

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

28 AUGUST 2019

DAY 151

20

PROCEEDINGS COMMENCE ON 28 AUGUST 2019

CHAIRPERSON: Good morning Mr Mokoena, good morning everybody.

ADV PHILLIP MOKOENA SC: Good morning Chair.

CHAIRPERSON: Good morning Mr Dukwana.

MR MXOLISI DUKWANA: Good morning Chair.

CHAIRPERSON: Are you ready?

ADV PHILLIP MOKOENA SC: Chair we are ready to proceed.

CHAIRPERSON: Okay before we proceed I just want to deal with one issue. Since the passing away of the late Mr Gavin Watson the
10 commission has received a number of enquiries from the media on whether or not it was intending to call him to give evidence and whether there are any steps it had taken to that end. We have not been able to issue a media statement but I have decided that I will give the response now and the response is that yes indeed he was one of the people that the commission intended to give an opportunity to come and give evidence and put his side of the story before the commission and be questioned by the evidence leaders and the commission. But he had not been called to give evidence as yet and no date had been arranged. But what had been done is that either last week at some
20 stage or the week before that I had signed what we call a Regulation 10.6 Directive that is a Directive that the Chairperson is empowered in terms of the Regulations to issue to a person that may have information that is relevant to the terms of reference of the commission and in terms of that Direct – of the – in terms of the powers given to the Chairperson under Regulation 10.6 the Chairperson can direct a person

to appear before the commission or to furnish an affidavit or statement in regard to certain matters. In the case of the late Mr Gavin Watson the Regulation 10.6 Directive that I have signed was not one that required him to appear before the commission as yet but it was one that required him to furnish an affidavit dealing with the various matters that had been dealt with in the statement of Mr Agrizzi and the personnel of the commission had already been in touch with his attorneys and attempts were being made to arrange for the Directive to be served on Mr Watson. But I understand that he – his attorneys had indicated that

10 the service should be on them. The Directive had not yet been served at the time of his passing on. I think that we will limit our – what we – I have to say to simply that – and we do that simply because there have been a number of media enquiries with regard to this and I hope that this clarifies it. Thank you. We may proceed.

ADV PHILLIP MOKOENA SC: Yes. Mr Dukwana yesterday when we adjourned you were just about to deal with the main topics and the first topic that you have identified is the one that you call the Asbestos Eradication Audit, am I correct?

MR MXOLISI DUKWANA: You are correct.

20 **ADV PHILLIP MOKOENA SC:** Yes. And you are dealing with same from page 12, am I correct?

MR MXOLISI DUKWANA: You are correct.

ADV PHILLIP MOKOENA SC: Now I was quite intrigued with the heading that you were giving to that topic. You call it the Asbestos Heist. Could you please explain to the Chair why you chose to coin it

in that manner?

MR MXOLISI DUKWANA: Thank you. Chairperson I use – I chose to refer to this because of the manner the whole project was – was created as well as how it came about and also the fact that it created an impression that it wanted to address a particular problem that is experienced by very, very poor people who are staying in the houses that still have asbestos roofing. And the fact that the whole thing – the motivation for the whole thing was the – it created an impression of people who were worried and concerned about the health hazards of
10 such a condition can create for people who are staying in houses that have a roof – asbestos rooves. But it will be clear as we continue that the intention was not for – for what they had motivated this project but it was something else in terms of syphoning resources of the – of the public,.

ADV PHILLIP MOKOENA SC: Yes. Now could we now proceed to deal with the specific facts which are contained in your statement but firstly could you give the Chair the background facts which are material and relevant to this Asbestos saga?

MR MXOLISI DUKWANA: Chairperson the person that – that played a
20 pivotal role in this – in this situation is a person well known to me even before the – this pro – this project. They had one project that together with a partner then not this one Mr Mogwera that did not go any further. And he is from my home town Welkom and we – we usually meet and at some stage he was the same person who intimated, who brought this to my attention the project itself and he was very excited at the time in –

when he was talking about this. But he was talking about this project having had the approval from the – the Free State Government. And it was at that time that because of my activism in the ANC they were looking for an opportunity also to expand to some provinces and he was asking a favour from me to help him get to other provinces. But I wanted more details on the project itself because one also values your – ones credibility in the sense that you do not want to introduce anyone to people that you would know and introduce something that is untoward. And then I asked some – some of the details pertaining to

10 this project and they were not forthcoming and I did not continue. But it was during our interaction that he informed me with all the details and the people that were involved from the – the person that yesterday we were told we should not mention – the person was mentioned to me and when he mentioned the person he used the initials and I wanted to know why – who is this person and he was saying where are you living; do you not know this person? And then – and you are in government but you do not know this. Then I – I actually was surprised that he would mention such and the relationship that they had. And every time he was talking to people who were involved in this he was using initials

20 and this would give the background to why I was confident and why I am still confident that what he – he said to me relates to these people that I mention here and also the facts that would demonstrate that why also I believed so. So this is the background that I give to this kind of a problem – of a project.

ADV PHILLIP MOKOENA SC: Yes. When we come to that individual

because I think that I do not want us to miss it from the record always refer to him as Mr X.

MR MXOLISI DUKWANA: Okay.

ADV PHILLIP MOKOENA SC: So that at the appropriate time when the time comes when we are able to deal with the full names we can attribute that to Mr X. It will be much more easier that way. So whenever that you want to mention his name say to the Chair you remember Mr X is the one that did ABCD. That will help us to trace the facts.

10 **MR MXOLISI DUKWANA:** Can I indicate Chairperson I am sorry Mr Mokoena.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: That one of the motivations that the late Igo as we called him Mpambani – Mr Mpambani was – he quickly when he mentioned – he quickly indicated to me that no we do not need money from the Provincial Government we can – you know – we can actually source it from the National Government as we have done with this one. So – and I am talking this Igo; the late Igo is a very, very intelligent young person.

20 **CHAIRPERSON:** Mr Mpambani.

MR MXOLISI DUKWANA: Mr Mpambani.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: Very, very intelligent Chairperson and I understood some of the eagerness to do this the way they have done this because of the previous failures in the province in attempting to do

some projects and they were let down and some monies were requested from them and at the time they were not willing to play and they went under sometime. And you can imagine when you are a business person and they were up there and their business empire collapsed and this also was giving them an opportunity to rise again. So I could understand his eagerness to get this rolled out to other provinces but I will come to that at the appropriate time.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: I will be referring you to a number of
10 documents. For now we will not deal with the details or the contents in full of those documents but to assist you to sketch the background material to the evidence which you are adducing before the Chair. The first document that I want us to visit is on page 39. It is page 39 Chair and once you are there Mr Dukwana if you can identify that document for the Chair?

MR MXOLISI DUKWANA: Chairperson it is – it is – the heading has a black – a Blackhead Consulting and Diamond Hill Trading and it has Free State Province Eradication of Asbestos Audit Report all towns. And it has the emblem of the Free State Province. Free State
20 Department of Human Settlement and the final audit report eradication of asbestos rooves on houses within the Free State Province and plus R300 000.00.

ADV PHILLIP MOKOENA SC: Yes. So this will tie up with the topic that you are addressing today before the Chair, am I correct?

MR MXOLISI DUKWANA: You are correct.

ADV PHILLIP MOKOENA SC: And this document as you have correctly stated it was drafted by an entity called Blackhead Consulting, am I correct?

MR MXOLISI DUKWANA: You are correct Sir.

ADV PHILLIP MOKOENA SC: Yes. And may we then turn to page [intervention].

CHAIRPERSON: And it bears the date of 13th February 2015?

ADV PHILLIP MOKOENA SC: Oh yes. Yes.

MR MXOLISI DUKWANA: It is dated so Chairperson.

10 **ADV PHILLIP MOKOENA SC:** Yes.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: That is important Chair.

MR MXOLISI DUKWANA: That is 14th February 2015.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: Now if you may turn to page 42 and you will see that on page 42 you will find a heading Executive Summary. Immediately thereafter there is a sub-heading Project Background. If you can read those two paragraphs into the record so that we can appreciate – so we can appreciate.

20 **MR MXOLISI DUKWANA:** It – the Executive Summary Project Summary Background.

“Blackhead Consulting and Diamond Hill formed a joint venture and were appointed by the Free State Department of Human Settlement as Blackhead Consulting JV to assess and qualify the entire stock

of low and density residential housing accommodation with rooved asbestos in the Free State Province with the ultimate aim of eradicating these asbestos rooves. The assessment results will enable the Department to formulate a plan to replace the affected rooves with environmentally friendly roof covering to guarantee the citizens of the Free State a healthier livelihood and an improved quality of life.”

- 10 **ADV PHILLIP MOKOENA SC:** Yes. And these accord to also you recollection pertaining to these Asbestos Heist as you refer to it?

MR MXOLISI DUKWANA: Yes Sir.

ADV PHILLIP MOKOENA SC: Now we will come back and deal with the sequence I just wanted to paint a picture around certain documents. Can I refer you to page 107?

CHAIRPERSON: What page?

ADV PHILLIP MOKOENA SC: 107 Chair.

CHAIRPERSON: 107.

ADV PHILLIP MOKOENA SC: 107.

- 20 **CHAIRPERSON:** Thank you.

ADV PHILLIP MOKOENA SC: And as you have done with the previous document if you may please also identify the document and also mention the date of the document?

MR MXOLISI DUKWANA: This is written on the – on the letterheads of Black – Blackhead Consulting – Consulting Engineers and Project

Managers. It is dated the 28th May 2014 addressed to the Department of Human Settlement Free State with the address:

“Dear Sir / Madam. Request for appointment on risk, audit and assessment, handling of hazardous material [removal], and disposal of asbestos contaminated rubble in the Free State Province.”

ADV PHILLIP MOKOENA SC: Yes. So this is the document by Blackhead requesting to be appointed and it was addressed to the Department of Human Settlement as you have said.

10 **MR MXOLISI DUKWANA:** Yes.

ADV PHILLIP MOKOENA SC: Now if you may turn to page 109. 109 Chair. And you will see there is also a paragraph which is dedicated to deal with the background material and would – did you have an opportunity to read what is contained under there heading “Background” and whether that – would that also accord to what was contemplated at the time?

MR MXOLISI DUKWANA: Yes I have read this and as we will continue we will demonstrate that it was just used to motivate and make sure that there is some concern, real concern for the people of the province
20 when it is not so.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: That is relation to which paragraph at 109?

ADV PHILLIP MOKOENA SC: It is page 109 Chair in relation to the entire contents under heading “Background”.

MR MXOLISI DUKWANA: Oh okay.

ADV PHILLIP MOKOENA SC: 109.

CHAIRPERSON: I have got the page I thought it may – I thought it was a particular paragraph?

ADV PHILLIP MOKOENA SC: Yes Chair.

CHAIRPERSON: Paragraph – okay.

ADV PHILLIP MOKOENA SC: Yes. Now if I may refer you back Mr Dukwana to your statement with particular reference to page 12? Now we before we deal with any specific paragraphs under that – on that page can you explain to the Chair who is Mr Mpambani and who is Mr
10 Soddi and whether or not are they still alive?

MR MXOLISI DUKWANA: The – as I indicated earlier Chair that Mr Mpambani were together with Mr Soddi were – had a joint venture and they submitted their proposal to the Free State Department as a joint venture and the – and the unfortunate thing is that Mr Mpambani was mercilessly gunned down – gunned down in Sandton on the 22nd June 2017. And this is the person as I say I knew him very well and also you have his business partner Mr Edwin Sodi. I must indicate that I have never met Mr Sodi personally but I believe he is still alive and you know my problem is I have thought that you know with this – this kind
20 of a project the – the commission should also subpoena him to explain the – the genesis of this project. And now as we speak Chairperson there are legal proceedings instituted against the estate of Mr Mpambani by his partner Sodi at the high court Gauteng local division in Johannesburg. And I understand that the amount in issue is the last payment of R77 million part of the R255 million that was advanced by

the Free State Department of Housing and Settlement.

ADV PHILLIP MOKOENA SC: Was – was that amount part of the monies which were dedicated for this asbestos scheme?

MR MXOLISI DUKWANA: The R77 million.

ADV PHILLIP MOKOENA SC: No – I am – yes.

MR MXOLISI DUKWANA: The R77 million is part of the R255 million but that was the final settlement that was paid for this project.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: The R77 million.

- 10 **CHAIRPERSON:** Yes. Okay. So – so as – from what you are saying it seems that you are saying that out of the R255 million was paid to the joint venture or to Blackhead and there was – or what was paid was R255 million less R77 million or the whole of it was paid but there is R77 million that is still in issue?

MR MXOLISI DUKWANA: The whole amount was paid Chair.

CHAIRPERSON: And that – the whole amount being R255 million?

MR MXOLISI DUKWANA: Was paid in batches. The whole amount R255 million was paid to this joint venture.

CHAIRPERSON: Yes okay.

- 20 **MR MXOLISI DUKWANA:** But it was paid in batches.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: And this was the last payment the R77 million.

CHAIRPERSON: That was made?

MR MXOLISI DUKWANA: That was made to add up and make it R255

million.

CHAIRPERSON: And make it R255 okay.

MR MXOLISI DUKWANA: Meaning the whole – the amount was paid but the last payment to make the R255 million was the one that amounted to R77 million and this is the one that was – that was contested in fact.

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: That the other partner wants about half of that money.

10 **CHAIRPERSON**: Hm okay.

ADV PHILLIP MOKOENA SC: Yes. Now if you turn to page 13 of your [intervention].

CHAIRPERSON: Maybe – I am sorry Mr Mokoena. I take it that this project related to houses in the Free State Province that were provided to – to citizens or residence by the government? I take it that it related to the removal of asbestos on the rooves of houses that were provided to people by government maybe RDP houses, maybe township houses and so on or is that not so, it was much wider than that?

20 **MR MXOLISI DUKWANA**: Can I just indicate Chair. During the – the dark days of apartheid some of these settlements, the houses that were built then most of them were rooved in asbestos. In Kutlwanong where I come from my family house is four roomed house that had an asbestos roofing. In the whole entire area of Polokwane it was asbestos roofing and you will find these all over and the most – you know the most important thing also is that in each and every

municipality you will find records of these things. They would know exactly where these asbestos houses are and – and you would also understand in fact even in the – in the goldfields area some of the pipes [indistinct] and all the pipes that were there were asbestos cement pipes and that created a problem especially with regard to the fact that there is movement. It is a mining area and these movements create cracks and in some instances you have a challenge. But also there was a – there is a time limit to the asbestos roofing. If you go to some houses because they are old, they become ruffled and then you

10 got this product coming out and inhaling that I am told that it is very dangerous for human beings. And that it was band it is no longer supposed to be used. And I understood that the intention of the project was to take away these and – and build new rooves that will not be asbestos. And even for disposal of these – this asbestos material needs a particular process. You cannot just dispose them anywhere. And I understood that the intention of the project was to take away these and – and build new rooves that will not be asbestos. And even for disposal of these – this asbestos material needs a particular process. You cannot just dispose them anywhere.

20 **CHAIRPERSON:** Yes but my question was whether the project was aimed at the removal of asbestos rooves from houses that had been provided by government whether it was the apartheid government or the new government or whether the idea extended to private houses. So did your – or is that something you never got to understand?

MR MXOLISI DUKWANA: They were doing all houses that were built

using asbestos and to my recollection there is no house that I know that – that it is a private house built by a private individual that has asbestos house. Most of these houses were municipal houses or local government houses.

CHAIRPERSON: Yes okay.

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Yes. Now at the time when Mr Mpambani you say that he was killed in Sandton was he still the member or the
10 member of the Blackhead?

MR MXOLISI DUKWANA: Yes.

ADV PHILLIP MOKOENA SC: Consulting?

MR MXOLISI DUKWANA: Yes, yes.

ADV PHILLIP MOKOENA SC: There is a further document that I want to refer you to Mr – if you may turn to page 94? And if you are – if you can also identify that document for us?

MR MXOLISI DUKWANA: This – this document is from the Department of Human Settlements Free State Province addressed to the Chief Executive Officer Blackhead Consulting Company that is the JV. And to
20 the attention of Mr Edwin Sodi. And it – the heading there is “Instruction to Perform Work in PW/-001[phase1] Audit and Assessment of Asbestos of Housing Units”.

ADV PHILLIP MOKOENA SC: Oh yes and if you turn on page 95 and who signs the letter?

MR MXOLISI DUKWANA: The letter here is - I do not know if it is his

signature - but it is signed by Mokhesi, N Mokhesi.

CHAIRPERSON: I see that - I think the first sentence of page 94 in that letter seems to give (foreground noise) to the question that I asked a few minutes ago.

ADV PHILLIP MOKOENA SC: It seems to be addressing that Chair.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Chair there appears to be - Mr Manyi might want to say something to the - to the Chair.

CHAIRPERSON: Yes, okay.

10 **MR MZWANELE MANYI:** Thank you Chair.

CHAIRPERSON: Yes. Come forward.

MR MZWANELE MANYI: Thank you Chair.

CHAIRPERSON: Yes.

MR MZWANELE MANYI: Chair will recall that the - yesterday myself on record. Sorry, Chair. I apologise for that. Chair will recall that the record yesterday reflected that I in presence of Mr Simile Bala (?) SC on behalf of the DG of the Free State Government and also on my own private instructions on Mr Seoe as well. I have just received instructions from the HOD that has been - just been mentioned by the
20 witness before you that the notice contrary to what was placed on record yesterday by the evidence leader that all the people that were mentioned including Mr Mokhesi received the note - necessary notice.

Unfortunately it transpired and it was confirmed this morning that Mr Mokhesi has never received it and it was posed to the evidence leader that indeed the notice went to an incorrect wrong address and as

a result Mr Mokhesi did not receive the notice and has just been -
drafted a letter that has been to the Commission stating that fact that
Mr Mokhesi has not received the notice.

The Chief Director of the department is before - is in the
attendance of the proceedings. We just wanted to bring that to the
attention of the Chair that indeed ...

CHAIRPERSON: Yes.

MR MZWANELE MANYI: As much as it has been placed before - on the
record yesterday Mr Mokhesi has not received the notice and as such
10 could not adequately respond to the allegations referring to him.

CHAIRPERSON: Yes, okay. Thank you. I - I take ...

MR MZWANELE MANYI: *Ja.*

CHAIRPERSON: Mr Mokoena the legal team has not had a chance to
apply their minds to the (intervenes)?

ADV PHILLIP MOKOENA SC: Not at all Chair.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: It was the only thing but all that we have
Chair as per schedule that was received from the secretariat and all
efforts were done and the names obviously and the addresses are not
20 thumb sucked. So there is an indication that there is an email that was
provided ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: Email address and according to what we
have submitted in good faith is - is that ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: 26 days before this hearing ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: A notice was sent in the name of Mr Thabo to Thabo - to Thabo Mokhesi and - and there is an email address but to the extent that it may be found that the email address is incorrect. We - we still have to verify those facts.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: We assure Mr Mokhesi that his rights will still be maintained. He will be entitled to file any other thing and to
10 contest whatever evidence. He can still even apply to cross-examine this witness or to exercise any of his rights.

CHAIRPERSON: Yes. My understanding is that - the idea was just to place on record

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: And to do nothing more.

ADV PHILLIP MOKOENA SC: Nothing more sir.

CHAIRPERSON: Yes. Just so that maybe if and when he - if he responds late or that could be understood.

ADV PHILLIP MOKOENA SC: Definitely Chair.

20 **CHAIRPERSON:** Yes.

MR MZWANELE MANYI: In fact Chair the - the name that has been mentioned is an incorrect name. His name is Nthimotse and not Thabo Mokhesi.

CHAIRPERSON: Yes.

MR MZWANELE MANYI: So it went to a wrong person altogether Chair.

CHAIRPERSON: Yes.

MR MZWANELE MANYI: Yes.

CHAIRPERSON: Yes. So - so you say he is Head of Department and he is this surname but the name is wrong?

MR MZWANELE MANYI: Indeed so.

CHAIRPERSON: Yes; but - but am I correct to say you just wanted to place it on record so that maybe if he takes time before he responds that would be understood?

ADV PHILLIP MOKOENA SC: Yes.

10 **MR MZWANELE MANYI:** Indeed so Chair.

CHAIRPERSON: Yes.

MR MZWANELE MANYI: As - also because the - it might emanate that the allegations that are going to be made against him will be - will be of (indistinct).

CHAIRPERSON: Yes.

MR MZWANELE MANYI: That will also be part of - you know.

CHAIRPERSON: Yes.

MR MZWANELE MANYI: Against his rights really to have responded before ...

20 **CHAIRPERSON:** Yes.

MR MZWANELE MANYI: Those allegations were made of an implicating nature.

CHAIRPERSON: Yes, yes.

MR MZWANELE MANYI: Indeed so Chair.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Chair we understand. We will make sure that

CHAIRPERSON: (Intervenes).

ADV PHILLIP MOKOENA SC: He is afforded all his rights ...

CHAIRPERSON: *Ja.*

ADV PHILLIP MOKOENA SC: And we will not take any issue should he want to participate in these proceedings ...

CHAIRPERSON: *Ja.*

ADV PHILLIP MOKOENA SC: And if it is the wrong address he ...

10 **CHAIRPERSON:** *Ja.*

ADV PHILLIP MOKOENA SC: And he wants to participate ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: He would be allowed to do that.

CHAIRPERSON: *Ja.* I think what - what should be done is somebody in the legal team must investigate the - the allegation that it went to a wrong address and then at some stage I must just be informed what the position is.

ADV PHILLIP MOKOENA SC: We will make sure that before the end of today ...

20 **CHAIRPERSON:** Yes.

ADV PHILLIP MOKOENA SC: All that is been done Chair.

CHAIRPERSON: Okay, thank you.

ADV PHILLIP MOKOENA SC: At this can permit us to proceed ...

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: With evidence Chair. Mr Dukwana we

were at the - at the stage where we are dealing with page 94 if I am not mistaken and the Chair was confirming that some of the paragraphs that you have read also addressed the issues that he was asking you. Am I correct?

CHAIRPERSON: Oh. I - I was saying that the first sentence of the letter at page 94 seems to address a question that I put to ...

ADV PHILLIP MOKOENA SC: Yes, yes.

CHAIRPERSON: Mr Dukwana. Namely it says:

10 “The IPW-001 serves to instruct you to audit all
pre-1994 Government issued housing units.”

So ...

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: It does look that it related to houses that were provided by Government.

ADV PHILLIP MOKOENA SC: Yes and then I was referring you to page 94 before we had to deal with this - the issue of the savings and you said on page 94 the - the name that is - is indicated as the person who is the author is Mr N Mokhesi. Am I right?

MR MXOLISI DUKWANA: You are right sir.

20 **ADV PHILLIP MOKOENA SC:** And he is also indicated as the Head of Department at the time?

MR MXOLISI DUKWANA: Correct.

ADV PHILLIP MOKOENA SC: Now crucially and to this letter it is also the date. If you can mention to the Chair what is the date of the letter.

MR MXOLISI DUKWANA: 2 December 2014.

ADV PHILLIP MOKOENA SC: Yes and speaking under correction and I know that you are the person who might have knowledge. Please assist me. Would I be correct that from 15 December onwards one would not find any building or construction you know processes being undertaken during that period?

MR MXOLISI DUKWANA: Normally Chairperson having worked in Government the - when it comes to 15 December most contractors you know ...

CHAIRPERSON: They shut down?

10 **MR MXOLISI DUKWANA:** They shut down ...

CHAIRPERSON: *Ja.*

MR MXOLISI DUKWANA: For the holidays ...

CHAIRPERSON: *Ja.*

MR MXOLISI DUKWANA: And they will start in January.

CHAIRPERSON: Yes. Around mid-January ...

MR MXOLISI DUKWANA: In most cases ...

CHAIRPERSON: Or not necessarily?

MR MXOLISI DUKWANA: It will be the first week of January.

CHAIRPERSON: Oh, first week of January?

20 **MR MXOLISI DUKWANA:** Yes.

CHAIRPERSON: Okay.

MR MXOLISI DUKWANA: In fact you will see also every time we plan anything you make sure that December is - is you know everybody slows down and in January because you are dealing also with the financial years the Government one - the Provincial Government and

National I think it is April and then June it is - it is Local Government.

So people make sure that because you know you are losing time in December and January. So normally people wake up in February and start working seriously in February. So December and January are actually - sometimes we refer to them as dead months. Yes.

ADV PHILLIP MOKOENA SC: Now would it make sense that an instruction is given on that date? If you look at the date and you - I mean you correlate that date with what you have stated to the Chair.

