay.

MR MBANA PETER THABETHE: This matter, did come out during the investigation, I think, by the Hawks. We went to the systems of the Department, we were not able to find it.

CHAIRPERSON: That payment.

MR MBANA PETER THABETHE: That payment and that's why I say I will need to go back.

10 **CHAIRPERSON:** Yes, no that's fine because we are not finishing today, I think your legal representatives with liaise with Ms Gcabashe if there is any document that the Commission is in position of that might assist in clarifying, in your own mind, what the position is.

MR MBANA PETER THABETHE: That's correct Chair.

CHAIRPERSON: Okay alright.

MR MBANA PETER THABETHE: I don't know whether you want to keep that one...[intervention].

ADV LEAH GCABASHE SC: Can I point to one more note Chairman we would like to take it back – can I just point you to one more entry
20 which is a sundry payment advice, it may not be what you are looking for in terms of confirmation, but this one, is found in – again reference Bundle B at page 654 – 654 reference Bundle B. You will see that, that's the cash amount, if you look at the right-hand side R25 400 000 and then another R4.6million signed off by yourself, you have a signature here, HOD. Do you recall what this might have been about?

MR MBANA PETER THABETHE: Chair this is still a document in anticipation, that sundry payment.

CHAIRPERSON: Oh okay.

MR MBANA PETER THABETHE: Chair why I'm having a doubt is that – it's because when this investigation was done the CFO, not the previous CFO, the new CFO was requested to go and check in the system and she came back and made a confirmation to them that she could not find such a payment.

CHAIRPERSON: She could not find that payment had been made?

10 **MR MBANA PETER THABETHE:** Had been made yes.

CHAIRPERSON: And do you know whether she had gone to the bank to check or not, or she just gave that answer?

MR MBANA PETER THABETHE: Ja but the system of the Department – because if you paid your system must...[intervention].

CHAIRPERSON: Yes your system should be able to tell you.

MR MBANA PETER THABETHE: Ja I'm not sure if they did go to the bank.

CHAIRPERSON: Ja but the department system, indicated that – did not indicate that payment had been made?

20 **MR MBANA PETER THABETHE:** Yes hence I'm...[intervention].

CHAIRPERSON: You're hesitant to accept.

MR MBANA PETER THABETHE: I'm hesitating now to say, was this paid or not paid.

CHAIRPERSON: No that's fine, between now and the next time, if it is possible from your side you will try and see what you can get but you

will get the cooperation from the Commission if there are any documents that could assist you to have clarity on the matter.

MR MBANA PETER THABETHE: Thank you Chair.

ADV LEAH GCABASHE SC: Chairman I've just consulted with the team and we'll be able to bring those on Tuesday, we have – just to reassure you Mr Thabethe that the first R30million was paid then the R84million was entered but not paid until a later date when it was paid in three tranches, so I think we're going to – when we come back, show you that the entire R114million, R30million plus R84million was in fact
10 paid and we'll show you the dates.

MR MBANA PETER THABETHE: Okay.

CHAIRPERSON: Yes and maybe what could be done is to make available to his legal representatives, on Monday those documents so that by the time we resume on Tuesday he has had time to reflect on them and consider them and is able to say, yes I agree there was payment or no I still don't agree.

ADV LEAH GCABASHE SC: Chairman I notice it's a minute to five, I can continue with this on Tuesday.

CHAIRPERSON: Okay, no that's fine.

20 **ADV LEAH GCABASHE SC:** If that's the date you've decided we should...[intervention].

CHAIRPERSON: Yes on Monday we are going to have a witness who's evidence belong to the Law Enforcement stream Mr [indistinct] and he may – he might not finish on Monday and might go – continue on Tuesday but I think if he does continue on Tuesday it will only be for a

short, very short limited time but there's a chance he might finish on Monday but now I remember that I already said in chambers we'll start at half past eight. The only thing is, that would be fine if we finished with Mr Nkasana on Monday, if we will not have finished and maybe he's going to take another hour or two, it might not be fair to let you be here earlier and if we have to continue with him we will start earlier, that is Mr Nkasana, we will try and start earlier unless there's something that I can't think of now that will prevent us from doing so. So I think – I think we should say one, in the hope that we will finish Mr

10 Nkasana's evidence will be finished on Monday then we will continue on Tuesday with Mr Thabethe's evidence and in that event we will start at half past eight. Should we not finish Mr Nkasana's evidence on Monday, may I request that you keep in touch with, I think Mr Pretorius will be leading Mr Nkasana's so that maybe we can indicate, I can indicate what time I think we would start with Mr Thabethe's evidence and then you can be in touch with his legal representatives to say what time they really would need to be here so that they don't drive all the way to be here half past eight only to find that we start at ten or something, is that fine?

20 **ADV LEAH GCABASHE SC:** That's fine Chair.

CHAIRPERSON: Okay, I take it, it's fine with you as well, okay thank you. Alright then we are going to stop at this stage Mr Thabethe and we will continue on Tuesday, we'll work on the basis of half past eight at this stage but Monday afternoon that might change if Mr Nkasana is going to go into Tuesday as well but your legal representatives will be

informed and then they'll let you know. Yes, okay we therefore adjourn for today and well resume on Monday but with a different witness, we adjourn.

INQUIRY ADJOURNS TO 19 AUGUST 2019