- 10 **MR MXOLISI DUKWANA:** Yes. There will be nothing untoward because during that time it depends what - what day Government would you know operate at a - a skeleton staff but in most cases and also with the Provincial Government especially with the Executive Council when it goes to the 15th most of us - it depends who would have indicated that we will be available.

After the - the 15th most of the people are on holiday. There will be a skeleton staff that is operating in - in Government. It does not necessarily mean that Government closes down.

ADV PHILLIP MOKOENA SC: Yes. Now ...

- 20 **CHAIRPERSON:** I - I do not know whether Mr Mokoena you intend to ask him to read this letter. It seems to be ...

ADV PHILLIP MOKOENA SC: Yes definitely Chair.

CHAIRPERSON: Quite important.

ADV PHILLIP MOKOENA SC: That is the - that was the next thing in line. Now if you turn back to page 94 and take us through the contents

of that letter and please where necessary please you know be at large to comment.

MR MXOLISI DUKWANA: Paragraph 1:

“Audit assess and GPS all pre-1994 Government ...”

CHAIRPERSON: Okay. Okay. I am sorry Mr - I think you must start where it starts:

“This IPW ...”

Then one will understand it proper.

ADV PHILLIP MOKOENA SC:

10 **MR MXOLISI DUKWANA:** Oh.

ADV PHILLIP MOKOENA SC: Before ...

MR MXOLISI DUKWANA: “This IPW-001 serves to instruct you to audit all pre-1994 Government issued housing units as follows: one, audit assess and GPS all pre-1994 Government housing units in the province at a rate of R850,00 VAT exclusive per unit up to a maximum of 300 000 units. This is the total value of the money 255 million VAT exclusive hereinafter to be referred to as the total project cost will be payable for all audited units and it should be noted that all asbestos units are expected to be audited in the province.”

20

Now Chairperson this is very important to understand why I said this is a heist. We assume that nobody knows how many of these units are and the intention there is to make sure that we eradicate

these units and that is what you want as - as a province. Now you cannot limit it to 300 000. You cannot also - this cannot be a magic number.

It must be understood why they ended to 300 000 and I will tell you it is because of the amount that was given was 255 000 - 255 million for this. So people had to work this thing backwards. If it is 255 million that we have. You then divide that by R850,00. It will then give you the maximum units that will be 300 000 units exactly.

Now what these people - what this is happening here and the
10 - and - and the price rate is given there and - and you expected that all asbestos units will be - should be audited. If - the question is - if the asbestos units go beyond 300 000 what will be the case ...

ADV PHILLIP MOKOENA SC: Hm.

MR MXOLISI DUKWANA: But in this case what is very interesting is - is that you - you are saying people should go and audit and the amount is this. Chairperson the Constitution demands of Government especially those who are given the responsibility to be - to be very efficient, effective economical and in terms of dealing with the public purse.

20 Now this could have been done the other way. The - every municipality has ward committees. It has ward councillors. If you do not have this kind of information at your disposal either coming from the Provincial Government or local municipalities this could have been guarded. The information could have been guarded using the people that are there at the local level without paying a cent and having done

that and having done that you will then know how many of the houses are asbestos.

Then you can do the GPS that you want to do but also we are living in a - in a very interesting time - in - in interesting times. You can actually Google this and you can get all this information you know using desktop research. You can do it and you will get all the details but I am just saying it is very interesting that the figure put up here the total number of houses audit - that should be audited.

It means you just counting these houses. You pay - per
10 house you pay R850,00 to do the auditing and just to make it look very expensive you put in the GPS thing.

CHAIRPERSON: What is this GPS - audit asses and GPS all pre-1994 Government housing units in the province?

MR MXOLISI DUKWANA: (Intervenes).

CHAIRPERSON: Audit - audit that one understands. If the idea was to remove all asbestos. What would be there to assess? Is - is the position not that you simply needed to identify all the housing units that had asbestos or if you had a limitation on the number you identify 300 000?

20 **MR MXOLISI DUKWANA:** Chairperson this is - this is ...

CHAIRPERSON: Or do - do you understand what it means this asses to say it must be assessed? What were they supposed to assessed - to assess?

MR MXOLISI DUKWANA: I think the - you know the Chairperson the more you probe into this you will find the reason why we are calling it a

heist. The - if you - you audit you assess meaning you identify these houses and you are able to locate them using the GPS. You would know where these houses are and you would know the structure. Some of these houses would be - the foundations would be poor etcetera.

So if you were to remove the - the roof - the roofs you would also affect the - the structure - the whole structure.

CHAIRPERSON: Oh that is where the assessment comes in ...

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: To say it is not enough to just identify that this
10 particular house has asbestos. You have got to also look at the whole unit and see whether if you remove the asbestos you are not going to affect the whole structure or - so that you - you can see whether you may end up having to replace the whole house or something.

MR MXOLISI DUKWANA: Yes. What - what you will find in the whole thing Chairperson is - is that the - these people who get into a house and some of the houses people would have made some improvements. This neighbour would have an asbestos roof. This one would not necessarily have that one. Now what is very interesting to look into the matter is if I am the person given the task to do the - the audit or the
20 assessment.

You - there is no need for you to - you just look at the roof and you find it is not asbestos. So you would not get paid the 850 for just doing that but getting to the asbestos house you identify the asbestos house. You will then take the photos etcetera of this asbestos house to exactly know what the conditions are of the house

but for you to get into a house and then you - I mean you can just go and you know in the township you have - this township has 200 houses.

You then go to the 200 houses. This - this number relates - the 300 000 relates to all the provincial - the houses in the Province of the Free State in the five districts that we have in all the municipalities. Surely you have more than 300 000 houses. So specifically for you to be - to - to be very efficient and effective in doing this what you will then do you would gather the information as - as a responsible department.

10 You will gather the information even before you give the job to the people. You would know that you have got these houses and you will direct them to say in the Free State we have so many of these houses that - that are asbestos. Then you can direct them to do their assessment etcetera but here all that was done go - it is - you know it is easy.

 You go every house and people will say in Welkom we - we went for 50 000 houses. We only found - as an example - we only found 300 houses with asbestos but the rest is also covered in terms of being paid because you have done - you have just audited - you know
20 you identified the house and then it is asbestos and then you do that.

 So it is not asbestos but it is a number. Once you get to 300 000 the project is done. So the - the whole thing itself is just a scheme to justify what actually these guys were looting.

CHAIRPERSON: I just want to make sure I understand what the points are. You seem to want to make a certain point with reference to the

choice of the figure 300 000 ...

MR MXOLISI DUKWANA: Hm.

CHAIRPERSON: And - and the amount 250 million. I - I - would it not be normal to first say how much budget have we got that we can put aside for this kind of project and if you say well we can put aside 255 million. Say okay 255 million and then say how many housing units are there that require this kind of project. You identify them.

Maybe if the - if the amount that you have set aside will be enough to do all of them then that is fine but if the amount that you have set aside will not be enough to have all of them done then you say out of 400 000 we will only be able to do 300 000. So I just want to check whether there is something I missed.

I would have thought that that is - there would be nothing unusual about that approach.

MR MXOLISI DUKWANA: No that the - in the normal circumstances it will not be (intervenes).

CHAIRPERSON: Under normal circumstances it will not be?

MR MXOLISI DUKWANA: Under normal circumstances.

CHAIRPERSON: Yes, yes.

20 **MR MXOLISI DUKWANA:** But in this case what I am trying to drive at is you have a Department of Human Settlement in the Free State. You have municipalities. You have this - this noble idea of removing the asbestos houses. The first normal thing that you will do to make sure you get the best for the money as a province before you give it to any other person to do this specialised thing.

You will then identify all the houses that have asbestos in the province. The - the likelihood - say it - it gets to - you find that you only have 60 000 Chair or you have 100 000 of these houses that are asbestos roofed houses. Then it means the amount of money that you would have budgeted would not - would be more than enough for you to do this but if you start the project and I am - I am saying this if there is no urgency and you create that urgency I am - I am about to be in - in September I will be 55.

I stayed in the asbestos house. I was born in that house and
10 I stayed there up until I moved out in 1993 and there has not been any urgency. I think - I do not think there will be any urgency in this case.

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: So what I am trying to say Chairperson is ...

CHAIRPERSON: Ja.

MR MXOLISI DUKWANA: The - the department being a responsible department ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: Would get the information and gather the information without paying this amount of money.

20 **CHAIRPERSON:** With - without ...

MR MXOLISI DUKWANA: Hm.

CHAIRPERSON: Without paying?

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: And then it would help them if they find that

they have a certain number of these asbestos houses. Remember it is the - the whole thing is not about auditing. The most important thing is removing them. So you do not focus an auditing as such. Spend a lot of money on auditing the houses. You - you want to make sure that you have these houses.

You have identified them. You have - what we call ward committees. They work with ward councillors and these people would know their wards and they would be able to say in Ward 10 in Welkom and Matjhabeng we have 20 of the asbestos houses and they can give
10 you the addresses.

ADV PHILLIP MOKOENA SC: Hm.

MR MXOLISI DUKWANA: Then - and then you are able to go out and - and do a - an advert in this case that you intend eradicating these asbestos roofing and you are calling for people. In this case there is competition and you will get a better price deal for this but for you to decide from the beginning that you only - you have 255 million and go and audit.

So what these people did they because it - you stipulate that you must audit 300 000 houses. So they went out and - and did exactly
20 that. They went out and audited 300 000 houses. You will see as we get to the report itself it will tell you of the 300 000 houses audited so - so many of them are roofed in asbestos. So what I am trying to give to the Commission is that ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: Taking the total amount - number of houses

the figure and the price will tell you the whole story of the - of the project.

ADV PHILLIP MOKOENA SC: *Ja.* If ...

CHAIRPERSON: Okay. Mr Mokoena I guess that maybe we should let him read the letter ...

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: And finish it before commenting.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: So that it will be much easier and then you ...

10 **ADV PHILLIP MOKOENA SC:** Chair yes.

CHAIRPERSON: Can comment after.

ADV PHILLIP MOKOENA SC: He can comment after but Chair because of this questions that you have posed maybe let us clarify them at this point ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: And if allow him to do that because ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: A number of things arises from what Mr Dukwana has said.

20 **CHAIRPERSON:** Yes.

ADV PHILLIP MOKOENA SC: Now would one understand your evidence better if you look at the figure 300 000. That as at this time there was no information at the disposal of either the department or the very same entity but indeed there is a need or there are 300 000 houses at least where you need to replace that asbestos.

MR MXOLISI DUKWANA: Yes.

ADV PHILLIP MOKOENA SC: Yet and amount has also been placed.

MR MXOLISI DUKWANA: Yes. It is clear there was no - there was no information in the - in the department for that.

ADV PHILLIP MOKOENA SC: Yes. Now in line to that because Chair has asked you also relevant questions. Turn to page 107 which might also clarify some of the questions that the Chair was - was putting and the answers that you proffered but they might be better explained with what you see in paragraph 1 of that letter. If you can just read that
10 letter - paragraph 1 of it only.

MR MXOLISI DUKWANA: Ja. Chairperson this paragraph here the - the one that is headed:

“Request for Appointment on Risk ...”

ADV PHILLIP MOKOENA SC: Hm.

MR MXOLISI DUKWANA: “...Audit and Assessment Handling
of Hazardous Material, Removal of Disposal of
Asbestos Contaminated Rubble in the Free State:
we have the pleasure in submitting our request to
be appointed on risk basis for the following: the
20 assessment audit of houses, roofed using asbestos
material, the handling and disposal of asbestos
sheets to an approved designated disposal site.
The scope of the work entails the physical door to
door counting, safe removal and disposal of
asbestos contaminated building rubble and

asbestos sheets from various townships across the
Free State.”

ADV PHILLIP MOKOENA SC: Yes. So would that also be inline in
what you are trying to convey to the Chair as to what was envisaged in
the appointment?

MR MXOLISI DUKWANA: Certainly sir.

ADV PHILLIP MOKOENA SC: Yes. Now maybe let us then do as the
Chair has proposed and proceed from paragraph 3 so that we can put
the entire contents of the letter in and thereafter have the opportunity
10 to comment on any other specific paragraph in that letter.

CHAIRPERSON: He had not gone to two if I remember correctly. Had
he done two?

MR MXOLISI DUKWANA: That is what I am reading.

ADV PHILLIP MOKOENA SC: No to paragraph 2. You are right Chair.

CHAIRPERSON: *Ja.*

ADV PHILLIP MOKOENA SC: From paragraph 2.

CHAIRPERSON: *Ja.*

MR MXOLISI DUKWANA: Paragraph 2 reads:

20 “The commencement period for the appointment will
be effective from 1 December 2014 to
31 March 2015 or earlier.”

Number three:

“You are expected to submit a completion report
within two weeks from the date of completion of the
project.”

Number four:

“40 percent of the 50 percent of the total project cost 51 million VAT exclusive is payable on commencement. That is on 1 December 2014 subject with submission of a valid tax invoice and valid tax clearance certificate. 60 percent of the 50 percent of the total project cost 76 500 000 VAT exclusive cost will be payable as progress certificate number two on or before 1 March 2015.”

10 And number six:

“40% of the 50% of the total project cost R51million VAT exclusive is payable on commencement that is on the 1 December 2014 subject to submission of a valid tax invoice and valid tax clearance certificate. 60% of the 50% of the total project cost R76 500 000 VAT exclusive cost will be payable as progress certificate number two on or before the 1st of March 2015 and – number six 40% of the 50% of the total project cost that is R51million VAT exclusive will be payable as a progress certificate number three on or before the 1st of May 2015. 60% of the 50% of the total project cost R76 500 000 VAT exclusive will be payable as progress certificate number four subject to submission of the final project’s Board on or before the 1st of June 2015. A minimum liability insurance of a million is required. I hope you’ll find the above in order of your respective purposes. Regards M Moghazi the Head of

20

Department, signed the 2nd of December 2014.”

ADV PHILLIP MOKOENA SC: Now let's go back to page 94 and allow you to comment on any of the paragraphs that appear in there.

MR MXOLISI DUKWANA: Can I – before I address this Chairperson, if you look at paragraph two the commencement period for the appointment will be effective from the 1st of December 2014.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: And then the letter is dated the 02/12/2014.

CHAIRPERSON: Yes.

10 **MR MXOLISI DUKWANA:** I'd leave that, that it's normal also but in this case I don't understand the reason that you don't appoint them from the date that you signed the contract then, you know, the 1st of December – what comes first is the 1st of December 2014 and then you sign this on the 2nd December 2014, so I'm just saying it would have been normal, in fact if the – that the Head of Department would have given the commencement date on the 3rd or the 2nd when they received the letter but to commence on the 1st of December and then the letter is signed out. Meaning on the 1st of December they don't have a letter and then the 2nd of December you sign it already.

20 **CHAIRPERSON:** Well part of what it raises might be the question of – the question you raised earlier as to what was so urgent, why did things have to be done in such a rush.

ADV PHILLIP MOKOENA SC: But also fundamentally Mr Dukwana the point that you're certainly making, go to page 94, is that clearly, if this is an instruction letter to perform certain duties, it says from 2nd

December then one would expect that any appointment cannot precede this instruction, am I correct?

MR MXOLISI DUKWANA: You're correct.

ADV PHILLIP MOKOENA SC: Yes you see that when you go to paragraph two the period appears to be the 1st of December a period when there was no any instruction that could have been – that could have gave them the mandate to do anything, is that the point that you're making?

MR MXOLISI DUKWANA: That's the point that I'm making.

10 **ADV PHILLIP MOKOENA SC:** Now any other issue you wish to comment?

MR MXOLISI DUKWANA: The – you'll remember Chairperson that when they made their proposal they were asking to be appointed on risk and the question that has been worrying me is that on commencement, these are people, when they come to you they say we can do it on risk...[intervenes].

CHAIRPERSON: And on risk meant what?

MR MXOLISI DUKWANA: I think they might have indicated that they are prepared to take the risk, they will commence and then you'll pay
20 them at a later stage.

CHAIRPERSON: So in other words without any deposit or advance payment?

MR MXOLISI DUKWANA: Without any deposit or without an advance, this was – they offered to do that when they were asking for this but even before that, you saying the first payment will go on the 1st or is

payable on commencement, the 1st of December 2014. When you sign this thing on the 2nd of December 2014.

CHAIRPERSON: Yes but also if one looks at what they were going to do in terms of how you explained it at least as I understand it, the initial task would be to identify the housing units with asbestos roofs and maybe at the same time do the assessment that you talked about. I would have imagined that once they had done that then the next phase would be the removal of the asbestos from those identified housing units. So one wonders why it was important that – or what
 10 justification there was that they should be paid before they could do any work at all. Sometimes the justification for some payment in advance might be that they will incur costs in terms of material, I don't know if there would be any significant cost for just doing door-to-door to identify the houses and assessing and therefore why they wouldn't be required to first perform certain tasks and once they have performed those tasks and the department is satisfied that those tasks were performed satisfactorily then they get paid, is that something you are able to comment on?

MR MXOLISI DUKWANA: That is what I said under normal
 20 circumstances some of these things will be best explained and one will understand but because of many things that are abnormal that are happening things like this you look at them carefully and want to understand and as I say Chairperson, I'm finding it very difficult to reconcile the fact that I come and I say, appoint me on risk to do this and then you appoint me but you then go out to say I'll give you money

in advance and if we don't see anything wrong then I don't understand because the fact that I come to you there were no plans to do this in the department itself and it means that the whole project was also not budgeted for by the department itself. It's an unfunded mandate that but the issue is, as the Late Mr Mbambo indicated that they got money, they were able to source money from National. So it means because now we have – and it was for that reason that they were saying appoint us on risk because they were assured that they would be paid. So it means these people were prepared to spend whatever needed to be

10 spent and then approach Government and say, the same reason that I said, and say, we have these houses and these houses now need to – we need to assess them and do work but the audit part it's an easy way, you can actually, as I say, you can audit houses you have 1, 2, 3 tables here but that one is broken and then that broken one needs to be fixed. So you then go to the – to whoever fixes the thing and say, now fix the one broken table but for you to take all this three tables we have done this now we need money for all the three tables, these ones are not broken but you're getting paid the same amount just because I was able to count that there were three and I pay you but the most

20 important thing that is very critical here to understand is, how do you – as I said there's no urgency, number one, the person comes with an unsolicited bid, you don't have – it was not budgeted for and the person says to you, appoint me I take the risk, I take the risk away from you as Government let me perform this but when you appoint the person who came to you with all this, you then point out how you will pay him

or that person even before they commence. You sign the letter on the 2nd of December, the commencement is the 1st of December and then you say I'll pay you from the 1st of December, I'll pay you this amount of money and it's not just any amount Chairperson, this is R51million of public money that I'm giving to you. You have not even started, I give you the R51million all that you might have done is give me a guarantee of a million then I give you R51million. You have a person who gives you a million and as a guarantee you still want to give R51million before he even commences and this argument, I'm making it

10 deliberately Chairperson, you will see at a later stage the same Head of Department raising a point that you can't pay a person that a person has not performed and this is the same person who deposed the affidavit to the fact that you can't pay for a service that has not - or goods that have not been delivered but you do the same thing. So I'm just saying there is a lot that is not right with this project.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Now with reference to that letter on page 94 is there any other thing that you wish to raise before I put some of the questions which I also seek clarity from you?

20 **MR MXOLISI DUKWANA:** No that's all.

ADV PHILLIP MOKOENA SC: Now what confuses me Mr Dukwana is that if you turn to page 95 of that document, you will see that in paragraph six and seven there are further amounts which the department appears to be committing itself to pay and within – referring to certain milestones and it also provides the date of the payment of

those amounts, can you see them?

MR MXOLISI DUKWANA: Yes I do.

ADV PHILLIP MOKOENA SC: Let's take the first one being the amount which would be paid of R51million on or before the 1st of May 2015, alright. Now having that in mind, let's go back to paragraph two on page 94, I thought that the period of appointment it's only for a period of, I think, it's less than three months taking into account December, am I right?

MR MXOLISI DUKWANA: Reading it Chairperson is the
10 commencement period for the appointment will be effective from the 1st
of December 2014 to the 31st March 2015 or earlier and with that in
mind how does one then get payment as provided for in paragraph six
beyond the stipulated period of the contract? It explains why I refer to
it as a heist Chairperson, I give you the timeframe January 1st – 31st of
March but still there are dates beyond the contract or whatever that I
gave you – I gave up until the 31st of March 2015 but the same letter
I'm saying to you I will give you R51million that will payable as
progress certificate number three on or before the 1st of May. That will
be after the whole project would have been – supposed to have been
20 finished and remember what I said Chairperson...[intervenes].

CHAIRPERSON: Well maybe before you get there, maybe between
you and Mr Mokoena somebody can give me clarification. I don't seem
to have any problem with payments that come after the date of
completion of the project because I'm assuming that normally you
would let them finish the project and then you must have time to

inspect whether they have done the job properly and with or without that, as long as they are finished the job if they are happy that you pay a month later and so on then that would be fine, is there something I'm missing. If you built my house, if I asked you to build my house and you finish it today, we might have an agreement that you let me have your final invoice within 7 days or tomorrow but I have 30 days to pay the final invoice, that's after you've finished the house.

MR MXOLISI DUKWANA: I think the normal thing is that I work and then say I work in January and then I give you a certificate and then
10 you go out and you pay me for the work that I would have done, the progress certificate. What I'm also trying to point out Chairperson is the determination of the figure.

CHAIRPERSON: Determination of?

MR MXOLISI DUKWANA: The figure, of the figure itself, say I make an example...[intervenes].

CHAIRPERSON: Yes but that might be a different point, I just wanted to make sure that there – I'm not missing any point that either you or Mr Mokoena was making about payments happening after the completion of the project but if I'm not missing anything it's fine.

20 **ADV PHILLIP MOKOENA SC:** Let's go to paragraph six Mr Dukwana, this does not seem to suggest that this will be the amount paid for the work already done, read the entire paragraph six with the emphasis on, will be payable as progress certificate. Would one understand that the progress certificate would entail work that must be done during that period for one to be entitled to that amount?

MR MXOLISI DUKWANA: Correct sir.

CHAIRPERSON: Oh so that's the – refers to progress certificate to say there seems to be a contradiction because the one paragraph says the completion date of the project is 31 March but another paragraph in the letter seems to contemplate that beyond that date there will be work continuing and therefore there will be progress...[intervenes].

MR MXOLISI DUKWANA: Yes and entitlement to further amounts.

CHAIRPERSON: Yes now I understand.

ADV PHILLIP MOKOENA SC: Now let's deal with paragraph seven on
10 the same basis and look at the period and look also at what was that amount supposed to be advanced for, if you can read it and also comment on it in line with paragraph two...[intervenes].

MR MXOLISI DUKWANA: This is the 60% of the 50% of the total project cost that will be R76 500 000 VAT exclusive that will be payable as progress certificate number four subject to the submission of the final report on or before the 1st of June 2015.

ADV PHILLIP MOKOENA SC: Yes, now I seek clarity also – maybe let me allow you to comment in relation to what you've said before, before I move to another point. Would that be in accordance with the normal
20 processes of the department to pay a service provider beyond the period of the stipulated – of the contract and also for – I mean the amount as indicated in paragraph seven?

MR MXOLISI DUKWANA: Normally Chairperson once you have done your project in some instances you'll find that you will be paid but before they give you the final settlement they want to go back and see

if everything has been done and if they are not happy with that, they will then from the final settlement that they need to give you, they will take what they believe they need to take and then give you everything that is due to you but as I'm saying here, this seems to determine – it's pre-determined that from this period you would have done – you should have done 40% in terms of counting houses and then we will pay you this 40% of this we'll pay you this. It's actually very, very vague, this – the whole thing that is written...[intervenes].

CHAIRPERSON: Well I wanted to also ask you, what is this thing of
 10 talk about 40% of 50%, 60% of 50%, what is this is this a normal way of calculating what will be paid to a contractor, why are they not talking about whatever percentage as we all know percentages. Percent of the whole amount, I mean they've said the whole amount is R255million, why are they not simply saying when you have done 20% of the houses then you will be paid 20% of the R255million, 20% of the whole amount or something like this, what is this 40% of 50% of the total project cost, 60% of 50% of the total project cost, 60% of the 50% of the total project cost?

MR MXOLISI DUKWANA: The simplest thing just to simplify it, you
 20 have – it is payable in four batches. In tis case you have 300 000 units, so what you do half of 300 000 would be 75...[intervenes].

CHAIRPERSON: Yes I understand that part, I'm asking whether this is normal, the normal way in which Government departments maybe particularly in the Free State, how they wold communicate or calculate amounts paid. You were an MEC for quite some time, you probably

would know or – was this a normal way of calculating what would be paid to a contractor or is it something you were seeing for the first time as well?

MR MXOLISI DUKWANA: This is very interesting, this is why, Chairperson, I wanted to just to show you what I understand by this and why I say – here the 50% if you take the 300 000 houses and then you have 150 000 the 50% of whatever, we are talking...[intervenes].

CHAIRPERSON: No, no I'm saying that part I understand, I understand how you would work it out that I understand, what I don't
10 understand is – I mean obviously 40% of 50% is 40% of half of 300 000 units or if you talk about the amount it's 40% of half of R255million but it's a very strange way of calculating anything, I mean – but maybe it's just because I don't know. So what I was interested in is whether in your experience, this is not something unusual to calculate things, make calculations like this?

MR MXOLISI DUKWANA: That's why I was saying it's vague, it's open to abuse but it's not normal that you do this. The fact is Chairperson, what you do, you appoint a person to do a particular job, as the progress report comes in, if I have done – this month I would have
20 done, say I would have done 20 houses, you will then pay me 20 – for the 20 houses and then you go and do it. So – but if you pre-determine it and you say you do this, we pay you this much. So I'm saying, I don't understand it quite clearly how this was structured and why it was structured.

CHAIRPERSON: Yes, okay thank you.

ADV PHILLIP MOKOENA SC: While we're still trying to clear that confusion Mr Dukwana, while you're opening page 94 could you also simultaneously open page 112, open page 94 and page 112. Now if you look at page 112 would I be correct that this was the tax clearance certificate which was submitted in line with this project?

MR MXOLISI DUKWANA: Yes sir.

ADV PHILLIP MOKOENA SC: And it was submitted by the service provider in question, would I be correct?

MR MXOLISI DUKWANA: Yes you're correct.

10 **ADV PHILLIP MOKOENA SC:** Now what is the expiry date of this tax clearance certificate, if you look at the top left-hand side, you'll find the date?

MR MXOLISI DUKWANA: The date there is – I don't know what...[intervenes].

CHAIRPERSON: 28 January 2015, isn't it?

ADV PHILLIP MOKOENA SC: Ja it would appear that the approved date...[intervenes].

MR MXOLISI DUKWANA: Expiry date 28 January 2015.

ADV PHILLIP MOKOENA SC: And the expiry date would appear to be
20 28 January 2015.

MR MXOLISI DUKWANA: Yes.

ADV PHILLIP MOKOENA SC: Am I reading it correctly?

MR MXOLISI DUKWANA: Yes sir.

ADV PHILLIP MOKOENA SC: Now compare that – that period of the validity of the certificate of the tax clearance certificate with paragraph

two on page 94 and can you wish to comment on comparing the two dates?

MR MXOLISI DUKWANA: The commencement is from the 1st of December to the 31st of March and then the expiry date of the clearance certificate is the 28th of January 2015 meaning that by the time you pay everything you would not have a tax clearance certificate that is in order.

CHAIRPERSON: Well isn't the requirement that at the time you ask to be given work by a Government department or you put in a bid you must show proof that you are tax compliant as at that time?

MR MXOLISI DUKWANA: That's correct.

CHAIRPERSON: In which case this would have shown that at the time they were appointed they were tax compliant.

MR MXOLISI DUKWANA: They were yes.

CHAIRPERSON: Ja and if there's a requirement that later on while the work is continuing they must show that might be another issue isn't it.

MR MXOLISI DUKWANA: I think the responsible thing to do is also to – once you appoint these people you're aware of this and you then point it out to them that this and they should submit also their tax clearance certificate that would be in order say – it's annual that they would say you should do that I don't – no I don't think that they submitted the same certificate for those. So I'm just saying these are some of the things that need to be followed up.

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: Let's deal with it clearly, go to page 94,

I mean paragraph two there's no ambiguity on the specific period of the contract that is relevant. So as at the time when this [indistinct] dispatched it is quite clear between all involved that it's for this duration which you'd be required to render certain services, am I right?

MR MXOLISI DUKWANA: You are right.

ADV PHILLIP MOKOENA SC: And also the payment that are going to be paid there's no ambiguity from paragraph four to paragraph seven as to when are they going to be paid those amounts? All that I'm saying if you have that in regard when these instructions are issued and the tax
10 clearance certificate which is submitted, it clearly shows that it will expire two months even before the conclusion of the contract.

MR MXOLISI DUKWANA: It is correct and I think it's a responsibility of whoever was working with this to point it out also that this will be the condition to pay other amounts of money or show the certificate that will be compliant.

ADV PHILLIP MOKOENA SC: But the Chair also raises something important. It says that normally and usually when a bidder submits a tender document one would submit it with the relevant documents including a valid tax certificate, am I correct?

20 **MR MXOLISI DUKWANA:** Yes you are correct.

ADV PHILLIP MOKOENA SC: Was there any tender in regard to this specific project?

MR MXOLISI DUKWANA: There was no tender.

ADV PHILLIP MOKOENA SC: Now if we can move on and may I refer you to page 96 and if you may identify that document for us?

MR MXOLISI DUKWANA: The Service Level Agreement entered into between Department of Human Settlement herein represented by Ntimetzi Mokesi in his capacity as Head of Department the [Department] and Blackhead Consulting [intervention].

ADV PHILLIP MOKOENA SC: I am sorry Mr Mokoena I did not hear the page.

ADV PHILLIP MOKOENA SC: Page 96 Chair.

CHAIRPERSON: 96 okay.

ADV PHILLIP MOKOENA SC: I apologise yes. Page 96 Mr Dukwana
10 already has read the name of the Department on record and indicted that this was the Service Level Agreement between the two entities or the two organs that are actually indicated in that letter, am I right? In that contract?

MR MXOLISI DUKWANA: Yes you are correct.

CHAIRPERSON: Yes. Just one second. Yes we may proceed.

ADV PHILLIP MOKOENA SC: And if you may please turn to page 97 and at the bottom you will see there is this clause number 2. If you can read what that clause conveys?

MR MXOLISI DUKWANA: The working relationship on page 97?

20 **ADV PHILLIP MOKOENA SC:** Yes. Yes.

MR MXOLISI DUKWANA:

“The working relationship. The Department appoints the service provider to assess audit houses rooved using asbestos material, handling and disposal of asbestos sheets to an approved designated disposal

sight.”

ADV PHILLIP MOKOENA SC: Yes. And while you are on page 98 what is the duration of the contract?

MR MXOLISI DUKWANA:

“The agreement commences on the last party signing and terminates on the 31st August 2017.”

ADV PHILLIP MOKOENA SC: Yes. Now let us see if we can be able to see as to when did the parties sign so that we can be able to know when it commences or – when it will terminate. If you go to page 103 is
10 there any signature appended on that – appended in that page?

MR MXOLISI DUKWANA: Yes there is a signature.

ADV PHILLIP MOKOENA SC: Is there any date?

MR MXOLISI DUKWANA: No.

ADV PHILLIP MOKOENA SC: Okay. Let us turn to page 104. Is there any date that one can see?

MR MXOLISI DUKWANA: No Sir.

ADV PHILLIP MOKOENA SC: Yes. Now let me refer you back to page 98.

CHAIRPERSON: I am sorry.

20 **MR MXOLISI DUKWANA:** Yes.

CHAIRPERSON: The signatures which – on page 103 the signature that is just above the word signature of department do we know whose signature that is? Do you know whose signature is?

MR MXOLISI DUKWANA: It looks the same as the one that was – that was reflected on the appointment letter. That letter that we just read.

CHAIRPERSON: The appointment letter?

MR MXOLISI DUKWANA: I think is it on page 95 Chair.

CHAIRPERSON: 94 – 95?

MR MXOLISI DUKWANA: 95.

ADV PHILLIP MOKOENA SC: Page 95 Chair.

CHAIRPERSON: Oh.

ADV PHILLIP MOKOENA SC: 95.

CHAIRPERSON: Thank you.

MR MXOLISI DUKWANA: If you check 95 the Head of Department and
10 103 would be the same signatures.

CHAIRPERSON: But they do not look the same they hey? Or they...

ADV PHILLIP MOKOENA SC: They seem.

CHAIRPERSON: Well I do not know whether it is because one – one is
– is smaller than the other but if you look at the two they seem to be
quite different. But I do know that sometimes when I sign many
documents not all my signatures look exactly the same. So – anyway –
okay now I – I see – so that is this signature and there is no signature
for a witness, is that right?

ADV PHILLIP MOKOENA SC: And there are no dates that are
20 reflected.

CHAIRPERSON: And there are no dates that are.

ADV PHILLIP MOKOENA SC: And that it is in line Mr Dukwana also
with what you have said that the agreement on page 98 – that the
agreement commences on the last party signing.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: And terminates on the 31st August 2017.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: Now bearing that in mind that we are not able to find that clarity could you please open – while you are still opening page 98 also go back to page 94. Now can you comment about the two durations that are reflected in relation to the same subject matter?

MR MXOLISI DUKWANA: The first one on page 94 is from 1st December 2014 to 31st March 2015 or earlier and then the duration on
10 this one the Service Level Agreement is – terminates on the 31st August 2017.

ADV PHILLIP MOKOENA SC: Can you explain? Do you know what was happening? I mean we have two different durations of the contract. The one reflected in the appointment and the one in the Service Level Agreement?

MR MXOLISI DUKWANA: In our discussion the – with the late Mr Mpambani was that they were doing – they were going to do this in phases. It will be the first phase and then the second phase. So I – I would assume that it would have been the fact that it goes to 2017 it
20 would have been to accommodate the 2017 thing which would be the second phase. Because he was saying the first phase was going to deal with the auditing of the houses and the second phase will be the removal of the asbestos houses – of the roofing. But as you would understand as you would see here this is not what actually transpired in the long run.

ADV PHILLIP MOKOENA SC: But also if you have regard to page 94 do you have any other letter of instruction or appointment that suggest that this period went beyond this period stipulated therein?

MR MXOLISI DUKWANA: The – the instruction letter here that was given to the Chief Executive Office one believes Chairperson would be after signing the Service Level Agreement you will then issue a letter that would – also give the instructions. There is – or use the Service Level Agreement. So I do not understand this in terms of you having the instruction to perform the duty and you give this – what it means is
10 they will then have to come back also and have the period that will be designated in terms of what work will then be dealt with. If you check that one there it goes out with the Audit and Assess and GPS and it ends there.

ADV PHILLIP MOKOENA SC: Hm.

MR MXOLISI DUKWANA: But if you check at the – at the Service Level Agreement the – when they – when they tell exactly what they want to do if we can read what the responsibility of the parties were.

CHAIRPERSON: Well that is what I wanted to ask you about because when you talk about phase 1 and phase 2 I was wondering whether –
20 how that would work out because I understood you to say the 300 000 houses would be all the houses and I thought that their task in terms of the letter of appointment was not just the auditing and assessment but it would also be – include the removal. So – but when I look at the responsibilities it looks like there might be a problem. Do you want to deal with that?

MR MXOLISI DUKWANA: I think if Chairperson we – we can also go to the page 98 and the – what the – each responsibilities would give some clarity to what I would be saying.

CHAIRPERSON: Yes just tell us about them. You can read them.

MR MXOLISI DUKWANA: The – if you read what the service providers must do and then the responsibility of the Department. I would like to read the responsibility of the Department out?

CHAIRPERSON: Okay.

MR MXOLISI DUKWANA:

10 “The Department”

That 4.3 – 4.3.1

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA:

“The Department shall pay for the services of the service provider in accordance with the cost breakdown as agreed and approved in instruction to perform work.”

So this goes to that instruction Chairperson. Instruction to perform work and the breakdown is this one. It has these dates. So then the confusion in this case would be you have the duration of this Service

20 Level Agreement and you have the responsibilities of the parties in accordance with this Service Level Agreement. And this Service Level Agreement refers to the instruction letter that has specific dates. The 1st December 2014 to 31st March 2015. The Service Level Agreement however terminates on the 31 August 2017 and the Department here in 4.3.1 says:

“The Department shall pay for the services of the service provider in accordance with the cost breakdown as agreed and approved instruction to perform work and appoint signing of the appointment letter.”

And this was the letter that we talking about.

CHAIRPERSON: Yes but are you referring to the letter at page 94?

ADV PHILLIP MOKOENA SC: 94.

CHAIRPERSON: When you say talk about the appointment letter?

Because it does not seem to me – it does not seem to me that that
10 necessarily refers to that letter but it may be. There is nothing in 4.3.1
that says which appointment letter they are talking about. Could it not
be an appointment letter – a new appointment letter that may have
been envisaged would be given to them or that may have been given to
them other than the one of – of – at page 94? Because are we not in
2017 already now?

MR MXOLISI DUKWANA: We are not.

CHAIRPERSON: Or they may be referring to it. I would simply have
expected that they would identify it by saying appointment letter dated
this and that and that. If – it would have made things much more
20 easier. But of course if there was no other appointment letter this was
the only appointment letter maybe one should read it to refer to it. It is
just strange or one would have expected them to annex it as an
annexure to the agreement to say appointment letter annexed as
whatever or addendum number – addendum number whatever. That is
something you might not be able to help me with.

MR MXOLISI DUKWANA: Ja.

CHAIRPERSON: But you are saying you read that paragraph to refer to that letter at page 94 that is how you read it?

MR MXOLISI DUKWANA: The – I read it this way Chairperson because there is – we do not have any letter.

CHAIRPERSON: Any other letter.

MR MXOLISI DUKWANA: Or instruction letter other than this one.

CHAIRPERSON: Yes. No, no that is fine I was just saying – I was just saying maybe we should not immediately assume that it refers to that
10 letter but maybe it does. But let us work on the basis that it refers to that letter if there is no other letter and then you can proceed with the comments you want to make.

MR MXOLISI DUKWANA: I feel comfortable that way.

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: Now after having dealt with those number of documents may I refer you back to your statement with particular reference Chair to page 13.

CHAIRPERSON: Maybe let me say this before you proceed Mr Mokoena and both Mr Dukwana and yourself can say something if you
20 have something to say. If – if it is correct to read this paragraph as referring to the appointment letter at page 94. Is the position not therefore that the whole thing becomes nonsensical because the letter at page 94 talks about the duration that starts on the 1st December 2014 goes up to the – and goes up to the 31st March 2015 and this memorandum is being signed in 2017 unless there is a clause in this

memoranda – in this agreement that says those dates in that letter must be read to mean a different – different dates. Is that something that you – you aware is being addressed or is that something you do not know?

MR MXOLISI DUKWANA: I hope the head will provide some clarity.

CHAIRPERSON: Okay no that is alright.

MR MXOLISI DUKWANA: But as I am saying Chairperson [intervention].

CHAIRPERSON: Some of the questions I may ask are questions that
10 you might not know about but I am only asking in case you know. And if you do not know you just say you do not know and at some stage we might get clarification.

ADV PHILLIP MOKOENA SC: From the documents at our disposal that you have furnished the commission with let us attempt after we have dealt with all this confusion to sketch a chronology from these documents. Let us do so by reference to page 107. Because the dates will be quite revealing. That is dated – you have already told the Chair that it is dated the 28th May 2014.

MR MXOLISI DUKWANA: Yes Sir.

20 **ADV PHILLIP MOKOENA SC:** And this is a request that is being made to the Department by the service provider, am I correct?

MR MXOLISI DUKWANA: Correct.

ADV PHILLIP MOKOENA SC: So at least from what we can gather this is where we can trace the – when the request was made, am I correct?

MR MXOLISI DUKWANA: Yes you are.

ADV PHILLIP MOKOENA SC: Yes. Now let us go to page 105.

CHAIRPERSON: Is that 101?

ADV PHILLIP MOKOENA SC: 105 Chair.

CHAIRPERSON: 105 okay.

ADV PHILLIP MOKOENA SC: That would be the letter dated the 1st October 2014.

MR MXOLISI DUKWANA: Yes Sir.

ADV PHILLIP MOKOENA SC: It will – it says that appointment as profession resource team, can you see that?

10 **MR MXOLISI DUKWANA:** Yes I can see that.

ADV PHILLIP MOKOENA SC: Can you read paragraph number 3?

MR MXOLISI DUKWANA:

“You will be expected to sign as Service Level Agreement with the Head of the Department or his duly designated official. The contract will stipulate among others the duration of the contract, payment arrangement and other general conditions.”

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA:

20 “You will be issued with an instruction to perform work based on an approved project milestone for each phase to be completed.”

ADV PHILLIP MOKOENA SC: So even the instruction letter that you have referred to surely must be borne out of the contents of this letter, am I right?

MR MXOLISI DUKWANA: You are right.

ADV PHILLIP MOKOENA SC: So we are still on track with the chronology. Let us go to page 96.

CHAIRPERSON: Just one second.

ADV PHILLIP MOKOENA SC: Yes Chair.

CHAIRPERSON: Before you go to page 96.

ADV PHILLIP MOKOENA SC: 96.

CHAIRPERSON: Mr Mokoena. Ja no I was just noting the signature at page 105 on that letter.

10 **ADV PHILLIP MOKOENA SC:** It appears to be consistent.

CHAIRPERSON: Well I seem to pick up that they are very ...

ADV PHILLIP MOKOENA SC: Variations.

CHAIRPERSON: Ja they are all kinds of variations.

ADV PHILLIP MOKOENA SC: Yes Chair.

CHAIRPERSON: But as I say ...

ADV PHILLIP MOKOENA SC: It might be depend.

CHAIRPERSON: When I sign...

ADV PHILLIP MOKOENA SC: Whether you sign on a Friday or Monday, Saturday or whatever day Chair.

20 **CHAIRPERSON:** I sometimes think that it might be very difficult for anybody to – who is looking at my different signatures to say it is the same person who signed.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay yes.

ADV PHILLIP MOKOENA SC: Now from page 105 let us go to page 96

and that is now the Service Level Agreement which is referred to that letter that you have just alluded to – to the Chairperson, am I right?

MR MXOLISI DUKWANA: You are right.

ADV PHILLIP MOKOENA SC: And we know that we do not have any dates in this SLA but at least it was subsequent to the letters that you have dealt with?

MR MXOLISI DUKWANA: Yes.

ADV PHILLIP MOKOENA SC: Right.

CHAIRPERSON: I am sorry Mr Mokoena. I think I – I lost you.

10 **ADV PHILLIP MOKOENA SC:** It was page 96.

CHAIRPERSON: I am still at 105.

ADV PHILLIP MOKOENA SC: It was page 96 Chair.

CHAIRPERSON: 96 yes.

ADV PHILLIP MOKOENA SC: 96. It is the Service Level Agreement.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Mr Dukwana has already testified on it and we have referred to page 103 and 104 during his earlier testimony and clearly established that there were no dates. But at least one can find comfort in knowing that they should have been – it should have
20 been concluded subsequent to those letters. Am I correct?

MR MXOLISI DUKWANA: Before any payment could be made you – you should have the Service Lever Agreement.

ADV PHILLIP MOKOENA SC: Yes. Now what would follow from what we are having now go to page 94. Then this is the document that tells you about [intervention].

CHAIRPERSON: I am sorry Mr Mokoena.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: At some stage I had asked and I think Mr Dukwana had said he was going to read the responsibility of the Service Provider and the Agreement but he sought to start with the responsibility of the Department and I think did not go back to – it to deal with the responsibilities of the Service Provider.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Maybe you can decide whether he answers the
10 question that you are putting to him now.

ADV PHILLIP MOKOENA SC: No it is fine Chair.

CHAIRPERSON: Or he clears that first.

ADV PHILLIP MOKOENA SC: I think while we are still [intervention].

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: While you are still want the question to be dealt with maybe it is appropriate to do so. Let us go to page 98 Mr Dukwana.

MR MXOLISI DUKWANA: Ja.

ADV PHILLIP MOKOENA SC: And for completeness you touched on
20 clause 4.3 but – may – can you please read 4.1 and 4.2 so that we can have the entire responsibilities being recorded?

MR MXOLISI DUKWANA:

“The responsibilities of parties. The service provider shall

4.1.1 Execute the project in line with this agreement.

The approved instruction to perform work and the applicable legislations and regulations.

2. On becoming aware of any matter which are materially changed or has changed the scope or cost or timing of the service – of the services of the works the service provider shall give notice to the Department.

3. Not undertake any work without the necessary instruction to perform work signed by the Head of the
10 Department or the delegated official. Provide the Department with a cost breakdown of the services connected with the project.”

CHAIRPERSON: So if you look at that clause that is 4.1 which is supposed to set out the obligations of the service provider and you are looking at establishing exactly what they were obliged to do it seems that you can only find that within clause 4.1.1 which is they were to execute the project in line with this agreement the approved instruction to perform work and the applicable legislations and regulations. Now it can only be – it would mean that you would need to find the approved
20 instruction to perform work.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: That is what would tell you what they were supposed to do.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: And this becomes to the extent that it might be

correct to read that instruction to perform work to be a reference to that letter at page 94.

ADV PHILLIP MOKOENA SC: Hm.

CHAIRPERSON: It would mean that the work they were supposed to do under this agreement is the same work that was given to them in terms of that letter. In other words what you may have thought of when you talked about phase 1 and phase 2 might not be applicable because one would have thought that if they had done the identification for example then the second – the phase 2 should not talk about them doing any
10 identification. It should talk about them doing the rest of the job.

MR MXOLISI DUKWANA: Chairperson the reading of 4.1.1 together with 4.1.3 that the service providers should not undertake any work without the necessary instruction to perform work signed by the Head of the Department and this would mean this one. I would assume it means the one that we talking about the instruction to perform which was signed by the HOD and with this you would believe that the service agreement that – that is here we talking about what is written in the agreement. I was merely voicing out the discussion that I had that it was not – the project was not entirely to – to audit and – etcetera the –
20 but it was also to eradicate, remove them and go and store them somewhere or bury them somewhere. So that is why he said it was in phases to me. So when I was saying that I was just assuming that it might actually.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: The fact that it goes to 2017.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: But the clarity is that before you do all these other things.

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: This is something that you would have dealt with.

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: And I am saying this Chairperson because as we will continue the – the other thing that I wanted to point out at some stage in 2010 there was an instruction from the office of the Premier to make sure that – I was still in government then – in the executive council that no contract should be entered into before it is taken to the service level – to the State Law Advisors in the office of the Premier. And there was a directive written to all the HOD's, the CFO's and as well as the Supply Chain Managers to that effect that every contract before you enter into it must have gone through the process. So one would assume that the same should have applied in this case but if ignored it explains some of the difficulties in understanding. Because the law advisors would have pointed out the problem in the whole thing.

20 **CHAIRPERSON:** Well Mr Mokoena.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: This is – I am just mentioning this to you obviously Mr Dukwana will hear. Clause 4.1.2 which Mr Dukwana referred to which – no, no 4.1.3 which says the service provider shall not undertake any work without the necessary instruction to perform work. Maybe

creating more problems if one says there was already an instruction to perform work.

ADV PHILLIP MOKOENA SC: Well Mr Chair.

CHAIRPERSON: You see.

ADV PHILLIP MOKOENA SC: No I am painting this chronology to demonstrate the serious anomalies in terms of the dates. And Mr Dukwana if [intervention]

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Clearly there is no letter that is talking
10 about Phase 1, Phase 2 Phase 3. You do not have any other instructions other than the one that is on page 94.

MR MXOLISI DUKWANA: True.

ADV PHILLIP MOKOENA SC: In terms of sequence of the dates and what is being read there is nothing else that one can say that there could have been any other instructions beyond what is contained in this documents. Am I correct?

MR MXOLISI DUKWANA: Exactly.

ADV PHILLIP MOKOENA SC: Yes. Now the period that is clearly identified is the one in paragraph 94 and that will be in conformity with
20 what the Chair has now read that you cannot perform any work without any other - without proper instructions.

MR MXOLISI DUKWANA: Yes.

ADV PHILLIP MOKOENA SC: Am I correct?

MR MXOLISI DUKWANA: You are correct sir.

ADV PHILLIP MOKOENA SC: But yet when you go to the same Service

Level Agreement you find a different duration and on a contract that does not have any signatures - it does not have any dates. Am I correct?

MR MXOLISI DUKWANA: You are correct.

ADV PHILLIP MOKOENA SC: Yes. Now I want now to move and - and just to clarify you said that this is the project of 255 million on a simple letter that you have seen. There was no open tender.

MR MXOLISI DUKWANA: No. There was no open tender.

ADV PHILLIP MOKOENA SC: Yes. Now I want to refer you back to
10 your witness statement with particular reference to page 13.

CHAIRPERSON: So - I am sorry Mr Mokoena. Without the - this agreement does not itself specify how many housing units it was talking about.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: One would have to go to some other document if applicable ...

ADV PHILLIP MOKOENA SC: Indeed.

CHAIRPERSON: To find that out if there is anything.

ADV PHILLIP MOKOENA SC: Exactly Chair.

20 **CHAIRPERSON:** Hm, okay.

ADV PHILLIP MOKOENA SC: Mr Dukwana do you want to ventilate what the Chair is saying?

MR MXOLISI DUKWANA: It is correct Chair. That is why I am saying there is a problem in - in relation to this and clearly I do not think the - the attorneys in the - in - legal advisors in the department or the - the

State Law Advisors especially with regard to the instruction that was given at the time by the Office of the Premier.

ADV PHILLIP MOKOENA SC: Now page 13 of your statement. If you can read the contents of paragraph 42 and you may comment when you deem necessary to do so.

MR MXOLISI DUKWANA: “The letter of ...”

42:

10 “The letter of appointment followed appointment followed a five paged proposal from Sodi that was dated 28 May 2014 for the request for appointment on risk audit and assessment, handling of a hazardous material, removal or disposal of asbestos contaminated rubble in the Free State Province. For ease of reference I annex hereto all these other copies.”

ADV PHILLIP MOKOENA SC: Yes and you say that this is what culminated in the Government paying 255 million?

20 **MR MXOLISI DUKWANA:** Ja. When - when you have dealt with the systems and as Government if I - you can imagine a five page proposal netting you 255 million. It is very interesting that they just made that proposal and then the 255 million was paid.

ADV PHILLIP MOKOENA SC: Yes and you make certain observations in paragraph 43. If you can take us through that.

MR MXOLISI DUKWANA: “This project was a brazen act of corruption executed by State Officials in concept

with the business persons at the behest of the Premier of the Free State Mr Magashule at that time.”

We will also demonstrate why Chairperson we are saying that.

ADV PHILLIP MOKOENA SC: Yes. Now from paragraph 44 that is where you are now detailing specific transactions and the monies which might have paid to different beneficiaries and if I understand your statement very care - very well is that these are the monies which emanates from this asbestos project. Am I correct?

10 **MR MXOLISI DUKWANA:** You are correct sir.

ADV PHILLIP MOKOENA SC: Yes and we should be alive to certain names that you have not mentioned. Mr X because we are now - we are now about to deal with those issues. Now before we deal with the specifics you mentioned specific names in the paragraphs. You make reference to people like Ms Morake. Where was she employed?

MR MXOLISI DUKWANA: In the Office of the Premier.

ADV PHILLIP MOKOENA SC: And do you know for how long roughly was she employed in that office?

MR MXOLISI DUKWANA: When I was ...

20 **ADV PHILLIP MOKOENA SC:** Was it a long time?

MR MXOLISI DUKWANA: When I was in - in Government she was still there ...

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA: And I do not - and she is still there even now.

ADV PHILLIP MOKOENA SC: You refer also to Ms Cholota. Who is she and where was she working?

MR MXOLISI DUKWANA: Ms Moroadi Cholota was working in the Office of the Premier as the Premier's PA.

CHAIRPERSON: Ms Cholota is Ms Moroadi is that the correct ...?

MR MXOLISI DUKWANA: Moroadi.

CHAIRPERSON: Is that the correct pronunciation? I got it wrong.

MR MXOLISI DUKWANA: Moroadi.

CHAIRPERSON: Yes, okay. Yes and Ms Moroadi is Ms Ipeleng ...

10 **MR MXOLISI DUKWANA:** Morake.

CHAIRPERSON: Morake. Okay. They both worked in the Office of the Premier?

MR MXOLISI DUKWANA: Yes sir.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Now you preface that transactions with paragraph 44 on page 14 of your statement. Could you please read that paragraph and we will then turn to deal with the specific annexures to that?

MR MXOLISI DUKWANA: Paragraph 44:

20 “Mr Mpambani was in constant communication with the Personal Assistant of Premier Magashule that is one Ms Moroadi Cholota referred hereto as Ms Cholota. Ms Cholota would communicate on behalf of Mr Magashule all his request or instructions with substantial financial implications

and no business entity could sustain in its commercial wellbeing and for ease of reference I annexed all these annexures marked 2DM9, 10, 11 and 12 and 13 as copies of the emails between Ms Cholota to Mr Mpambani. It will be noted that in some of the emails one Ms Ipeleng Morake shall be referred to as Ms Morake from the Office of the Premier features prominently in executing instructions on behalf of Mr Magashule via
10 Ms Cholota.”

ADV PHILLIP MOKOENA SC: Yes. You being annexing those documents from page 113. If you may please refer to that document. Could you please ID that document for us?

MR MXOLISI DUKWANA: This is the email the subject there is (indistinct) document 2. Is it from Moroadi Cholota in the Premier's Office and the - the email address is premier@fspremier.gov.za to igo@diamondhill.co.za. Igo Mpambani and mpambani@yahoo.com. The date is the 25th - 2015/08/12 and the time is 10 past one.

CHAIRPERSON:

20 **ADV PHILLIP MOKOENA SC:** So this email is sent from the office of the Premier to the service provider that you have mentioned Mr Mpambani ...

MR MXOLISI DUKWANA: Yes.

ADV PHILLIP MOKOENA SC: The one who you say - who you said was involved in the asbestos ...

MR MXOLISI DUKWANA: Yes. Yes sir.

ADV PHILLIP MOKOENA SC: Skip?

MR MXOLISI DUKWANA: Yes sir.

ADV PHILLIP MOKOENA SC: Now there is also an email at the bottom and I think that is what we have to start with in order to go to the one on top. Take us through the one on - on the bottom. It is from who to who?

MR MXOLISI DUKWANA: This one is from Refiloe Mokoena and it - it is from the address - email address
10 maeto@refiloe.maseza@gmail.com (?) sent on 17 July 2015 to
premier@fspremier.gov.za and the subject there is (indistinct)
document 2 and ...

ADV PHILLIP MOKOENA SC: (Intervenes) - sorry. Yes. You want to say something.

MR MXOLISI DUKWANA: And it reads thus:

“Dear Premier, herewith please find the document
for purposes of setting my daughter’s university
account ...”

ADV PHILLIP MOKOENA SC: Settling.

20 **MR MXOLISI DUKWANA:** “...of settling ...”

Yes.

“...my daughter’s university account. Please know
that the annual fees payable after receiving the
scholarship is approximately US\$2 400 ...”

CHAIRPERSON: 24 000.

ADV PHILLIP MOKOENA SC: 24.

MR MXOLISI DUKWANA: "...24 298."

That is US Dollars.

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA: "The semester amount payable before 31 July 2015 is however US\$12 149. Kindly go to the link provided in their email and use the following access code to pay namely user name is given there and the password is given. Please
10 acknowledge receipt and let me know if you will also be paying for her travelling and living expenses as well. I take this opportunity to thank you from the bottom of our heart for your assistance. I have no doubt that my daughter will make good use of this opportunity. God Bless, Refiloe Mokoena."

ADV PHILLIP MOKOENA SC: Now before I pose questions could you explain the contents of this letter. What was happening?

MR MXOLISI DUKWANA: The - the person referred here is
20 Ms Mokoena - Refiloe Mokoena. At some stage she had a distinct act - opportunity acting also as - as a Judge in the Free State and sometimes in Gauteng and ended up at SARS. Currently she is under suspension at - at the - I think at SARS.

ADV PHILLIP MOKOENA SC: Now I - I am - I am much more - you know concerned with the contents of the email. What was being

conveyed and what was supposed to happen?

MR MXOLISI DUKWANA: It is clear that this was directed to the Premier and one would assume that they might have met to discuss this and she was following up on the matter because of the way this is written and even thanking the Premier in advance and this was asking for payment of schooling or annual fees of the - of Ms Refiloe Mokoena's child.

ADV PHILLIP MOKOENA SC: Do you know why such a request would be made by Ms Mokoena to the Premier?

- 10 **MR MXOLISI DUKWANA:** I have no idea because I - I think that as we will be dealing at a later stage with these scholarships or bursaries one would think that any - any deserving student but also a clear criteria should be set up for any person to do this. It will go through the normal processes.

The question I do not understand is you will see Chairperson this one when it is directed to the Premier and taking into consideration the - the Free State prides itself in making sure that there is - there are - there is a lot of kids who are studying abroad and - and here at home and there is a bursary - there is a program and we will deal with that.

- 20 One would understand that it will be common purpose that there whole thing would go through the normal process and deal with this in that particular way. Send it over to the people who are dealing with the - with the - with all these things. In this case it will be as we will see later it will be the Office of the - the DG but Ms Morake is actually in the Office of the Premier but is working more in - with regard

to the international scholars - bursary holders.

She is a - but in this case we still working - dealing with the letter that - the email that was sent to the Office of the Premier for this request.

CHAIRPERSON: So are you saying that the Provincial Government had a special scholarship or bursary fund that it used to assist or sponsor over - students from the Free State Province who would be studying outside of the country?

MR MXOLISI DUKWANA: When I was still - I do not know if this has
10 changed Chairperson. When I was still in Government as - as MECs for instance I would have a - a - you know an opportunity to give bursaries to at least 10 kids and in that it was stipulated that my children - my relatives or any person close to me should not be considered. It was that condition.

So you will be allocated 10 kids to - to allocate bursaries to and - and that was a condition. It should not be any person related to me in anyway and then the - the - then there was this scholarship program that was given to - to children in the - in the Free State and as we will deal with this we will demonstrate that how the whole process
20 went about but the - the issue is the - I found it strange that the person would go straight to the Premier.

Unless the person knows the Premier or the former Premier and you know will direct that but under - under normal circumstances you would direct your request to the Office of the Director-General in this case.

CHAIRPERSON: Yes but my question is - was whether to your knowledge the Provincial Government had a special bursary fund or scholarship that was for students who were studying outside of the country?

MR MXOLISI DUKWANA: Yes it has - it has that program.

CHAIRPERSON: It had that program?

MR MXOLISI DUKWANA: Yes. It has the program.

CHAIRPERSON: Was that separate from what you have just told me about namely that an MEC would be allocated like 10

10 **MR MXOLISI DUKWANA:** It - it ...

CHAIRPERSON: Students or was that part of the whole program?

MR MXOLISI DUKWANA: Your 10 students become part of the whole funding thing.

CHAIRPERSON: Oh.

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: And it was for both inside the - studying inside and outside or only outside?

MR MXOLISI DUKWANA: In our case - say in my case I never funded any student going abroad.

20 **CHAIRPERSON:** Yes.

MR MXOLISI DUKWANA: I would give the - the - these to students who are studying at home.

CHAIRPERSON: Inside the country?

MR MXOLISI DUKWANA: Inside the country.

CHAIRPERSON: But was there a limitation to say you can only use

this allocation for students who are studying in the country or you - you can - it is up to you whether you also assist somebody who is studying outside the country? Was there any limitation on that as far as you remember?

MR MXOLISI DUKWANA: Yes there was - there was Chair. You - we - the - that was determined at the Office of the Premier of the students who would go abroad. It started as only those who were going to Cuba at the time for medicine. Then it included many others but for all other kids we will then be allocated 10 but also you have got the top 100 kids
10 and - and all these other things that were offered.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Now you have explained the ...

CHAIRPERSON: Mr Mokoena maybe we should take the ...

ADV PHILLIP MOKOENA SC: Oh, yes.

CHAIRPERSON: Tea - tea break. It is quarter past. We will take the short adjournment and resume at half past 11. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 **CHAIRPERSON:** Yes let's proceed.

ADV PHILLIP MOKOENA SC: Thank you Chair. Mr Dukwana just before the tea adjournment we were still dealing with the document on page 113.

MR MXOLISI DUKWANA: Yes.

ADV PHILLIP MOKOENA SC: We have now explained the bottom part

of the email, now what I want to understand from you that there is an email on top, do you know why would this request be dispatched to Mr Mbabane who is a service provider?

CHAIRPERSON: I'm sorry Mr Mokoena you said there is an email on top at 113.

ADV PHILLIP MOKOENA SC: At 113 yes, if you look there's a line Chair dividing the two emails.

CHAIRPERSON: Yes, has he read that email, do you want him to read it first or not.

10 **ADV PHILLIP MOKOENA SC:** Read the email to contextualise.

MR MXOLISI DUKWANA: This email is from Morali Cholota to Ego, that is Mr Mbabane, it was dated the 12th August 2015 and it goes on to say,

"Good day this was the initial request sent to the Premier regards, Morali Cholota".

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: And it was sent at 10 minutes past one, 13h10.

ADV PHILLIP MOKOENA SC: Yes.

20 **CHAIRPERSON:** I seem to think that the other one you read was also sent more or less the same time.

ADV PHILLIP MOKOENA SC: It was 11h50 AM.

CHAIRPERSON: Oh okay, alright thank you.

ADV PHILLIP MOKOENA SC: On a different date Chair meaning that the one on – at the bottom seems to have preceded the one on top.

CHAIRPERSON: Yes oh ja and they are on different dates and

different months.

ADV PHILLIP MOKOENA SC: Yes Chair.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Now my question Mr Dukwana, why would that request that was made to the Premier as per the bottom email now being sent to the service provider?

MR MXOLISI DUKWANA: One can only conclude, Chairperson, before that, that – before concluding, the Free State as we said has a bursary programme and it's meant for kids who are – who cannot afford but who
10 are – who qualify to get the bursary and one would understand the logical thing to do, once you get this kind of a bursary if it comes after the deadline you have closed issuing the bursary you would – as a responsible person you would indicate like that, that you would not be able to help avoiding a situation where there's a service provider doing this and you then ask favours from the service provider.

CHAIRPERSON: I'm not sure whether that's an answer to Mr Mokoena's question. I understood the question to be whether you are able to say why Ms Cholota would send this request to Mr Mbabane?

MR MXOLISI DUKWANA: I thought I gave a context Chair, to say you
20 have a bursary scheme and I don't understand why this one specifically would go to Ego.

CHAIRPERSON: Oh so your answer is, you don't understand why it was sent or would have been sent to Mr Mbabane, that's the answer?

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: Okay well Mr Mokoena I was looking at the subject,

the email from Ms Mokoena has a subject, [indistinct], the one from Ms Cholota to Mr Mbabane doesn't seem to have a subject, am I right? It doesn't seem to identify the subject.

ADV PHILLIP MOKOENA SC: It has.

CHAIRPERSON: Is that because it was attaching the one from Ms Mokoena?

ADV PHILLIP MOKOENA SC: It's referring to the one below Chair.

CHAIRPERSON: It's referring to the one below okay.

ADV PHILLIP MOKOENA SC: One trail of email.

10 **CHAIRPERSON:** Okay.

ADV PHILLIP MOKOENA SC: Yes but we can also deal with other documents Chair to give you that, if you may turn to page 117 so that we can understand the subject matter, what is that document?

MR MXOLISI DUKWANA: It's the [indistinct] college 8 May 2015 it's written to the person Masiza who stays at this address in Johannesburg.

ADV PHILLIP MOKOENA SC: Yes and it's from that [indistinct] college am I correct?

MR MXOLISI DUKWANA: Yes you are correct.

20 **ADV PHILLIP MOKOENA SC:** And the amount – what is the total amount?

MR MXOLISI DUKWANA: The total amount here is 12 149.

ADV PHILLIP MOKOENA SC: Okay if you turn to page 113 would that amount accord to what you see in the bottom email, the second paragraph?

MR MXOLISI DUKWANA: Yes this one in the email Refiloe Mokoena stipulates, even clarifying here the amount is 12 149 it does not show whether it's dollars or rands but here it specifies the dollars US Dollars 12 149.

ADV PHILLIP MOKOENA SC: Now having regard to that sequence of documents may I refer to another, on page 118 if you could please identify the document and please read the contents into the record.

MR MXOLISI DUKWANA: The subject is Payment from Moroadi Choloto, the Premier's office to Ignus Mbabane and it's dated the 18th
10 of August 2015,

“Good morning, proof of payment received and acknowledged,
thank you very much, regards Moroadi Choloto, Personal
Assistant to Premier office of the Premier and dating
everything that is there”.

ADV PHILLIP MOKOENA SC: Yes there appears to be another email at the bottom if you can also read it.

MR MXOLISI DUKWANA: This one came before that one it was – it's written from – it comes from Mr Ignus Mbabane sent on the 17th of August 2015 to Moroadi, PA Premier Free State, CC Moroadi, PA
20 Premier Free State, subject payment.

ADV PHILLIP MOKOENA SC: So from that trail we'll see that there was initial request it goes to the office of the Premier and it's sent to the service provider and the said provided does pay amount.

MR MXOLISI DUKWANA: Yes the service provider here in this email says – confirms he says,

“Good day kindly find the proof of payment for 4000 Dollars, regards Ignus Mbabane”.

CHAIRPERSON: So the request from Miss Refiloe Mokoena at page 113 which was addressed to the Premier is dated 17 July 2015, and the email from Miss Moroadi Choloto an assistant in the Premiers office, her email to Mr Mbabane is dated 12 August 2015 and it says this was the initial request sent to the Premier and we are to understand that the request is the one of Miss Refiloe Mokoena and then you made reference at page 117...[intervenes].

10 **MR MXOLISI DUKWANA:** It's an attachment of what was required to be paid.

CHAIRPERSON: The attachment dated 8 May – oh that was from the college, 8 May giving the amount then we have then the email from Mr Mbabane on the 17th of August 2015 addressed to Miss Moroadi Choloto, that's the PA to the Premier which says,

“Kindly find the proof of payment for 4 000 Dollars”,

And then thereafter on the 18th of August, the following day 2015 there's an email from Miss Choloto to Mr Mbabane acknowledging receipt of proof of payment and thanking him.

20 **ADV PHILLIP MOKOENA SC:** That's the sequence Chair.

CHAIRPERSON: Okay thank you.

ADV PHILLIP MOKOENA SC: That's exactly the evidence of this witness.

CHAIRPERSON: Yes, so this gives the impression, you know the picture that Miss Refiloe requested the Premier to settle her daughter's

fees and one of the PA's to the Premier sent that request to Mr Mbabane and Mr Mbabane made payment of 4 000 Dollars and sent proof of payment to Miss Choloto in the Premier's office and Miss Choloto acknowledged receipt of payment?

ADV PHILLIP MOKOENA SC: Yes Chair.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: That's the sequence, does it capture it neatly Mr Dukwana?

MR MXOLISI DUKWANA: Yes.

- 10 **ADV PHILLIP MOKOENA SC:** Aright let's proceed you in line with what I've said in your paragraph you then refer to further payments if you may turn to page 119 and take us through as to how do you link it with your arguments in paragraph 43. Identify the document for us and tell us what are the instructions and what has transpired.

MR MXOLISI DUKWANA: This one is also – the subject is request for payment from Moroadi Choloto...[intervenes].

CHAIRPERSON: I'm sorry what page are we?

ADV PHILLIP MOKOENA SC: 119 Chair.

CHAIRPERSON: Okay thank you.

- 20 **MR MXOLISI DUKWANA:** It's from Moroadi Choloto from the Premier's office to Ego@diamondhill.co.za and a copy to Morakeio233@gmail.com dated the 6th of – I think it's May 2015,

“Good day, following the discussion with Ipile Morake Premier requested that we pay full amount 470 000 and the remaining amount of R30 000 to one of the SRC president in Cuba, the

account holder is SWC Inkata, account number is given and it's FNB, amount R30 000. I hope the above is in order regards Ipile Morake”.

ADV PHILLIP MOKOENA SC: Yes please more detail to this email who are – who dispatches it and who is the recipient of that email?

MR MXOLISI DUKWANA: Ipile Morake is in the office of the Premier dealing with IGR or Government Relations in the office of the Premier and this was from Moroadi Choloto going to Ego but this was addressed to Ego, this amount.

10 **ADV PHILLIP MOKOENA SC:** Remind us as to who is Ego?

MR MXOLISI DUKWANA: Ego Mbabane is the – a partner to the joint venture that got this asbestos project.

CHAIRPERSON: That's the one that reference has been made to when we were talking about the payment of the school fees for Miss Mokoena's daughter?

MR MXOLISI DUKWANA: The same person.

CHAIRPERSON: The same person?

MR MXOLISI DUKWANA: The same person.

CHAIRPERSON: Okay.

20 **ADV PHILLIP MOKOENA SC:** So here the request is made for Ego to pay for Mr Mbabane and Ego to pay R470 000 and remaining R30 000 to be paid to the SRC president in Cuba am I correct?

MR MXOLISI DUKWANA: You're correct.

CHAIRPERSON: I don't know whether you might be able to say to indicate what your understanding is here. I'm not sure whether the

understanding – the instruction is that the two amounts must be paid to the SRC president in Cuba or whether it's only the R30 000 that has to be paid to the SRC and maybe the first amount of R470 000 is to be paid somewhere else and the recipient is supposed to know where it is to be paid, you might not be able to assist.

MR MXOLISI DUKWANA: It's clear that the only amount, if you check the details of the account holder and that the amount is specified that it should be R30 000 and that would mean the person was supposed to pay R500 000 in total. The R470 000 is paid – should be paid but the
10 remaining R30 000 should actually go to this account.

CHAIRPERSON: So your understanding is that the two amounts are not to be paid to the SRC president it's only the R30 000.

MR MXOLISI DUKWANA: The R30 000.

CHAIRPERSON: Okay, alright.

ADV PHILLIP MOKOENA SC: If you may refer to page 120 and also take us through that document but firstly by identifying it and thereafter please comment its contents.

MR MXOLISI DUKWANA: This one also has the office stamp of the Premier of the Free State and it's from Moroadi Choloto, Personal
20 Assistant to the Free State Office of the Premier, the subject is, request for funding to Ignatius Mbabane and is dated the 28th of January 2016 and it says,

“Good day, kindly find the below details as discussed telephonically, account name is given, account number is a travel agency and it's an amount of R250 000 written also in

words, two hundred and fifty thousand. Please send the proof of payment to the above email address, thank you in advance, warm regards”.

ADV PHILLIP MOKOENA SC: So this is a further request made to Mr Mbabane?

MR MXOLISI DUKWANA: Yes sir.

ADV PHILLIP MOKOENA SC: To also pay this amount?

MR MXOLISI DUKWANA: Yes sir.

ADV PHILLIP MOKOENA SC: If I may refer you to the next document
10 on page 121...[intervenes].

CHAIRPERSON: So this time the amount is R250 000?

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay alright.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: And on the face of this email, it's not clear what the amount was for, is that right?

MR MXOLISI DUKWANA: One can deduce it was for travelling because they paid to a travel agency.

CHAIRPERSON: Yes okay.

20 **ADV PHILLIP MOKOENA SC:** Yes the next document is on page 121.

MR MXOLISI DUKWANA: The subject is the invoice from Moroadi Choloto at the Premier's office...[intervenes].

CHAIRPERSON: Is that a different amount, a different transaction or are we still connected with this one of R250 000.

ADV PHILLIP MOKOENA SC: I think it's still connected Chair.

CHAIRPERSON: Maybe let me ask the question I wanted to ask. With regard to the R250 000 which was to be paid to Astra Travel, Mr Dukwana are you – having been in Government for the long time that you were in Government are you able to throw any light as to why the office of the Premier would instruct somebody in private business to make a payment to a travel agent, of this kind of amount...[intervenes].

ADV PHILLIP MOKOENA SC: This is, like I said, under normal circumstances leaders would avoid such transactions happening, you would not get one person who would go to a service provider, 10 especially if it is an official trip or whatever that you ask somebody to pay for your cost – to bear your cost of travelling or any other person for that matter. So it's something very strange.

CHAIRPERSON: It's something you are not able to throw light on other – but you say you don't understand it to be normal for such a thing to happen, if it relates to your official?

ADV PHILLIP MOKOENA SC: If you remember Chairperson, I told you yesterday, I told the Commission that in the Free State a system that undermined a system of good governance emerged in the Free State and as such abnormal things would happen. Something that is not 20 supposed to happen would happen and these things would happen with impunity because people were becoming a law unto themselves. Under normal circumstances this should not happen and I'm saying this is the person who gets it and we are talking about an unsolicited bid and all these other things that are raised and immediately after this there is so much request coming you pay this, you must pay this. Any business

person, if you want to help a business and you affect the cash flow of such a business you are killing it. In this case here's a person who gets this business and is working, you now have demands coming from the office of the Premier, pay this amount, pay this amount, I mean R470 000, R500 000 in total, R200 000 and something again, this is ridiculous Chairperson.

CHAIRPERSON: The R470 000 plus R30 000 which make R500 000 was in August I think 2015 and the R250 000 is in January 2016, so that means if Mr Mbabane or his company paid these two amounts that
10 means by end of January 2016, it means more or less within six months, he would have paid more than – around R750 000 at the request of the office of the Premier.

MR MXOLISI DUKWANA: You have excluded the 4 000 US Dollars.

CHAIRPERSON: Oh ja so it would be more than R700 000?

MR MXOLISI DUKWANA: It would be more than that.

CHAIRPERSON: Well it couldn't – the payment to the travel agents couldn't be for the Premier's official trips because those would be paid for by Government, there will be no reason for some business person to pay for those. So the question would be whether that amount could
20 have been for the Premier's personal trips and if it was for the Premier's personal trips that could raise questions as well. You have alluded to one question, if it was for somebody else's trip then there would be question of why the Premier would get involved in trying to organise payment for trips for somebody else and why those people wouldn't go directly to Mr Mbabane or whoever if they needed any

assistance with travelling.

MR MXOLISI DUKWANA: The question that must be asked all the time is why people would feel comfortable in approaching the office of the Premier and getting this thing. The – as you say, I don't think this was for the travelling of the Premier I think he was facilitating for somebody else or some people and the question would also be relevant what you raised, why then the office of the Premier should get itself involved in facilitating such especially with a person who was doing business with Government.

- 10 **CHAIRPERSON:** Yes because the amount of R500 000 was in August 2015, the letter of appointment said the appointment for Mr Mbabane's company was from 1 December 2014 to end of March 2015 but there were payments envisaged beyond that even in May 2015, so this is – this request for July, the payment was in August 2015 and we know that later in 2017 there is that service level agreement that we dealt with earlier, okay thank you.

ADV PHILLIP MOKOENA SC: Mr Dukwana on page 121 it appears that there is an acknowledgement of payment, please take us through that it might be linked with the one on 120 unless you testify differently.

- 20 **MR MXOLISI DUKWANA:** This comes from Moroadi and it says,

“Afternoon to Ignatius Mbabane, kindly note that the proof of payment is well received and appreciated. Warm regards
Moroadi Choloto Personal Assistant to Premier office of the Premier”.

ADV PHILLIP MOKOENA SC: Yes so clearly when those requests

were made to Mr Mbabane he did comply with same and effect those payments as we have already demonstrated with different Annexures to your statement.

MR MXOLISI DUKWANA: Yes this one also, if you check and read, this was also a response to the one that was sent earlier by Mr Mbabane confirming the payment.

ADV PHILLIP MOKOENA SC: Yes, now if I may refer you back to page 14 because you make concluding remarks on these payments that you have dealt with and you deal with them on paragraph 44 and 46, Chair
10 on page 14, if you can read those paragraphs into the record.

MR MXOLISI DUKWANA: From page 14, 44 and 46.

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA: “Mr Mbabane was in constant communication with the personal assistant of Premier Magashule, one Miss Moroadi Choloto, Miss Choloto would communicate on behalf of Mr Magashule on his request or instruction with substantial financial implications. No business entity could sustain in his commercial well-being and I attach Annexures thereof as copies of the emails between Miss Choloto to Mbabane to Mr
20 Mbabane it will be noted that in some of the emails, one Miss Ipile Morake from the office of the Premier features prominently in executing instructions on behalf of Magashule via Miss Choloto. 45. It is apparent from the emails between Miss Choloto and Mr Mbabane that payments were advanced for every [indistinct] request that was made to Mr Mbabane on

behalf of Mr Magashule as [indistinct] in the said emails at all material times thereto. The official emails of Miss Choloto and Miss Morake were used to communicate request and acknowledge payments of monies and executing instructions at the behest of Mr Magashule.

ADV PHILLIP MOKOENA SC: And paragraph 46 you draw certain inferences.

MR MXOLISI DUKWANA: “An inference could be drawn that each time payment was advanced to Blackhead Consulting JV by the
10 Free State Department of Housing, Miss Choloto or Miss Morake were informed undoubtedly both would inform Mr Magashule followed by a honourous request or instruction to Mr Mbabane resulting in the latter making payments as requested or instructed by Mr Magashule”.

ADV PHILLIP MOKOENA SC: Yes, now let’s move on to page 15 of your statement in paragraph 47 you are referring to a concept which I’m sure that it’s foreign to me and the Chair, please if you can read and explain what you’re conveying.

MR MXOLISI DUKWANA: “47. Mr Magashule was simply a blessing to
20 many due to payments advanced by Mr Mbabane from monies corruptly and fraudulently sourced from the State coffers through the asbestos project at the behest of Mr Magashule, Mr Mbabane paid sums of monies for some students studying through various Universities here and abroad...[intervenes].

ADV PHILLIP MOKOENA SC: Yes. Mr Chair speaking for myself I am

not sure what is a blesser but I think you were still proceeding to deal with the concepts.

MR MXOLISI DUKWANA: It is – it is a [indistinct] old ages you would use Father Christmas but now you you know it is a blesser in the sense that you – you agree to request that personally you not able to do but you facilitate this on behalf of other people. And – and worse it comes from the – the service provider that is working with the – with your government. So you know it is taking this – you giving and taking it and giving there so that you will be seen to be this person who would
10 do everything to demonstrate that you care but at the expense of the public resources that are acquired fraudulent.

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA: So as I said you know for the – just to avoid being seen as old and coming to the new generation the blesser would fit well as opposed to the Father Christmas.

CHAIRPERSON: And I see you referred to a blesser would that be a blessee?

MR MXOLISI DUKWANA: The one who [intervention].

CHAIRPERSON: And if so who would be the blessee in this context?

20 **MR MXOLISI DUKWANA:** In one context the blessee will be Mr – Ms Mokoena. That will be a blessee for the fact that the blesser upon receiving your request went to the provider who would do that on behalf of the blesser and get to the blessee Ms Mokoene in this case.

CHAIRPERSON: Would Mr Mpambani not be also be – be a blessee in terms of any government work if there was government work that he

was being given or that would not – the term would not fit in there?

MR MXOLISI DUKWANA: We can use it even to him in this case where you get money and then you use it whenever there is a request.

CHAIRPERSON: Yes okay. Alright.

MR MXOLISI DUKWANA: But what is very interesting Chairperson is why would the request come from the highest office in the province? And – and go to this person and everything happens this way. That is why we – you know you say once you respect the laws and every – the act you protect the office from all these kinds of things and once you
10 are in an office you need to demonstrate that and make sure that you protect that office. But drawing that office to issues like this is actually undermining the office and also abusing your authority in this regard because if the request was made and Mr Mpambani did not respond positively this would have also put him in the difficult situation.

CHAIRPERSON: Hm. I thought your counsel wanted to say something at some stage maybe it has fallen away.

ADV SMANGA SETHENE: Chairperson I was intrigued by your smile when the concept of blesser is being discussed. It appears the Chairperson is well versed with the concept of blesser and blessee.

20 **CHAIRPERSON:** Well the Chairperson reads newspapers and – and watches – is touch with what happens in South Africa. Thank you.

ADV PHILLIP MOKOENA SC: As indicated Chair you can exclude me I am not sure about the concept. You in paragraph 48 and 49 the issues that you canvass there you have already testified on those issues so it is not necessary for us to repeat that evidence but I want to draw your

attention to paragraph 50 of your witness statement where you link different payments with that asbestos scheme. Please read for us paragraph 50 and explain?

MR MXOLISI DUKWANA:

“Events from the emails between Ms Cholota and Mr Mpambani all the requests or instructions originated from Mr Magashula. And inference could be drawn that the asbestos audit was but an asbestos audit heist sponsored by the Premier of the Free State Government. The Asbestos Audit Heist was executed through the Premier’s office by Mr Magashule’s personal assistant employed by government at the behest of Mr Magashule. This was not only a blatant abuse of power by Mr Magashule but a brazen commission of fraud, money laundering and daylight robbery of the public purse.”

ADV PHILLIP MOKOENA SC: Yes. Now you also proceed to attach a spreadsheet to your statement and you attach it as Annexure 2DM14. Mr Chair that spreadsheet is to be found on page 124.

CHAIRPERSON: I have found it.

ADV PHILLIP MOKOENA SC: Now that spreadsheet Mr Dukwana reflects further payments and beneficiaries which might have been paid the amounts which are reflected in that spreadsheet, am I correct?

MR MXOLISI DUKWANA: You are correct.

ADV PHILLIP MOKOENA SC: Could you take the Chair through that

spreadsheet?

CHAIRPERSON: Well may – before he does that can I know where the spreadsheet comes from?

ADV PHILLIP MOKOENA SC: Yes Chair definitely.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Mr Dukwana could you also explain to the Chair the source if you can of this spreadsheet?

MR MXOLISI DUKWANA: From Mr Mpambani's emails.

CHAIRPERSON: It – from Mr Mpambani's emails?

10 **MR MXOLISI DUKWANA**: Yes.

CHAIRPERSON: One of the emails?

MR MXOLISI DUKWANA: One of the emails.

CHAIRPERSON: It was attached there?

MR MXOLISI DUKWANA: It is an email coming from.

CHAIRPERSON: It was in an email? Okay.

ADV SMANGA SETHENE: May I assist Chair?

CHAIRPERSON: Yes, yes.

ADV SMANGA SETHENE: It is part of the supplementary statement.

CHAIRPERSON: Yes.

20 **ADV SMANGA SETHENE**: That email is attached in the supplementary statement.

CHAIRPERSON: Okay.

ADV SMANGA SETHENE: Perhaps it would be fitting if Mr Mokoena can start with that email to give a context to the spreadsheet.

CHAIRPERSON: Yes because it is important before we go into the

content of the spreadsheet to see.

ADV PHILLIP MOKOENA SC: Chair you will find the supplementary from page 222.

CHAIRPERSON: 222? I do not seem to have 222 I seem to have up to 221.

ADV PHILLIP MOKOENA SC: I am reliably informed Mr Chair that it was placed in your file instead – maybe it is part of those documents that went to read separately before making the –the ruling of the observation that the Chair made subsequent to different parties have
10 made submissions to the Chair. So it might be that it is somewhere – it is lying somewhere.

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: But if we may.

CHAIRPERSON: Ja I think any documents that are handed up just – somebody must make sure that they are put in and it should be somebody from the legal team because he might not know exactly where to put it.

ADV PHILLIP MOKOENA SC: Where to put it in – Yes Chair.

CHAIRPERSON: Okay I have – I can make use of that.

20 **ADV PHILLIP MOKOENA SC:** But for the purpose of facility – facilitating this debate we may hand you a further copy.

CHAIRPERSON: Yes. Thank you.

ADV PHILLIP MOKOENA SC: While the Chair is still putting that document in its file Mr Dukwana you can also quickly go mark the paragraphs that links those different emails and the email in question.

MR MXOLISI DUKWANA: You say the supplementary statement.

ADV PHILLIP MOKOENA SC: Yes supplementary statement.

MR MXOLISI DUKWANA: Can you repeat the instruction again?

ADV PHILLIP MOKOENA SC: Go to page 222.

CHAIRPERSON: Oh this is the supplementary statement that I was told about;

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Yesterday.

ADV PHILLIP MOKOENA SC: Yesterday. Yesterday Chair.

10 **CHAIRPERSON:** But you say it was handed up?

ADV PHILLIP MOKOENA SC: Yes Chair.

CHAIRPERSON: Oh okay.

ADV PHILLIP MOKOENA SC: You read – you also had an opportunity to go and read it in chambers.

CHAIRPERSON: Oh that is the one that I read.

ADV PHILLIP MOKOENA SC: Yes for you to come and make a ruling.

CHAIRPERSON: Well when I read it it was in the other bundle which is not here. I do not know if it is supposed to be here. That was the bundle that had correspondence?

20 **ADV PHILLIP MOKOENA SC:** It could have been misplaced there inadvertently.

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: But it is fine.

CHAIRPERSON: Or maybe they might not have appreciated that that particular bundle which has correspondence was required today.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: I think that is what might have happened. I probably also did not think it was required.

ADV PHILLIP MOKOENA SC: Required.

CHAIRPERSON: Because it was [intervention].

ADV PHILLIP MOKOENA SC: But be that as it may Chair we will make sure that it is placed and in the proper place.

CHAIRPERSON: Correspondence. Ja. Maybe what you – what you can – what you can clarify because I understood it to be handed up
10 simply for convenience in regard to the argument that was to be presented and that is why we did not admit as an Exhibit.

ADV PHILLIP MOKOENA SC: And maybe it might be also – be appropriate for us to mark it accordingly.

CHAIRPERSON: If ...

ADV PHILLIP MOKOENA SC: So that we do not lose it.

CHAIRPERSON: If the intention is to have it as an Exhibit then we will have to do that.

ADV PHILLIP MOKOENA SC: Definitely as an exhibit Chair.

CHAIRPERSON: Ja. But I do not know whether we need to do that
20 insofar as it refers to correspondence.

ADV PHILLIP MOKOENA SC: Because it is some – it is simply supplementing what is already existing.

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: Which is Exhibit X5.

CHAIRPERSON: Ja it may be that you need to check what it is that is

there that really needs to be part of the evidence as such. Obviously the supplementary statement is important. But the supplementary statement might well belong here.

ADV PHILLIP MOKOENA SC: Yes Chair.

CHAIRPERSON: Rather than in that other file.

ADV PHILLIP MOKOENA SC: No it does not definitely you know belong in the correspondence file.

CHAIRPERSON: In the other file. Yes,yes.

ADV PHILLIP MOKOENA SC: Remember that the correspondence file.

10 **CHAIRPERSON:** Ja.

ADV PHILLIP MOKOENA SC: Was merely to place different items that were received at the last moment.

CHAIRPERSON: Hm. Yes.

ADV PHILLIP MOKOENA SC: And that included also you know the supplementary statement.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: But I think it should belong in the main file.

CHAIRPERSON: Yes, ja.

20 **ADV PHILLIP MOKOENA SC:** And maybe to be identified as you know Exhibit.

CHAIRPERSON: Ja okay thank you.

ADV PHILLIP MOKOENA SC: X6 Chair.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Or Exhibit XX7 Chair.

CHAIRPERSON: You refer to X7.

ADV PHILLIP MOKOENA SC: Yes because...

CHAIRPERSON: You talk about that bundle. When you say X7 what are you talking about?

ADV PHILLIP MOKOENA SC: No I am saying that maybe this supplementary should be referred to.

CHAIRPERSON: As X7.

ADV PHILLIP MOKOENA SC: As Exhibit X7.

CHAIRPERSON: Exhibit X7.

10 **ADV PHILLIP MOKOENA SC**: Yes.

CHAIRPERSON: In which case should it not be on a separate – would there be a problem if it is simply added here as part of this Exhibit and not as a separate exhibit?

ADV PHILLIP MOKOENA SC: We are – we are easy.

CHAIRPERSON: I think that is – because this is where it belong.

ADV PHILLIP MOKOENA SC: That is where it belongs Chair.

CHAIRPERSON: All the other supplementary.

ADV PHILLIP MOKOENA SC: Definitely.

CHAIRPERSON: Are here. Okay so let us not mark it separately. So

20 ...

ADV PHILLIP MOKOENA SC: It can be referred to as a supplementary.

CHAIRPERSON: It will simply be added at the end of Exhibit X. Ja.

ADV PHILLIP MOKOENA SC: At the end of Exhibit X5 Chair.

CHAIRPERSON: Ja. Ja. Thank you.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: I have got it. The spreadsheet – I think somebody said it is part – was attached to the – to the supplementary statement, is that right? The spreadsheet that you were talking about?

ADV PHILLIP MOKOENA SC: The spreadsheet Chair it is part and parcel of the main.

CHAIRPERSON: Of the main.

ADV PHILLIP MOKOENA SC: Of the main statement.

CHAIRPERSON: Not the supplementary.

ADV PHILLIP MOKOENA SC: The main statement ja. Which is X5.

10 **CHAIRPERSON**: Ja.

ADV PHILLIP MOKOENA SC: And that is where we have located in the spreadsheet.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay. Okay let us continue then.

ADV PHILLIP MOKOENA SC: Yes. If you go to the document that you are referring to Mr Dukwana and in line with the question posed to you by the Chair you did provide a supplementary statement, am I correct?

MR MXOLISI DUKWANA: You are correct.

20 **ADV PHILLIP MOKOENA SC**: And in that statement you also deal with some of the documents which were initially not annexed to your statement, am I correct?

MR MXOLISI DUKWANA: You are correct.

ADV PHILLIP MOKOENA SC: If you turn to page 225.

MR MXOLISI DUKWANA: Yes.

ADV PHILLIP MOKOENA SC: Take us through paragraph 11 and 12 and tell us as to how should we link that to this spreadsheet?

MR MXOLISI DUKWANA: This – see email correspondence between Mr Mpambani and Sodi. Paragraph 11 I refer to paragraph 52.1 I made reference to the email exchanges between Mr Mpambani and Sodi relating to payments effected for asbestos heist. It appears I only annexed the spreadsheet and not the copy of the said email. I annex hereto marked 2DMS2 being a copy of the email exchange in issue. The email from Mpambani to Sodi reads:

10 “Sure Eddie I have affected the payment in two batches. Kindly find attached the updated schedule with the following minor adjustments. JT from R1 million to R500 000.00. I hope the issue supplemented above are in order.”

ADV PHILLIP MOKOENA SC: Now for completeness turn to page 231. Is that the email that you are referring to?

MR MXOLISI DUKWANA: Yes, yes Chair.

ADV PHILLIP MOKOENA SC: And you are linking that to the spreadsheet?

20 **MR MXOLISI DUKWANA:** Exactly that is what I am doing.

ADV PHILLIP MOKOENA SC: So then your answer to the Chair is that the spreadsheet that you are just about to deal with was as a result of the correspondence that passed hands between Mr Mpambani and Mr Sodi?

MR MXOLISI DUKWANA: Correct Sir.

CHAIRPERSON: That email at 231 comes from Edwin Sodi Chief Executive Officer and it is addressed to Sure Eddie. I have affected the payments in two batches kindly find attached the updated schedule with the following minor adjustments. JT from R1 million to R500 000.00 on 24 March 2015 at 3:23 pm and then that is the email address. Yes so that is part of – that went with the spreadsheet, is that right?

ADV PHILLIP MOKOENA SC: Mr Dukwana.

CHAIRPERSON: Mr Dukwana did that go with the spreadsheet?

10 **MR MXOLISI DUKWANA**: But it is from – not from Edwin it is from Igo to Edwin.

CHAIRPERSON: Oh right at the top.

MR MXOLISI DUKWANA: Right at the top.

CHAIRPERSON: Not to Edwin.

MR MXOLISI DUKWANA: To Edwin yes.

CHAIRPERSON: Okay alright thank you.

ADV PHILLIP MOKOENA SC: Chair just to correct also to make sure that we align you with the times. Sure it is not the name of the person I am sure it is a greeting when it says sure Eddie. So it is not
20 addressed to Sure Eddie.

CHAIRPERSON: Well I – I had a suspicion that it was about greeting but I was not sure. One does not see these things written down.

ADV PHILLIP MOKOENA SC: Yes Chair.

CHAIRPERSON: One hears them being said only.

ADV PHILLIP MOKOENA SC: So...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Having clarified the issue of the spread [intervention]

CHAIRPERSON: But at 231 it is an email from Edwin Sodi addressed to Eddie but Mr Mpambani is sending something or – to Eddie, is that right?

MR MXOLISI DUKWANA: You are right.

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: He is sending the spreadsheet but he was
10 demonstrating how they have dealt with that but correcting all the – the amount.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: For duty from R1 million to R500 000.00.

CHAIRPERSON: Yes. Okay. It is a little confusing.

ADV PHILLIP MOKOENA SC: It does Chair.

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: But what – what appears to be the relevant portion in terms of linking it is it not the first line that says that I have affected the payments in two benches but most importantly
20 kindly attached the updated schedule with reference to the following adjustment. Should one read the adjusted schedule to – adjusted schedule to be the one that you will be dealing with?

MR MXOLISI DUKWANA: Exactly it is the one Chairperson that we will be dealing with the spreadsheet.

ADV PHILLIP MOKOENA SC: Now if we may refer to page 124. If you

can take us through the different columns – but maybe before you do that Mr Dukwana because I have just adjusted certain things in my notes. If you can go back to page 16 of your statement. If you look at the spreadsheet comparing the spreadsheet with what you are saying there. In the spreadsheet you will agree with me that it only gives the initials or the abbreviated names like those that are appearing there, am I correct?

MR MXOLISI DUKWANA: You are correct.

ADV PHILLIP MOKOENA SC: However in your statement you then put
10 the full names of what you believe those people to be, am I correct?

MR MXOLISI DUKWANA: Yes.

ADV PHILLIP MOKOENA SC: Okay. Bear in mind the 52.3.1 as we proceed through that – that will be Mr X for the references throughout this spreadsheet, am I correct?

MR MXOLISI DUKWANA: Correct.

ADV PHILLIP MOKOENA SC: Yes. Now [intervention].

CHAIRPERSON: What page did you say the spreadsheet is again?

ADV PHILLIP MOKOENA SC: It is page 124.

CHAIRPERSON: Oh I got it. Yes okay.

20 **ADV PHILLIP MOKOENA SC:** Now let us go back to the – page 124 and take us through the different columns and the payments that could have been effected?

MR MXOLISI DUKWANA: The spreadsheet is headed or referred to as The Free State Asbestos Eradication Project. And it has a number of units. It has rate per unit. It has a project value and it has the year.

And then the extreme right you would see that there is a first payment, the second payment and the third payment to be effected.

ADV PHILLIP MOKOENA SC: And please tell us what – I mean according to your knowledge would each column signify that would be quite important so that we do not lose your evidence.

MR MXOLISI DUKWANA: Can I suggest that we go through this and then explain.

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA: So that...

10 **ADV PHILLIP MOKOENA SC:** Yes.

MR MXOLISI DUKWANA: If you check Chairperson the – the number of units that you will see there is 300 000.

CHAIRPERSON: That is now on the extreme left column.

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: Of the bigger column. There is...

MR MXOLISI DUKWANA: Bigger – the extreme left.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: The left one.

CHAIRPERSON: There is 300 000 units.

20 **MR MXOLISI DUKWANA:** Yes.

CHAIRPERSON: It says number of units and then the number 300 000 appears.

MR MXOLISI DUKWANA: And then it then says the rate per unit.

CHAIRPERSON: The next column is the...

MR MXOLISI DUKWANA: And in this case it is R850.00

CHAIRPERSON: The next column it says rate per unit and it says R850.00.

MR MXOLISI DUKWANA: And then when you multiply that it gives you R255 million.

CHAIRPERSON: Okay hang on let us not speak at the same time Mr Dukwana.

MR MXOLISI DUKWANA: Okay.

CHAIRPERSON: So – so you were saying that the next column has got rate per unit and it has got R850.00, is that right?

10 **MR MXOLISI DUKWANA:** That is right Chairperson.

CHAIRPERSON: Yes then you move to the next column.

MR MXOLISI DUKWANA: The project value. That is the total amount of the project. The Free State Asbestos Eradication Project.

CHAIRPERSON: Well you have to read it as it is. The total project value reflected on the third column is R255 million.

MR MXOLISI DUKWANA: Exactly.

CHAIRPERSON: And then you want to make an observation about that amount.

20 **MR MXOLISI DUKWANA:** The R255 million is the same amount that was referred to in the – in the letter – the instruction from the HOD.

CHAIRPERSON: So you – so you say if we go back to the letter of instruction from the Head of the HOD which was at page 94 if I recall correctly the total value of the Asbestos Project was R255 million.

MR MXOLISI DUKWANA: That is correct Chair.

CHAIRPERSON: Yes. And I see 300 000 where it says number of

units. That letter also indicated that the housing units which were to be the subject of that project was 300 000, is that correct?

MR MXOLISI DUKWANA: Correct.

CHAIRPERSON: And there was – was there not also something about the amount per unit?

MR MXOLISI DUKWANA: It was there.

CHAIRPERSON: Is it the same as R850.00 that is written here?

MR MXOLISI DUKWANA: It is R850.00 Chairperson yes.

CHAIRPERSON: Yes.

10 **MR MXOLISI DUKWANA:** Correct.

CHAIRPERSON: So from this you conclude?

MR MXOLISI DUKWANA: This is the project that we referred to as the Heist that was the – what comes from the office of the – in the Department of Human Settlement in the Province and then let us – that pointed out that the total value of the project is R255 million and that each house would be the cost for that would be R850.00 and then they will do the audit for 300 000 houses. So that tells you that it is not separated, it links very well with what we are explaining here now.

CHAIRPERSON: So the suggesting you make is that the payments that
20 you are about to read in the spreadsheet are connected to the project of the Eradication of Asbestos, that is what you are saying?

MR MXOLISI DUKWANA: Correct Sir.

CHAIRPERSON: Yes okay. Mr Mokoena.

MR MXOLISI DUKWANA: I had indicated that having discussions with the late Igo Mpambani explaining to me in detail it was a long

discussion that we had and it did not happen once it happened several times. He – he used certain names and that were involved in the project and he – he referred to them when I was asking – are you not going to be disappointed the way you were with the – in the other project that you wanted to undertake in the Free State? And then he said we are sorted out. We have dealt with everything this time that we have brought everybody who matters, who would facilitate the process so there is no problem or there is nothing that one should be afraid of. And but of course as he would mention people that they are working
10 with this one, this one he was using these and I would ask who is this one and he would tell me the name.

CHAIRPERSON: Was he using initials?

MR MXOLISI DUKWANA: He was using initials.

CHAIRPERSON: Was he using a nickname?

MR MXOLISI DUKWANA: He was using initials.

CHAIRPERSON: Initials.

MR MXOLISI DUKWANA: And then he would say the – and I would ask specifically who is this one?

CHAIRPERSON: Yes.

20 **MR MXOLISI DUKWANA**: Yes.

CHAIRPERSON: Okay.

MR MXOLISI DUKWANA: And at the time I was not asking because I wanted to prepare or there was any commission I was asking because I just wanted to know who are these people that you talking about.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: Yes and then he would give this to me and then that is it. But he only gave me names of people that he thought were more relevant to be mentioned to me. Others did not [intervention].

CHAIRPERSON: You did not ask?

MR MXOLISI DUKWANA: Ja.

CHAIRPERSON: Yes. Okay.

MR MXOLISI DUKWANA: And others he did not give. As he was speaking he would tell me this person and then he would tell me this
10 person.

CHAIRPERSON: Oh.

MR MXOLISI DUKWANA: So he did not tell me all the other people.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: That are here in the spreadsheet.

CHAIRPERSON: But did you ask him to tell you who certain people were and not all of them or did you ask all of them but he gave you some and not gave you others or ...?

MR MXOLISI DUKWANA: Let me make an example. When he said the - the project in fact is funded - he said the project was funded from
20 national. The province is not paying you know. The transfer would be made from national to the province and he indicated that we have so and so Mr X who is facilitating this for us and then he then said in the province and then he was jokingly saying you know you cannot do anything without the big man and then - then he would refer to the big man as in initials and would ask why do you say this.

He say hey you do not talk about this name anyway. So it was his way of hiding who - whenever he speaks he would speak in - in that and then I became interested in finding out why he is using that. That is why he explained and then he would even give the reasons why they - they brought all these people together but he did not say to me that they were paying them or doing that.

We were discussing and he was just simply saying he has managed to bring them to understand and accept and help facilitate the project.

- 10 **CHAIRPERSON**: Okay. So at this stage in your discussion he was not saying that he was going to be paying them. He was simply saying they support the project. They are on board.

MR MXOLISI DUKWANA: Yes. He just said we - we made sure this time that we tie everybody that matters to this for ease of - of our project going through.

CHAIRPERSON: Okay.

MR MXOLISI DUKWANA: So he did not mention that they were going to pay them.

CHAIRPERSON: Hm.

- 20 **MR MXOLISI DUKWANA**: He gave me that impression that they working quite well. They managed to engage ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: These people and these people were on their side and they understood exactly where they were going ...

CHAIRPERSON: Okay.

MR MXOLISI DUKWANA: And he gave me the impression that because it was money not coming from the province but because you needed the province to accept and do this and appoint you. You had - he had to make sure that he - he gets these people to - to accept and work with him and once he had that he was excited ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: Telling me that really this time we are moving and then Mochana (?) if you can - he would refer to me as Mochana.

10 **CHAIRPERSON:** Yes.

MR MXOLISI DUKWANA: If you can facilitate the - the other provinces specifically he mentioned the Eastern Cape ...

CHAIRPERSON: Hm, hm.

MR MXOLISI DUKWANA: And I think because my parents originate from the Eastern Cape ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: And we - we will talk Xhosa you know ...

CHAIRPERSON: Hm, hm.

MR MXOLISI DUKWANA: To which other every time you know ...

20 **CHAIRPERSON:** Hm.

MR MXOLISI DUKWANA: Were not speaking any other language other than that.

CHAIRPERSON: Hm, hm. Okay, thank you.

ADV PHILLIP MOKOENA SC: Can you now proceed with reference to page 121 as I have requested you to do before and tell us what does

each column represent and what is reflected in those columns?

MR MXOLISI DUKWANA: If you check Chairperson it says there “The Cost of Business” and it is in one column ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: And when it says the cost of business which is stipulated there and the total cost of business being R82 608 567. That was the total value of what he referred to as the total cost of business.

CHAIRPERSON: Oh. So the - the various payments or items are part
10 of the - of what he regards as cost of business?

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: And then the total is the one you have just mentioned?

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: Okay.

MR MXOLISI DUKWANA: Then ...

CHAIRPERSON: So it is likely it was the cost to his business - to their business?

MR MXOLISI DUKWANA: To ...

20 **CHAIRPERSON:** In regard to this project.

MR MXOLISI DUKWANA: It is - this - this is with regard to the asbestos project.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: Okay.

MR MXOLISI DUKWANA: And then ...

ADV PHILLIP MOKOENA SC: We - we do not need to speculate Mr Dukwana. Look right on top of that document. What - what is written there? What is the heading?

MR MXOLISI DUKWANA: Free State Asbestos Eradication Project.

ADV PHILLIP MOKOENA SC: Yes. So ...

CHAIRPERSON: Well that is helpful Mr Mokoena. I also did not pick that up.

ADV PHILLIP MOKOENA SC: So clearly he is specifically referring to
10 the issues that you have canvassed with the Chair pertaining to this project. Am I correct?

MR MXOLISI DUKWANA: You are correct.

ADV PHILLIP MOKOENA SC: So when he talks about the cost of business it is with reference to what we see as the heading on top. Would I be correct?

MR MXOLISI DUKWANA: You will be correct.

ADV PHILLIP MOKOENA SC: Then proceed then.

CHAIRPERSON: Effectively it was - it is - it is what the business has had to pay in regard to or his company has had to pay in regard to this
20 business that they got from the Department of Human Settlements in regard to the asbestos eradication.

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: That is what ultimately it means.

MR MXOLISI DUKWANA: It means ...

CHAIRPERSON: Yes, okay.

MR MXOLISI DUKWANA: Yes. Greasing if you like.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: You are saying what?

MR MXOLISI DUKWANA: Greasing.

ADV PHILLIP MOKOENA SC: Greasing?

MR MXOLISI DUKWANA: Yes.

ADV PHILLIP MOKOENA SC: What is that?

MR MXOLISI DUKWANA: (African language).

CHAIRPERSON: Oh greasing your hand.

10 **MR MXOLISI DUKWANA:** (African language).

CHAIRPERSON: Greasing your hand.

MR MXOLISI DUKWANA: (African language). You pay bribery if you like. You pay - you bribe somebody ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: Or you pay them for them to facilitate this for you.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: so this cost of business ...

CHAIRPERSON: *Ja*.

20 **MR MXOLISI DUKWANA:** Good English ...

CHAIRPERSON: *Ja*.

MR MXOLISI DUKWANA: Hiding ...

CHAIRPERSON: Bribery.

MR MXOLISI DUKWANA: Bribery.

CHAIRPERSON: It is - it is a bribe.

MR MXOLISI DUKWANA: It is a bribe.

CHAIRPERSON: *Ja.*

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: Well in isiZulu we have got the word (isiZulu language) to refer to that as well.

MR MXOLISI DUKWANA: Sotho word (Sotho language).

CHAIRPERSON: Okay, alright. Continue.

ADV PHILLIP MOKOENA SC: You may proceed then.

MR MXOLISI DUKWANA: Mr X - in the cost of business Mr X was
10 scheduled to get 10 million and then TM five million. I will come to the
other names. AM 10 million. OM one million. MEC 2.5 million.
MasterTrade 44 208 567,909 and others two million and then you have
other names Martin 1.5, Steve 1.2, Randwa (?) 1.2 million, JT three
million, Deidricks one million and then it gives you that total that is
there. That is the cost ...

CHAIRPERSON: Just repeat the total. You said it earlier but just
repeat for convenience.

MR MXOLISI DUKWANA: The total cost of business is 82 608 567,90.
Oh wait. You are talking about (intervenes).

20 **CHAIRPERSON:** *Ja.* 82 608 567,90.

MR MXOLISI DUKWANA: Yes, 90 cents.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: May I ...?

MR MXOLISI DUKWANA: And then you have also the project value
cost of business ...

ADV PHILLIP MOKOENA SC: Hm.

MR MXOLISI DUKWANA: That will be 172 391 ...

CHAIRPERSON: 172 million. Is it not?

MR MXOLISI DUKWANA: 172 million.

CHAIRPERSON: That - that looks like 172 million.

ADV PHILLIP MOKOENA SC: Yes it is Chair.

MR MXOLISI DUKWANA: It is Chair.

CHAIRPERSON: I think you said 172 000.

MR MXOLISI DUKWANA: I said R172 ...

10 **CHAIRPERSON:** Okay.

MR MXOLISI DUKWANA: 391 432,10.

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA: If you check the - the project value cost of business divided between the two Blackhead and Diamond in equal portion will be R86 195 716,05 and you will see that it is written 2013/2014 financial year that will be 127 500 000 and then 2014/2015 financial year 127 500 000.

ADV PHILLIP MOKOENA SC: So this is how ...

CHAIRPERSON: Yes.

20 **ADV PHILLIP MOKOENA SC:** The different amounts were expanded?

MR MXOLISI DUKWANA: Exactly. This is how these amount were - were expanded and then the - the - Mr X was - the name was given because it was in a way of telling me who is facilitating this at the head or at the head office and - and this amount will go to 10 million for Mr X.

CHAIRPERSON: And the initial that is given here which you are not mentioning. The initials that are given here are the initials that he told you.

MR MXOLISI DUKWANA: He was using them. Every time he referred to the person. He would use

CHAIRPERSON: *Ja*.

MR MXOLISI DUKWANA: Use that.

CHAIRPERSON: Okay.

MR MXOLISI DUKWANA: Twice in our meeting he used that.

10 **CHAIRPERSON:** *Ja*, okay.

MR MXOLISI DUKWANA: And - and then there is also TM in this case. The many people ...

CHAIRPERSON: I am - I am sorry Mr Dukwana. Mr Mokoena I am - I am not sure I understand what these other amounts relate to. Are - are they part - the ones that he is starting to read now. Are they part of example in regard to Mr X are they - are they part of the 10 million? Is five million part of the 10 million or is it an additional five million?

ADV PHILLIP MOKOENA SC: Mr Dukwana if you look at that column ...

MR MXOLISI DUKWANA: It ...

20 **ADV PHILLIP MOKOENA SC:** You will see that there are different columns.

MR MXOLISI DUKWANA: *Ja*. You see the left one Chair it explains the total amount to be paid ...

CHAIRPERSON: Given to a particular individual?

MR MXOLISI DUKWANA: Yes. That will be the total amount ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: To be paid ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: And then it will be in terms of the year. If you check in terms of the financial year as he indicated there at the bottom. This half of it, it is 127 500 000.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: Yes and then the second half 2014/2015 financial year he says 127 500 000. He - he broke it in - in half but it
10 is the total amount of 255 million ...

CHAIRPERSON: Okay.

MR MXOLISI DUKWANA: And then if you check the - the - if you go to your right he then breaks it down in years. That for this financial year they will pay this amount of money and then it will then be broken down in that fashion.

CHAIRPERSON: Yes; and - and the amounts that - that appear between the two columns that there is two - R2 million in relation to - in relation to Mr X and there is R3 million. What do they represent those that appear between the two columns which seem to be hanging? If
20 you know what I mean.

ADV SMANGA SITHINI: Chair - Chair before ...

CHAIRPERSON: Yes.

ADV SMANGA SITHINI: Before Mr Dukwana answers that question.

CHAIRPERSON: Hm.

ADV SMANGA SITHINI: May I plead that ...

CHAIRPERSON: Hm.

ADV SMANGA SITHINI: Perhaps it will be prudent not to go to the nitty-gritties of the - of the spreadsheet.

CHAIRPERSON: Yes.

ADV SMANGA SITHINI: The reason is the witness is not schooled in accounting.

CHAIRPERSON: Huh-uh.

ADV SMANGA SITHINI: So he may not explain certain things with the - the requisite knowledge that it may be expected out of a person who
10 will analyse the spreadsheet.

CHAIRPERSON: Yes. No, no I ...

ADV SMANGA SITHINI: And the Chairperson would note that if you look at page 94 the first amount there payable is 51 million ...

CHAIRPERSON: Yes.

ADV SMANGA SITHINI: And then it is reflected there.

CHAIRPERSON: Yes.

ADV SMANGA SITHINI: Other amounts particularly the ones that are not inside the columns ...

CHAIRPERSON: Hm, hm.

20 **ADV SMANGA SITHINI:** I doubt Mr Dukwana is in a position of explaining with precision what those amounts are about.

CHAIRPERSON: Yes. No, no I understand that completely. I think he - he should just be able to say this is what I am able to explain. Otherwise other things I am not able explain. After all it is not his document. So it was just to try and understand that we are - we

understand the - the document in the same way he does.

So Mr Dukwana where you - what you cannot explain just say I - I do not know what this represents. As I say it is not your document in any effect.

ADV SMANGA SITHINI: Thank you Chair.

CHAIRPERSON: *Ja.*

MR MXOLISI DUKWANA: Yes. I will do. The - if you check this - this first portion that is big was for the total amount of money.

CHAIRPERSON: Yes.

10 **MR MXOLISI DUKWANA:** That they have earmarked and how they would Chair share it ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: But if you go to the extreme right ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: It was with the payments that were made as they were coming.

CHAIRPERSON: *Ja.*

MR MXOLISI DUKWANA: As you would - as you would see that there was a payment that was made in December. There were two payments
20 that were made. The one was 20 million followed by the 31 million in December and this would be your 51 million.

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: That was there. So one assumes that every time there was payment ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: The cost to business would then be paid.

CHAIRPERSON: Oh. Okay, okay.

MR MXOLISI DUKWANA: And they would be paid these amounts that are - are shown there but as you pay ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: It was going to go to the total that each person ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: Would at the end ...

10 **CHAIRPERSON:** Okay.

MR MXOLISI DUKWANA: Would have received ...

CHAIRPERSON: Okay.

MR MXOLISI DUKWANA: But in this case it - it is not like 10 million and then you getting the 10 million just like that.

CHAIRPERSON: In one payment.

MR MXOLISI DUKWANA: The first payment is - is 20 million that we get.

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: Then we give you the amount that ...

20 **CHAIRPERSON:** *Ja*.

MR MXOLISI DUKWANA: And then we will give you one million give you this and it was meant for that. So the second payment is made ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: And the people who - who would have received would be - would be shown that this person got this amount of

money.

CHAIRPERSON: Okay. No that is fine.

ADV PHILLIP MOKOENA SC: Any other thing that you wish to explain to the Chair in relation to the spreadsheet on page 12 - 124?

MR MXOLISI DUKWANA: On - I just want to say Chairperson the names here as I explained why I am - I am confident that they refer to these people that are here including Mr X is what I explained to you.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: That it was a discussion that we had ...

10 **CHAIRPERSON:** Yes.

MR MXOLISI DUKWANA: And I still met with one person who was a partner at some stage Tata Mogwera (?) ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: In - in the province and then unfortunately Mr Mpambani passed on.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: So we - we had these kinds of engagements.

CHAIRPERSON: Yes.

20 **MR MXOLISI DUKWANA:** So this would be much clearer in terms of the names ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: But if you check there and that email that - that was the supplementary evidence.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: That was said everything is sorted out with

the adjustment from one million for JT to 500.

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: Meaning that everything that was paid for that duration ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: But - and if you check that was for with that information it was the third payment that was made. In this case it was 500 000 instead of what was - was done - was paid.

CHAIRPERSON: Okay. Huh-uh.

10 **ADV PHILLIP MOKOENA SC:** If you turn to page 16 of your witness statement and in line with what you reference to paragraph 52.3. From 52.3.1 onwards you give the specific names which you say that those abbreviated names actually represents. Am I correct?

MR MXOLISI DUKWANA: You are correct.

ADV PHILLIP MOKOENA SC: And you say that this you are able to state with certainty flowing from your own discussions with the source of the information.

MR MXOLISI DUKWANA: Yes. He - when - because I - I knew certain people by their surnames.

20 **CHAIRPERSON:** Yes.

MR MXOLISI DUKWANA: So when he said TM to me I wanted to know but who is this TM.

CHAIRPERSON: Huh-uh.

MR MXOLISI DUKWANA: Why are you referring to this person as TM ...

CHAIRPERSON: Huh-uh.

MR MXOLISI DUKWANA: And he then said it is Thabo Mokhesi.

CHAIRPERSON: Huh-uh.

MR MXOLISI DUKWANA: And I wanted to know who is Thabo Mokhesi because I - I know Mr Mokhesi. The HOD of the Department of Human Settlement in the Free State and he said that is what they know him to be as TM and he says why - and I wanted to know what is T. He says I found him. They call him Thabo etcetera. He says it is Thabo Mokhesi.

The HOD in the - in the Free State - the Human Settlement in
10 the Free State referred to as Thabo - Thabo Mokhesi. He is referred to as TM in this case. That is what he said and then AM ...

CHAIRPERSON: Well before you go I think so that one can understand it correctly. Now that you are mentioning who is who then I think you must just repeat in terms of the spreadsheet what it shows was paid to who.

ADV PHILLIP MOKOENA SC: Maybe what would assist is if you can open page 124.

CHAIRPERSON: Ja, page - in other words as you explained who certain initials refer to. You go to 124 and just mention that ...

20 **ADV PHILLIP MOKOENA SC:** How much was he paid.

CHAIRPERSON: That amount is what that person got.

ADV SMANGA SITHINI: Chair can it be ...

CHAIRPERSON: Yes.

ADV SMANGA SITHINI: Can it be - he can mention that minus Mr X?

CHAIRPERSON: Yes of course. Of course.

ADV SMANGA SITHINI: Right.

CHAIRPERSON: No, no he - I took it that we all know that ...

ADV SMANGA SITHINI: Yes.

CHAIRPERSON: Mr X remains Mr X.

ADV SMANGA SITHINI: Yes correct.

CHAIRPERSON: Yes. *Ja.* No, no.

ADV SMANGA SITHINI: But he can state how much Mr X have - was paid.

CHAIRPERSON: *Ja.* He - he - I think he has stated - he can say how
10 much Mr X got

ADV SMANGA SITHINI: Chair the other thing may Mr Dukwana not mention the details pertaining to Mr X in the statement.

CHAIRPERSON: That would - that would give a clue?

ADV SMANGA SITHINI: Correct.

CHAIRPERSON: *Ja.*

ADV SMANGA SITHINI: It will give a clue. So what ...

CHAIRPERSON: Yes.

ADV SMANGA SITHINI: With in line with the inclination of the Chairperson ...

20 **CHAIRPERSON:** Yes.

ADV SMANGA SITHINI: Yesterday.

CHAIRPERSON: Yes.

ADV SMANGA SITHINI: He should not even make reference to where Mr X could possibly ...

CHAIRPERSON: Yes.

ADV SMANGA SITHINI: Be located.

CHAIRPERSON: Yes.

ADV SMANGA SITHINI: Thank you.

CHAIRPERSON: Yes. No, no I think - I think that was the understanding yesterday.

ADV SMANGA SITHINI: Yes. Since Chair he has already mentioned how much Mr X allegedly received ...

CHAIRPERSON: Hm, hm.

ADV SMANGA SITHINI: According to the spreadsheet.

10 **CHAIRPERSON:** Hm.

ADV SMANGA SITHINI: Which is the email exchanges between two persons.

CHAIRPERSON: Hm.

ADV SMANGA SITHINI: Who are - who were directors of these two companies.

CHAIRPERSON: Hm.

ADV SMANGA SITHINI: Blackhead and Diamond Hill. Then we move to TM.

CHAIRPERSON: Yes. Let us - let us leave out ...

20 **ADV SMANGA SITHINI:** There he can explain.

CHAIRPERSON: Mr X, *ja*. That is fine.

ADV SMANGA SITHINI: Thank you Chair.

CHAIRPERSON: *Ja*.

MR MXOLISI DUKWANA: Can I quickly point out Chairperson that the - the amounts that you see there are the amounts earmarked - the cost

for total business but as you pay - as he got paid he will pay a certain amount of money. So the - the 10 million was not paid like that.

CHAIRPERSON: In - in ...

MR MXOLISI DUKWANA: In term of the spreadsheet.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: It - it - there were several - there would have been several payments ...

MR MXOLISI DUKWANA: Yes.

10 **CHAIRPERSON:** Which totalled 10 million.

MR MXOLISI DUKWANA: So every time he received payment ...

CHAIRPERSON: *Ja.*

MR MXOLISI DUKWANA: He would effect this payment.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: At the end of it all ...

CHAIRPERSON: *Ja.*

MR MXOLISI DUKWANA: One believes that after everything was done ...

CHAIRPERSON: Yes.

20 **MR MXOLISI DUKWANA:** These people would have received this amount.

CHAIRPERSON: The total amounts given.

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: *Ja.* No that is fine.

ADV PHILLIP MOKOENA SC: So you may proceed then from TM.

MR MXOLISI DUKWANA: TM was - was (intervenes).

ADV PHILLIP MOKOENA SC: You are still explaining how - how you knew (intervenes).

MR MXOLISI DUKWANA: I explained that as - as the head of the department in the Free State of Human Settlement was earmarked to receive five million and after the first payment that was received the person got one million and the second one he got one million and the third one he got 500 000. So in total according to the spreadsheet - the spreadsheet he got 2.5 million. In three batches.

10 **CHAIRPERSON:** I am sorry. Are you still with TM or are you dealing with somebody else now?

MR MXOLISI DUKWANA: I am dealing with TM.

CHAIRPERSON: Ja. In total he got five million you say?

MR MXOLISI DUKWANA: In total he is supposed to get five million.

CHAIRPERSON: Oh that was - are those amounts - amounts that he was - they were supposed to get and then you break them down in the other columns?

MR MXOLISI DUKWANA: That is correct.

CHAIRPERSON: Okay. Just continue.

20 **MR MXOLISI DUKWANA:** If you check you - you will see that for instance the - the - Mr X was supposed to get 10 million ...

CHAIRPERSON: Oh.

MR MXOLISI DUKWANA: Chair.

CHAIRPERSON: Okay, okay.

MR MXOLISI DUKWANA: And then if you check in the column there

how much was paid ...

CHAIRPERSON: Okay.

MR MXOLISI DUKWANA: And it will add this side. It is three million.

CHAIRPERSON: Okay. No, no now I ...

MR MXOLISI DUKWANA: If you check that.

CHAIRPERSON: Now I ...

MR MXOLISI DUKWANA: I - I hope you understand now.

CHAIRPERSON: No now I think I understand. I think you - you - maybe based on the email that went with this spreadsheet I may have
10 confused. I - I thought that it - the spreadsheet represented amounts that had already been paid and that where it says 10 million it would just show the total and what is shown in other columns would be how that 10 million was made up of - but in respect of amounts that had already been paid but what you are saying is the 10 million or five million would be what the person was supposed to get at the end of the whole project.

I guess and then the other columns reflected what had been paid as at the time when this spreadsheet was prepared?

MR MXOLISI DUKWANA: Yes.

20 **CHAIRPERSON:** And in regard to TM ...

MR MXOLISI DUKWANA: In regard to TM ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: The total amount received in this case if you check the first payment was supposed to be that and it is clear that as you look at that that he did not get the total amount as it was alluded to

but so far from this spreadsheet and from the column that is there this is the amount that he received here.

CHAIRPERSON: 2.5 million?

MR MXOLISI DUKWANA: 2.5 million.

CHAIRPERSON: Out of the 10 million.

MR MXOLISI DUKWANA: Out of five - 500 ...

CHAIRPERSON: Out of the five million he was supposed to get?

MR MXOLISI DUKWANA: Out of the five million.

CHAIRPERSON: Okay. So he got about - he had received about - he
10 had receive half of what he was supposed to receive at the end?

MR MXOLISI DUKWANA: Yes sir.

CHAIRPERSON: Okay. Yes.

ADV PHILLIP MOKOENA SC: Mr Dukwana ...

MR MXOLISI DUKWANA: Yes.

ADV PHILLIP MOKOENA SC: I - I am not sure. I see that 2.5 but next
to 2.5 there is an amount on the right hand side that says one million.
What does that represent?

MR MXOLISI DUKWANA: This if you check there ...

ADV PHILLIP MOKOENA SC: (Intervenes).

20 **MR MXOLISI DUKWANA:** There was also a payment of 51 million.

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA: You see that?

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA: There was a payment meaning they got the
two and this total is five million - it is 51 million. If you check that

spreadsheet you have this first payment and the second payment and then it goes there as 51 million.

ADV PHILLIP MOKOENA SC: Yes, but ...

MR MXOLISI DUKWANA: Yes.

ADV PHILLIP MOKOENA SC: In relation to TM ...

MR MXOLISI DUKWANA: Yes.

ADV PHILLIP MOKOENA SC: (Intervenes).

MR MXOLISI DUKWANA: What I am trying to show you is that is the one million paid ...

10 **ADV PHILLIP MOKOENA SC:** Yes.

MR MXOLISI DUKWANA: And then there is 1.5 million paid.

ADV PHILLIP MOKOENA SC: 2.5.

MR MXOLISI DUKWANA: There is 1.5 and then if you - you break it down it is one million, one million, one million, 500 000.

ADV PHILLIP MOKOENA SC: Oh I see.

CHAIRPERSON: Oh.

ADV PHILLIP MOKOENA SC: I - I am ...

MR MXOLISI DUKWANA: Ja.

ADV PHILLIP MOKOENA SC: I am not sure if I understand.

20 **MR MXOLISI DUKWANA:** Am I losing you?

ADV PHILLIP MOKOENA SC: I thought ...

MR MXOLISI DUKWANA: No, no.

ADV PHILLIP MOKOENA SC: I thought you said to the Chair that column that says 2.5 on the - on the right hand side. You see on top it says year one. Can you see?

MR MXOLISI DUKWANA: It says year one.

ADV PHILLIP MOKOENA SC: And then but what confuses me I see - I see 2.5 but there is a - an amount of one million which I am not - I am not sure what does it represent.

MR MXOLISI DUKWANA: I indicated if you - if you check that - if you check the spreadsheet Mr Mpambani was very meticulous in working these things. He would get all the details and I hope you will not be confused by this. The first payment, the second payment and the third payment.

10 **CHAIRPERSON:** I am sorry Mr Dukwana. Maybe because Mr Mokoena and I seem to have a similar problem. Maybe if I explain it - the ...

MR MXOLISI DUKWANA: Oh.

CHAIRPERSON: I check with you whether ...

MR MXOLISI DUKWANA: Okay.

CHAIRPERSON: I understand it correctly. It might help. Is - is the position the following that - I hope I will not going - I am going to cause more confusion. Is the position that the big column on the left which has got R300 000,00 - 300 000 units and 250 - 255 million that when you look at that big column which has got its own columns the amounts
20 of 10 million, five million, 10 million and so on and so on that is what each person mentioned there was supposed to get when the whole project was finished. Am I correct so far?

MR MXOLISI DUKWANA: You are correct Chair.

CHAIRPERSON: Okay. Then you go to the next column. It says 255 million. That is the value of the whole project. Then the column on the

right hand side of that column which has got five million at the top. 2.5 million below that and so on and then it has got two million next to five million. That was an allocation for each person. The amounts appearing under those columns reflect allocations of what each person was supposed to get in the first year?

MR MXOLISI DUKWANA: Yes sir.

CHAIRPERSON: Is that - am I correct so far?

MR MXOLISI DUKWANA: You are correct so far.

CHAIRPERSON: Okay, but those amounts the five million and the two
10 million and the first year they are amounts that are part of the 10 million in the case of Mr X for example?

MR MXOLISI DUKWANA: Yes sir.

CHAIRPERSON: That is correct?

MR MXOLISI DUKWANA: That is correct sir.

CHAIRPERSON: Okay. Then you go outside of that column and then you have got at the top 51 million. Alright?

MR MXOLISI DUKWANA: Yes sir.

CHAIRPERSON: And then below R51million you have got a kind of two
20 columns without lines, the one relating to Mr X there is two million and then you've got three million next to it, and then you've got other amounts which are – which relate to the other people. Would I be correct to say that those amounts which are under that 51million are amounts that they were supposed to get not out of the 255million but out of the 51million, in other words was the 51million part of the 255million or was it additional?

MR MXOLISI DUKWANA: If you check the project value, it's 255million.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: And if you check the financial year he believed that they would have got 127 500 000 and then that would be the second year they will get this, so in terms of the payment they would be in batches but the first year they would pay the 500, the 5million or half of it.

CHAIRPERSON: Yes.

10 **MR MXOLISI DUKWANA:** If you are to get 10million they will pay you half of it the first year.

CHAIRPERSON: Yes, yes.

MR MXOLISI DUKWANA: So if you take the first year in that column what it means in relation to the first financial year this person would get R5million, the other one R2.5million, and if you check the cost of business for TM is R5million but the first year if that amount is paid the person would have received this amount of money, R2.5million.

CHAIRPERSON: Mmm.

20 **MR MXOLISI DUKWANA:** You understand, in the first year, and then the payment, the actual payments that were made are appearing there, the first payment, the second payment and then the third payment.

CHAIRPERSON: Well it may be that we will not understand everything but it ought to be possible maybe to find somebody who might be able to explain it much more clearer in due course. Mr Mokoena, it ought to be ...(intervention)

ADV PHILLIP MOKOENA SC: Yes Chair, with only question to Mr Dukwana that I want to know from this spreadsheet what are the actual amounts that are paid, let's leave everything else. Let's just simplify it, we can see that, let's talk to the person and what is the actual amount received, then we can deal with others later.

MR MXOLISI DUKWANA: Can I put it this way Chairperson that the person and what was earmarked for the person as to how much he received it is something that you will work it out there.

CHAIRPERSON: If you are not able to say how much was actually paid
10 according to the spreadsheet to that person that's fine, but if you are able to say that (indistinct) how much was actually paid according to the spreadsheet you say both, it just depends what you are able to say.

MR MXOLISI DUKWANA: Chairperson to avoid the confusion that I see coming in I think it would be better as you suggested that we just give the figures, the amount, the payments would then come in, the person that would be attached to that, that would be better that way.

CHAIRPERSON: Yes, that's fine.

MR MXOLISI DUKWANA: So that we move from there.

CHAIRPERSON: So let's do that, just the total amount that was, that
20 the person was supposed to get.

MR MXOLISI DUKWANA: Was supposed to get when the total amount was paid.

CHAIRPERSON: Ja, okay let's do that.

ADV PHILLIP MOKOENA SC: Chair do we do this exercise that has consumed us now before lunch or after lunch?

CHAIRPERSON: Well if he is going to just say these initials represent so and so, this is what he was supposed to get we can do that because it should be quick and then we can adjourn.

ADV PHILLIP MOKOENA SC: Mr Dukwana let's try.

MR MXOLISI DUKWANA: Chairperson just to make the number of units here will be 300 000, 300million, there would be 300 000 units and the rate per unit is 850 and the project value, the cost of business in this case with the units with the initials Mr X earmarked to get 10million, TM as I explained, Thado Magesi as the head of the
10 department R5million, AM in this case is Ace Magashule, R10million as the Premier of the Free State then, OM is Olum Lamlele that's R1million, he was the head of the department, MEC of the department at the time and then the MEC in this case although he explained to me what this MEC means he called a number of other people as MEC and I will rather not mention this one.

CHAIRPERSON: Okay, you are not sure.

MR MXOLISI DUKWANA: Because he mentioned another of other people, we will say MEC this and then when I ask him he will give me another name and I say MEC (indistinct) he talks of another MEC and
20 then he will give another name so I will not be (indistinct) in this case mention this one

CHAIRPERSON: Yes okay.

MR MXOLISI DUKWANA: And then these are the people that he mentioned, and if you check the argument here is all these people were key in securing this project, Thadu Magesi was the one who made it

possible appointing and all those things and Me Olum Lamlele is the MEC then of the Department will be given that and then you have also Ace Magashule as the Premier of the Province who get that amount as stipulated there.

CHAIRPERSON: Okay, thank you. So the other names that are mentioned are people that you don't know?

MR MXOLISI DUKWANA: No he never spoke about these.

CHAIRPERSON: He never spoke about them, okay.

ADV PHILLIP MOKOENA SC: Do you know who is Martins Steve and
10 Rantwa you don't know them?

MR MXOLISI DUKWANA: No I don't know them.

ADV PHILLIP MOKOENA SC: Do you know who is JT, Diedericks, you know them?

MR MXOLISI DUKWANA: No I don't know them.

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA: But all I know about the JT when we spoke at the time he was going to Kimberley and he was to meet JT and when he said JT to me he said Jimmy Tawu and he was going to meet Jimmy Tawu and he said he is JT, so that's why I have the name as JT there.

20 **ADV PHILLIP MOKOENA SC:** And the Diedericks do you know?

MR MXOLISI DUKWANA: No.

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA: I don't know Diedericks.

ADV PHILLIP MOKOENA SC: Chair would we adjourn at this moment?

CHAIRPERSON: Yes we will take the lunch adjournment and we will

resume at five past two.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Are you ready Mr Mokoena?

ADV PHILLIP MOKOENA SC: We are ready Chair.

CHAIRPERSON: Before you proceed Mr Dukwana just to maybe wrap up what you may have to say about the spreadsheet is it correct to
10 understand the spreadsheet to have been part of a conversation between two partners in the same joint venture or co-directors or keeping the same project, Mr Bambani to Mr Sode?

MR MXOLISI DUKWANA: Yes it will be correct.

CHAIRPERSON: So the one was writing to the other?

MR MXOLISI DUKWANA: Making aware the other aware of how the money was spent.

CHAIRPERSON: Of how the money was either meant to be divided and how part of it may have been already paid, ja okay.

ADV PHILLIP MOKOENA SC: Mr Dukwana we have exhausted that
20 topic, can we move on to page 18, page 18 Chair in those paragraphs apparent from that page you seem to be making very strong statements, do you wish to summarise for the Chair what you are conveying in those paragraphs and take us please through paragraph 53 to 58.

MR MXOLISI DUKWANA: Chairperson with the information that we have presented today and many others, one I submit that the

involvement of Mr Magashule in this asbestos audit heist makes him unfit to hold public office of the Office of the Secretary General of the ANC. Mr Magashule's suitable place of abode in public in a jail cell. If our law enforcement agencies were well oiled Mr Magashula and all those who aided and abetted this asbestos audit should be doing time in jail.

To date no eradication of asbestos roofs has been carried out in any township in the Free State to asbestos roof (indistinct) yet, 255million has been advanced to Blackhead Consulting Joint Venture
 10 and the 77million of the State fund is a subject of a litigation in our courts, and our law enforcement agencies are doing nothing. I invite the Commission to investigate and subpoena the Provincial Head of the Department of Housing, Mr Thabo or Mr Nthimotse Mokhesi. The Chief Finance Officer at the time, the Head of Supply Chain in the Department and the then MEC of Human Settlement.

Mr Magashule was the Premier at the time, Ms Cholota and Ms Moroaki should be no exceptions. The MEC of Finance in the Free State at the time and Head of Treasury at the time have some explanation to do also. Ma'am Mokoena should come to the
 20 Commission to explain the circumstances that led her to request funding from Mr Magashula for her daughter's education abroad.

The office of the Auditor General in the Free State would be a great resource to the Commission. The Commission and the people of South Africa, in particular the Free State, deserve to know the truth about this asbestos audit heist. The Commission would also do well to

subpoena government officials who were at the helm at the time of this process, and in this case I mention a number of people in the Department, but I must say that I am not suggesting that the persons at the National Department of Human Settlements cited above were involved in the asbestos audit heist. Me thinks the asbestos audit heist would not have occurred without their knowledge.

What begs the question is why this project was undertaken only n the Free State. Asbestos roofed houses are found in all provinces, even the Free State alone R255million was spent for a
10 purported asbestos audit. How much of the amount was from the public payers – I beg yours?

CHAIRPERSON: The National Public Payers.

MR MXOLISI DUKWANA: From the National Public Payers via the National Department of Human Settlement. I have a reasonable belief that the Free State Government under Mr Magashule was the only fertile ground in the country for this asbestos audit heist to be staged and executed.

The Commission should also commission an audit to be conducted on any payments made from Blackhead Consulting Joint
20 Venture to any persons or private entities. Further the Commission ought to investigate if ever there were municipalities and other Organs of State in the Free State that were contracted to either Blackhead Consulting or (indistinct) Joint Venture.

ADV PHILLIP MOKOENA SC: Yes, the paragraphs on page 20, paragraphs 3 and 64 you have already alluded to that allegation to the

Chair, you don't need to deal with those allegations any more.

MR MXOLISI DUKWANA: Yes.

ADV PHILLIP MOKOENA SC: Now can you move on to deal with a new topic in your statement, which is introduced from page 20 and paragraph – with reference to paragraph 65, you are also referring to ...(intervention)

CHAIRPERSON: Maybe before that Mr Mokoena so in regard to the Asbestos Eradication Project are you saying as a matter of fact that actually no asbestos was removed from houses or are you saying they
10 may have removed it from some houses but certainly not as many as they were meant to do in terms of 300 housing units?

MR MXOLISI DUKWANA: Chairperson it is clear from the records that we have presented that the intention was just to do the audit, and that was it, that was done. The part of the eradication of this would have been the other as I say the other project but in as far as this and in terms of the instructions that were received from the Department it was for the audit of the 300 000 houses at R850 per unit totalling R255million for that alone and this is what was done and if you check even in the report here that the period I thought that the evidence
20 leader would also just for the record the report itself that they submitted and if you check the period that the contract was from the 1st of December and it ended and the report, the final report was given in February, now if you look at that only 255million was paid for a project that took December, January and then February and everything was there, so there was no eradication of this or removal of these asbestos

housing meaning besides the fact that they made an appeal that this would help in terms of the wellbeing of the people of the Free State but the money is spent, the money is lost, and our own people in the Free State who are still in this asbestos roofed houses are still experiencing the same conditions even before the haste that this project was dealt with in the first place.

That is why when I indicated there was no urgency they should have gone through the processes and invited other people to participate in this.

- 10 **CHAIRPERSON:** But let me just understand I may have misunderstood at the beginning, I thought that the 255million in terms of the letter of appointment at page 94 I thought that the R255million would have included the removal of the actual asbestos roofs and I guess you can't remove without putting in something else, and putting whatever was acceptable, but maybe to think that all of that could have been done on the basis of R255million is not realistic for 300 000 houses, but are you saying that as you understand the project the instruction to this joint venture was simply to do the audit, identify which houses had asbestos roofs, you mentioned the assessment as well, are you saying that your
- 20 understanding is that the R255million did not go beyond them doing that?

MR MXOLISI DUKWANA: Chairperson that's why I thought it would be wise if we go to the ...(intervention)

CHAIRPERSON: To the report.

MR MXOLISI DUKWANA: To the report and just allow the Chairperson

to get the glimpse of that report. In fact ...(intervention)

CHAIRPERSON: Yes we could go there but what you can tell me is your own understanding.

MR MXOLISI DUKWANA: Nothing of that sort. My understanding is the report in fact in terms of the letter you know to the Department it was for the audit as well as for the eradication and the removal of the rubble to a safer place.

CHAIRPERSON: Oh, okay.

MR MXOLISI DUKWANA: And what also the – what the instruction was
10 also clearly indicated that it was for the audit of the asbestos house.

CHAIRPERSON: Okay just to make sure that we have the same understanding, your understanding if I understand you correctly now your understanding might be the same as mine then, is the position that as you understand the letter of instruction to perform, the letter at page 94 from the head of department, is your understanding that it was instructing them to do the audits, make the assessment, remove the asbestos, take it to a particular site and replace, make a replacement on the roofs, was that your understanding?

MR MXOLISI DUKWANA: Initially that is what was supposed to be but
20 if you check the letter it talks of assessing, auditing and – what did they use, the word, if we can go to there.

CHAIRPERSON: I think it's page 94 if my recollection is correct.

ADV PHILLIP MOKOENA SC: Are you looking for the report or the letter?

CHAIRPERSON: The letter.

MR MXOLISI DUKWANA: The letter.

ADV PHILLIP MOKOENA SC: It's page 94.

MR MXOLISI DUKWANA: The letter Chairperson of the instruction is audit, assess, and GPS all pre-94 housing units in the province and it says at a rate of 850, so that itself the instruction in this case excludes, there is no instruction to remove, it is only to audit, to assess and GPS all these. At that rate that is given there 850 and that is what the report then does.

CHAIRPERSON: Also says that.

10 **MR MXOLISI DUKWANA:** Yes.

CHAIRPERSON: But I did ask earlier on what GPS means and I think you gave me an explanation but I can't remember what – is that something that they were supposed to do as well, in addition to auditing and assessing or ...

MR MXOLISI DUKWANA: They needed a company that would use whatever instruments ...(intervention)

CHAIRPERSON: GPS?

MR MXOLISI DUKWANA: Just to deal with the identification of where the property is and then have photos of the property itself, unit by unit,
20 only those that will have asbestos, so they will be able to assess if they were to remove the roofing will that not affect the foundation and many other things.

CHAIRPERSON: So the reference to GPS is just for the pictures of the houses?

MR MXOLISI DUKWANA: Just for all that, that's it.

CHAIRPERSON: Ja, okay. Thank you. So the whole R255million was effective for identifying the houses that had asbestos roofs and making an assessment, in terms of the letter of appointment.

MR MXOLISI DUKWANA: In terms of the letter of appointment.

CHAIRPERSON: Okay, alright. Yes?

ADV SMANGA SETHENE: Chairperson you would recall that Mr Dukwana did take Mr Mokoena to page 96.

CHAIRPERSON: Yes.

ADV SMANGA SETHENE: No, 97, sorry.

10 **CHAIRPERSON:** Yes.

ADV SMANGA SETHENE: And asked Mr Dukwana to read paragraph two which is working relationship.

CHAIRPERSON: Yes.

ADV SMANGA SETHENE: That is the document that relates, it's an SLA agreement.

CHAIRPERSON: Yes.

ADV SMANGA SETHENE: And if the Chairperson have regard to that it says it says the Department appoints the service provider to assess/audit houses ...(intervention)

20 **CHAIRPERSON:** I'm sorry, I'm at 97.

ADV PHILLIP MOKOENA SC: At the bottom Chair.

ADV SMANGA SETHENE: At the bottom Chair.

CHAIRPERSON: Oh close to?

ADV SMANGA SETHENE: Correct, yes and I think that's what Mr Dukwana read into the record when he was being led by Mr Mokoena,

so it answers the Chair's question. And that is why Chair has characterised the whole contract as nonsensical, the letter of appointment says something, the SLA agreement says something and they relate to the same project.

CHAIRPERSON: Yes.

ADV SMANGA SETHENE: Thank you Chair.

CHAIRPERSON: Okay Mr Dukwana you will confirm it looks like in terms of the 2017 agreement what they were supposed to do included disposal of asbestos to a certain site, to an approved designated
10 disposal site but from what you have said that was not included in the letter of appointment. Is that correct? I haven't gone back to the letter of appointment but I understood you to be saying that?

MR MXOLISI DUKWANA: Yes as I say this is something, that's why I was saying it contradicts if it was done done by the lawyers they would have seen this, this one even on page 97 it says something, it includes there handling and disposal of asbestos sheets and the only way you can do that is by removing them, and then to the designated disposal site, but if you read the instruction that was given in this case it was only to assess and then to audit and GPS at that rate that was given,
20 so there was no rate given for the removal and for other things in that letter.

CHAIRPERSON: Well I have just gone back to page 94, it appears that the only paragraph in page 94 where one can find what the HOD was saying this joint – this company should do appears in paragraph one.

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: And it says audit, assess and GPS all pre-1994 government housing units in the Province at a rate of R850 VAT exclusive per unit up to a maximum of 300 000 units [R255million VAT exclusive] hereinafter referred to blah-blah-blah, will be payable for all audited units and it should be noted that all asbestos units are expected to be audited in the Province.

So if you say the reference to GPS doesn't involve removing it would appear that it doesn't say anything about, the letter doesn't say anything about removing.

10 **MR MXOLISI DUKWANA:** Yes it doesn't say.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Yes.

ADV SMANGA SETHENE: And the emphasis there Chair it is always throughout that paragraph it is audit, audit, audit.

CHAIRPERSON: I'm sorry?

ADV SMANGA SETHENE: I'm saying that the emphasis in that paragraph it is audit, nothing else.

CHAIRPERSON: Yes, yes, okay thank you.

MR MXOLISI DUKWANA: And I just want to emphasize that it says
20 here the number one in page 94 when it reads everything there the units and the amount of money that will be paid as a total project cost, it says will be payable for all audited units.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: You understand.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: This means even if that unit that audit is not an asbestos it does not have an asbestos roof, you will be paid just by merely mentioning that this house and all those things, so that is where I was saying Chairperson it does not make sense for you needed to, that's why I was saying you could have done the assessment yourself and once you've got the report you would know exactly how many of these houses that have asbestos roof and then you would then say go and remove them and do one, two, three, so that would be a better way of doing things, but for them to say for you to do the assessment and
10 also to do the auditing and GPS you do all the houses that is why where we say it is actually a scheme in this case, you siphoning the money, you use this, the 300 000, if you go to the report you will see that the houses that were said to be having asbestos roofs do not come close to 300 000, but this one says will be payable for all audited units and then it goes on to say and it should be noted that all asbestos units are expected to be audited in the province.

Now that is where I get some difficulties, you say all audited units and then you say asbestos units are expected to be audited in the Province. My understanding is ...(intervention)

20 **CHAIRPERSON:** So you read that to include auditing units that might not have asbestos roofs, that's how you read it?

MR MXOLISI DUKWANA: I read it to say the first one, the first instruction is you do audit all the houses, the 300 000, but you must make sure that all units that have asbestos in the Free State are audited.

ADV PHILLIP MOKOENA SC: Maybe let me help you and the Chair and refer you to page 43.

CHAIRPERSON: 23?

ADV PHILLIP MOKOENA SC: 43 Chair.

CHAIRPERSON: 43.

ADV PHILLIP MOKOENA SC: And simply read under that heading that says the field findings.

MR MXOLISI DUKWANA: The field findings Chairperson out of a total of all the Free State townships assessed via site visits the following
10 were discovered. The actual number of residential units that contained asbestos could only be quantified after the physical audit has been done, however the audited encountered number of residential units containing asbestos is 36 303 stands and the stands walked physically and assessed is seen at more or less or plus minus 300 000.

ADV PHILLIP MOKOENA SC: So that is the point that you are making that the only ones that were assessed were 36 000 yet you will be entitled to be paid the entire amount of 300 000 units.

MR MXOLISI DUKWANA: What it means if you were to do the calculations you will then say for the asbestos and everything you
20 would then say 36, the GPS would say 36 303 multiplied by 850 and that is what you will pay but ...(intervention)

CHAIRPERSON: And it would be much less.

MR MXOLISI DUKWANA: It would be much less but you pay for the R300 000 that were physically assessed, walked in and assessed so you still pay the 850.

CHAIRPERSON: But the question then is or before I ask that, is this page 43 part of the report that – of the company.

MR MXOLISI DUKWANA: The report starts on page 39 Chair.

CHAIRPERSON: Yes, but this is part of the report?

ADV PHILLIP MOKOENA SC: Yes that's part of the report.

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: Now what would have been the justification for the HOD to instruct that they should audit even houses that did not have asbestos roofs, because you can see whether the roof is asbestos
10 without even going into the house. Are you able to throw light on that?

MR MXOLISI DUKWANA: That's what I indicated and that is the reason why I referred to this as a heist.

CHAIRPERSON: As a heist.

MR MXOLISI DUKWANA: That the – there was a number specified from the beginning, that is 300 000, and there is a figure per unit which is 850 and there is a total budget that is there t hat is for this project 255million, so working it out there you just work the total amount and work everything and say go down so you work all this and you make sure that you get the money, all of it, and you can justify that I went to
20 the house and the house does not have an asbestos and I went to these only 36 out of 300 000 in the whole of the Free State.

CHAIRPERSON: Well I have a suspicion that your counsel has quickly calculated what it would have been, 850 for 36 000 houses if anybody has I would like to know the figure. Oh he hasn't.

ADV SMANGA SETHENE: No Chairperson the only thing that I

thought the Chairperson needed an answer to is what is a GPS.

CHAIRPERSON: Yes.

ADV SMANGA SETHENE: If you go to page 55 it answers the Chairperson.

CHAIRPERSON: Yes. Oh geographical information system.

ADV SMANGA SETHENE: Yes. No, no Chair you go down there.

CHAIRPERSON: I'm sorry, did I look at the wrong one.

ADV SMANGA SETHENE: Other electronic special database it will say the GPS position of the house can be met at the added advantage
10 that each of the above can later be revised by GPS and navigation, so the way they were talking about that information that they will get.

CHAIRPERSON: Okay, okay. But so 36 000 housing units at R850 per unit will be far less than the ...(intervention)

MR MXOLISI DUKWANA: The 225million.

CHAIRPERSON: It's about R5million.

MR MXOLISI DUKWANA: No I am saying it will be far ...(intervention)

CHAIRPERSON: Far less ...(intervention)

MR MXOLISI DUKWANA: Than R250million.

CHAIRPERSON: But as far as you know Mr Dukwana because
20 obviously you have spoken to people and you have looked at documents is there anything that you have come across that says what the justification was why housing units that did not have asbestos had to be visited?

MR MXOLISI DUKWANA: Every time you engage on this the only conclusion that one comes to is that it was only motivated by greed

and make sure that you get as much money from the whole project and you could see also by the requests that were coming that these people would not mind if in any project Chairperson you need to have a bit of quantities and make sure, especially this, you would know that this is how much this project would cost if you had to do that, but for a person starting anywhere you start with say there's R50million that we put aside for cost for business and then if you go again at the end you've got R77million that in the papers that Ms Cholota also placed in this case also indicate that the R77million the last payment was for – it

10 was a profit for them because they did not have any overheads etcetera, so meaning the 77million was to be shared. If you go there you will see the report indicates that upon discovering that 77million was paid they had a meeting and in that meeting they then took the 16million, the 17million and shared it equally and the money that was left because it was said they were over the report in the report in their papers that they submitted to court he argues that the late Mr Mpambani indicated that the Public Protector had actually found out that they were overpaid by R77million, but then he realised that it was, that it was sixty – he said it was 60million and then we had to share the

20 70million out of the 77million. Then he goes to Court to demand that half of the 60million is due to him and that must be paid, so that is why in the papers he demands 30million of the 77million because they would have shared the money, so what I'm trying to point out is you have 50million cost to business, you have 77million it works out to 127million. Of that 255million worth of project that goes as a profit that

these people had and it shows you how bad the whole thing was, there is no project, it's almost half of the total project that will give you a profit.

CHAIRPERSON: So the answer is you have not come across anything that provides justification for – there might be none justification maybe for the project in relation to the roofs that have asbestos, and maybe there is justification but for those that didn't have asbestos roof you say you have come across nothing that provides any justification?

MR MXOLISI DUKWANA: Nothing, nothing chair.

10 **CHAIRPERSON:** Yes, I take it Mr Mokoena that our teams are already underway to get all these papers from litigation that he refers to and so on?

ADV PHILLIP MOKOENA SC: Indeed Chair indeed.

CHAIRPERSON: And Mr Sodi is still – is still alive?

ADV PHILLIP MOKOENA SC: He is alive.

CHAIRPERSON: But you said you have not met him?

MR MXOLISI DUKWANA: No I have not met him but he is still alive.
Yes Chairman.

CHAIRPERSON: Ja we...

20 **ADV PHILLIP MOKOENA SC:** Efforts are made Chair.

CHAIRPERSON: Efforts are being made to ...

ADV PHILLIP MOKOENA SC: Even though we cannot [indistinct]. Yes.

CHAIRPERSON: Get him. Ja okay. Alright thank you.

ADV PHILLIP MOKOENA SC: Chair from the lawyers mathematics that are on trust. They say that [intervention].

CHAIRPERSON: Sorry.

ADV PHILLIP MOKOENA SC: From the lawyers of which I do not trust their mathematics they say that 100 and – for R850.00 and times those 36 units.

CHAIRPERSON: 36 000 is it?

ADV PHILLIP MOKOENA SC: 36 000 units it is almost R30 million.

CHAIRPERSON: R30 million?

ADV PHILLIP MOKOENA SC: Ja.

CHAIRPERSON: Okay.

10 **ADV PHILLIP MOKOENA SC**: So you can subtract that from the R255 million.

CHAIRPERSON: But you say I must take that figure with a pinch of salt?

ADV PHILLIP MOKOENA SC: Be careful Chair when it comes to lawyers.

CHAIRPERSON: I would agree with you. Yes okay alright. But that might give us an idea.

ADV PHILLIP MOKOENA SC: It just gives an idea Chair.

CHAIRPERSON: Ja an idea.

20 **ADV PHILLIP MOKOENA SC**: We might have to rely on other people to do the calculations but for now we can live with that figure.

CHAIRPERSON: Okay hm.

ADV PHILLIP MOKOENA SC: Mr Dukwana I was just about to move to deal now with what you are calling the housing heist. Now explain to us before you even deal with the – the facts relevant to it why did you

refer to it as the housing heist?

MR MXOLISI DUKWANA: This also will demonstrate Chairperson how people would steal resources meant for poor people and do that with impunity and nothing happens. And in this case you will see that you have key people who were involved and these people nothing happened to them and as usual as it happens the people who were dealt with are officials who were taking instructions from the – their heads. And you would find that the HOD then, the DDG then and the CFO and the MEC in the Department nothing happened to them. But all other officials
10 who working in this project were – I am sorry – were disciplined and you know as we speak [intervention].

CHAIRPERSON: Were what?

MR MXOLISI DUKWANA: They – there was a disciplinary process some dedicated officials and unfortunately as we speak most of them are outside the employ of government. And this was only meant Chairperson that when the Auditor General comes you just want to demonstrate that you have done something about this and it usually goes. It happened in the Free State with 23 roads. If you remember there was a project that cost almost – it was about R6 billion in the
20 Free State and it was 23 roads and the same way some officials suffered but all the people who were up there nothing happened to them. So these are just as you say – as we say put them here. People are just stealing – stealing and every time we put the people in front and we say we want to serve, we want to – we are doing all these things for the people but when it comes out it is these people that

stand up and always you know give an impression that you are servants of the people when in actual fact you are criminals and stealing money from them and always created this impression that you care. Any person who – who cares Chairperson will not have stolen R255 million just for this. Even the Head of the Department could have seen that this is wrong and I cannot be part of this. But this person – this thing happened because people were getting something. You come to this you will realise also it is just a heist, it is stealing and nothing else.

CHAIRPERSON: Yes. But before we go into more into the housing
10 heist as you call it. At some stage you talked about going to the report that was provided by the company in regard to the asbestos project. There was reference to one page that may or may not have covered what is necessary but I thought I want – I would ask the question whether all it says really for all intents and purposes is we audited plus minus 300 000 and then out of those 36 000 had asbestos rooves. We did our job then we are entitled to payment. Was it something along those lines more or less or is it difficult to say?

ADV PHILLIP MOKOENA SC: Mr Chair what Mr Dukwana read on page 43 it is in fact the findings.

20 **CHAIRPERSON**: Yes.

ADV PHILLIP MOKOENA SC: It is the findings.

CHAIRPERSON: Of the report?

ADV PHILLIP MOKOENA SC: You know of the – yes of the report. It is the field findings unless you want [intervention].

CHAIRPERSON: Well is that the report – that is the report of who?

ADV PHILLIP MOKOENA SC: Of the entity that was appointed.

CHAIRPERSON: Oh the JV?

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Oh ja that is – that is what I am – that is what I am.

ADV PHILLIP MOKOENA SC: Mr Dukwana let us go to page [intervention].

CHAIRPERSON: Well it should not have the finding because it should just make a report.

ADV PHILLIP MOKOENA SC: Yes let us go to page 39 so that these
10 issues are clarified.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: And if you can identify that document?

MR MXOLISI DUKWANA: It is the Free State Department of Human Settlement. It is a – the report Free State Department of Human Settlement final audit report.

ADV PHILLIP MOKOENA SC: And who is the author – who is the author of the report?

MR MXOLISI DUKWANA: The report is prepared by Mr IP Mpambani, Blackhead Consulting JV and it prepared for Head of the Department
20 Free State Department of Human Settlement.

ADV PHILLIP MOKOENA SC: Now bearing in mind the time period that we have dealt with in – on page 94 paragraph 2 you do not have to go there.

CHAIRPERSON: I am sorry before you go there this is confusing for me. Why is a report that comes from a service provider carrying the

logo of the Department giving the impression as if it is a report prepared by the Department for somebody else, do – is that something you are able to say anything on – you are not able to say anything on?

MR MXOLISI DUKWANA: I do not understand.

CHAIRPERSON: Because normally if you are service provider you are supposed to report how you have done the work. Your report should have your own letterheads.

MR MXOLISI DUKWANA: Correct.

CHAIRPERSON: And it might be addressed to the client. Earlier on
10 this gave me the impression as if it was a government report.

ADV PHILLIP MOKOENA SC: I thought so Chair that is why I wanted to take him back to this report.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay alright.

ADV PHILLIP MOKOENA SC: Now having in mind the duration that we have already spoken about on a number of occasions what is the date of this report?

MR MXOLISI DUKWANA: 13 February 2015.

20 **ADV PHILLIP MOKOENA SC:** So that is what you are conveying to the Chair that within a very short space of time they were able to produce this report and be paid the monies that you have referred to?

MR MXOLISI DUKWANA: Remember Chairperson the letter appointing them was dated the 2nd.

CHAIRPERSON: Say – it was signed on the 2nd December 2014 yes.

MR MXOLISI DUKWANA: But it was for the 1st January – of December.

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: And the final report was submitted or prepared on the 13th February 2015.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: So it tells you it is from the 1st December to the 1st January would be one month and then the 1st to that is almost two months.

CHAIRPERSON: Hm.

10 **MR MXOLISI DUKWANA:** So basically they did a five page proposal and a two month work.

CHAIRPERSON: Well it is two and half months if you...

MR MXOLISI DUKWANA: Yes two.

CHAIRPERSON: If you include the shutdown period.

MR MXOLISI DUKWANA: Yes and then – and then they got R255 million.

ADV PHILLIP MOKOENA SC: And what you were reading on page 43 you have already read it into the record it is what the service provider themselves are saying in the report it is not the Department that is
20 recording that am I correct?

MR MXOLISI DUKWANA: It is the service provider.

ADV PHILLIP MOKOENA SC: Yes Chair. So surely it clarifies Chair what the service provider themselves say that they have done and you can then correlate that with what they have been paid and in line with what Mr Dukwana has testified about throughout the better part of the

day.

CHAIRPERSON: Yes I see that on that page – page 43 there is a reference to phase 2 of the works and I know that Mr Dukwana did before lunch make reference to phase 2.

ADV PHILLIP MOKOENA SC: And it says options to cater for repairs.

CHAIRPERSON: Yes it says options.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: It says options to cater for repairs will be developed in detail on phase 2 of the works however recommendations
10 highlighting the advantages and drawbacks of each option is indicated as follows. And then it goes on.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay.

MR MXOLISI DUKWANA: This comes to what the Chairperson was asking that if it explains it also that it was just for auditing and all that. And then there was going to be that other process of removing them and doing that and they had options. And what this means the stealing was going to continue. I suppose had the death of Mr Mpambani did not happen and you could see if you check the amount of money that were
20 now earmarked to be used for the reroofing and everything and the options that are there we talking here a lot of money. You talking about R3.6 billion and this was pointed there. For that the first option would have been R3.8 billion and the second option R3.7 billion and that was going to be the [intervention].

CHAIRPERSON: Where are you reading those figures from?

MR MXOLISI DUKWANA: Page 84 Chairperson.

CHAIRPERSON: Oh okay.

MR MXOLISI DUKWANA: Of that report.

CHAIRPERSON: Thank you.

MR MXOLISI DUKWANA: So I am just saying this was something that was going to continue.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: So it was the – that and once you have dealt with the identification of such houses the focus now of the number
10 there was going to be something and remember Chairperson that they said they had three in their report if you go to 43 you said – in the report I think it is 43.

CHAIRPERSON: Ja 43.

MR MXOLISI DUKWANA: They said the 36 units – 36 000 units and then it was not going out at the rate demolishing existing building and dispose rubble the amount there and everything. And the total project as they say with the options that are there is R3.7 and then R3.8 billion. That if – if the project were to continue this is the amount of money that was going to be spent to remove these asbestos rooves and
20 replace them with either the IBR sheet roof or something else that – or the tile roof. So what it explains is that they did not do that work because it needed to be approved first and then given a go ahead.

CHAIRPERSON: To the extent that there may have been a need for this type of project in respect of housing units that had asbestos rooves you have come across nothing that justifies why it would not be – it

should not have been through a competitive tender process, is that right?

MR MXOLISI DUKWANA: Ja they have come – there is nothing
Chairperson.

CHAIRPERSON: There is nothing?

MR MXOLISI DUKWANA: There is nothing.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Does that clarify Chair the initial enquiries.

10 **CHAIRPERSON:** YEs.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Can we now move onto – you have now explained to the Chair as to why you referred to it as the Housing Heist. Can you preface you know this session of your testimony by giving us a brief synopsis of relevant materials facts you know giving rise to what really transpired in this Housing Heist?

MR MXOLISI DUKWANA: In 2010 Chairperson the Minister of Housing at the time was Mr Tokyo Sexwale. And he – there was a decision
20 taken that any province that was not moving in terms of building houses because people were tired in fact even in Parliament the Parliament was tired of departments that were not spending their allocated amount of money and then every time roll overs and roll overs. So then the department and the – and Ndada Tokyo Sexwale decided that any – if they Chair – if they find that a department – a Province is not

delivering accordingly they will then take whatever that is allocated what they feel should be taken and give the – what they have taken from this province give to the province that is moving so that houses are built instead of waiting for this and nothing happens. So during that time there was a notice to the effect that monies from the Free State because at the time this I think it was almost in December the Free State their spending was very low in terms of houses. And it could be explained Chairperson it was not the time when after the elections 2009 and you getting into the new era. And in this case you

10 will find a new administration, a new Premier and there were contracts that were there and you would think that government operating as government it was not any other government it was still the ANC government. And the person who was an MEC at the time of housing was also a MEC member – ANC member. So the common sense is you take the work that is there, you continue with the work. But it was not to be. What happened is those who had contracts at the time there was a need to renegotiate these contracts and some of these people it took a long time for this process to happen. And it actually created this backlog for the department because they could not – they could not go

20 ahead and build. Remember the financial year would end in April and there would be these allocations coming in. But if by December you still have not done the work that you needed to do in terms of identifying the service providers and starting the work then it created a problem. So this is the – why this backlog existed. If the income in the administration that came in 20 – in 2009 had continued with existing

projects or existing companies that were awarded contracts at the time so that by the time your financial year comes you have got money and you can work. But this created that problem. And in December I think a few days before [intervention].

CHAIRPERSON: I am sorry just to understand the part soon after the new administration came in 2009. So you say contractors who had already been awarded contracts before the elections who were carrying on with the work they were effectively told no now this is a new administration we will have to renegotiate. Is that what you saying?

10 **MR MXOLISI DUKWANA:** This is what I am saying Chairperson.

CHAIRPERSON: Yes. And what was being renegotiated now? Was the new prices or what? I mean there was a contract – there were contracts in place that had been signed by the same government?

MR MXOLISI DUKWANA: Chairperson what I want to point out is as government and how you work you develop all the systems and by the time you go to the next you already know how much is going to be allocated for you before the financial year begins. And with that knowledge – armed with that knowledge you prepare the ground. And in this case you advertise, you do that. You do not advertise in April
20 after you have received money. So you will do that in advance so that by the time the financial year begins already you have people. There are many business people who were given these contracts and some were told to give back these contract etcetera. Because people wanted also some of these business people wanted to be in the good books of the new administration. Some of them accepted and did that in hoping

that they would be favoured at the time when these allocations were given but it was not to be. It was clear – this is something that you would witness that people normally as it happens in many – I do not know in other provinces but in our province that is what is the problem that we sitting with. This administration comes you actually want your own you know you have your own style, you do things differently. You disregard some of the things that happened in the past and then you start something new. And this is what actually has created problems in terms of having seamless transition in terms of government. Taking
 10 into consideration in the Free State it has been the ANC in government and it has been ANC members in these portfolios. So you would take – it will be common sense that if that happens and the new MEC comes there is nothing that you need to take and then the financial year that comes you would then introduce whatever you introduce.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: So you do not disturb the smooth running of the department – of the – of government. But in this case it was like that and continue afresh.

CHAIRPERSON: Okay.

20 **ADV PHILLIP MOKOENA SC:** Now faced with the threat of the money having been – or threat that the money might be taken you know back to the National government what then happened?

MR MXOLISI DUKWANA: The – the MEC Mr Mosebenzi Zwane at the time came to a meeting of the Executive [intervention].

CHAIRPERSON: Was he MEC for Housing in 2009?

MR MXOLISI DUKWANA: He was MEC for Housing and you know it was still [intervention].

CHAIRPERSON: In the new administration.

MR MXOLISI DUKWANA: Yes Sir.

CHAIRPERSON: At that time ja.

MR MXOLISI DUKWANA: Yes. And I was MEC for Economic Development and Tourism at the time and Environmental Affairs. So I sat in the meeting where this happened. In that meeting it was a few days before the 16th December in 2010 and with this threat in
10 government that money would be taken away from the Free State because we were – we had spent almost less than 10% at the time as I wanted you know April it is May, June, July soon you are in December and you only left with January, February, March and then you know so roll over was [intervention].

CHAIRPERSON: The end of the financial year.

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: At the end of March ja.

MR MXOLISI DUKWANA: Yes and now you going to have a problem. And then for you to deal with that the MEC got into the meeting and
20 indicated related the whole story.

CHAIRPERSON: In December 2010 now?

MR MXOLISI DUKWANA: In December 2010.

CHAIRPERSON: Okay.

MR MXOLISI DUKWANA: And said that we should not be worried because they – they have a plan and he was going to – he is not going

to take any holiday he was going to work throughout. And that one picked that up immediately and the question that one asked was considering that the 15th – the 16th December around the corner could be two days or so of that meeting what is it that you are going to do when contractors would have been closed by that time? Then he said, no we are going to work throughout the holidays and to make sure that no money goes. So this is the creation of this fiasco that we sitting with. And we – we went with that understanding and you know you could not understand how that was going to be possible. But when we

10 came back [intervention].

CHAIRPERSON: Was he saying this at a meeting of the executive council of the province?

MR MXOLISI DUKWANA: Correct; you are correct.

CHAIRPERSON: In – on the 15th December 2010?

MR MXOLISI DUKWANA: No it was in December I cannot remember the date.

CHAIRPERSON: You cannot remember the date?

MR MXOLISI DUKWANA: But it was in December.

CHAIRPERSON: Okay.

20 **MR MXOLISI DUKWANA:** And the fact what I remember is the question was; considering that we are a few days before the 16th December what is it that you are going to do when contractors are closing on the 16th December? And all that he said was that he – he will not personally – he will be overseer in this process. He would not go on holiday and they will work on this. When we came back; when we reopened the

report that he gave was – we have managed to move I think at the time he was saying we have managed to move to almost 66% or so of the spending of the budget and some of our colleagues were impressed but there were others who were not impressed in terms of what could have happened? The question was then, is this – this 66% or so are you talking about money actually spent in building houses? And the answer was yes we have built houses, we have sorted the matter out. But it came later as you will see that it was money paid to implementing – to service providers' etcetera without them doing any job and it cost the

10 province a lot of money and many of the people who were supposed to get those houses could not get those houses. And you will see later even at the – when the Head – the current Head of the Department and deposing his statement to – his affidavit in – in the court application to declare to nullify these contracts and referring to it as a corrupt scheme engineered in the Department that is how he used the terms that he used then. I may not be quoting him verbatim but it is in that. And also agreeing and confirming that almost more than R500 million was lost in this and then – the houses and the number of units of houses that were not built. So in essence you could see that some

20 people were given some money and some in the process some were involved in the car accident and died and nothing was done in terms of getting the money back and there were some other people who will just say we did what [indistinct] to do and then there will be service providers who would just chowed the money that there is nothing.

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA: So the Department – this is the long and short of what this is but we can go point by point Chairperson.

ADV PHILLIP MOKOENA SC: Yes before referring you to specific annexures or documents that you may have alluded to may we preface that with you reading paragraph 67 into the record on page 21?

MR MXOLISI DUKWANA:

10 “Through that commitment by Mr Zwane service providers some of which had no expertise in building of houses let alone registered with the NHRBC were paid in advance millions without compliance with any public procurement prescripts. There is a court case about this matter that has since been withdrawn. For ease of reference I annex hereto marked 2DM15 a copy of the court order indicating that the matter has been withdrawn by the applicant.”

ADV PHILLIP MOKOENA SC: Yes. May we proceed to also read paragraph 68?

MR MXOLISI DUKWANA:

20 “Fortunately my legal team has been able to obtain the application to review and set aside the corrupt scheme conceived by Mr Zwane and undoubtedly at the behest of Mr Magashule. In the said application the HOD of the Human Settlement in the Free State that is the current HOD Mr Mokhesi deposed to a very lengthy affidavit and I am advised I should read

the same into the record as Annexure 2DM16.”

ADV PHILLIP MOKOENA SC: May I then refer you to page 125. Are you there?

MR MXOLISI DUKWANA: Yes I am.

ADV PHILLIP MOKOENA SC: Is this the Notice of Removal that you alluded to in the previous paragraphs that you have read into the record?

MR MXOLISI DUKWANA: It is true that it is.

ADV PHILLIP MOKOENA SC: And what is the date of that removal?

10 **MR MXOLISI DUKWANA:** The - the date is dated on 5 March 2019.

ADV PHILLIP MOKOENA SC: Are you aware if this application was ever pursued after this removal?

MR MXOLISI DUKWANA: I have - I have not seen anything that is - towards that.

ADV PHILLIP MOKOENA SC: Yes. Now may I refer you to page 1-2-8? Is this the affidavit that you have referred to as being deposed to by Mr Mokhesi wherein they sought to set aside this corrupt scheme as per your words?

MR MXOLISI DUKWANA: Correct sir.

20 **ADV PHILLIP MOKOENA SC:** Yes. I am not going to permit you to read as you have requested the entire affidavit but what we will attempt to do in order to place some of the facts relevant to your testimony before - on record is to direct you to some of the portions of the affidavit. If I may refer you to page 1-3-0.

CHAIRPERSON: Just repeat that page please.

ADV PHILLIP MOKOENA SC: Page 1-3-0 - 130 Chair.

CHAIRPERSON: 1-3-0.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay, thank you.

ADV PHILLIP MOKOENA SC: You would see that there is a subheading dedicated to deal with “The Nature of this Application”. If you can read those paragraphs into - into the record up until paragraph 11 at least they will give us a sense as to what you are referring to.

MR MXOLISI DUKWANA: “The nature of this application:

10 this application arises from a set of agreements concluded in late 2010 and early 2011 between the department and a number of building contractors and suppliers of building material to whom I refer generally as the contractors and the suppliers and to payments made by the department to the suppliers. The agreements are listed in the schedule attached as NM1 to this application and Annexure 2 to the Notice of Motion. The agreements relate to the construction of low cost

20 housing in the Free State Province. The department received a large conditional funding allocation from the National Treasury to build low cost housing. The agreements formed part of a fraudulent scheme which was conceived by the department to disperse very substantial sums of

money mainly to the suppliers in order to avoid the funds becoming a so called unspent conditional allocation and therefore reverting to the National Revenue Fund.”

ADV PHILLIP MOKOENA SC: So that is what this accord to what you have told the Chair?

MR MXOLISI DUKWANA: Yes Chair.

ADV PHILLIP MOKOENA SC: Yes, alright. Can you proceed?

MR MXOLISI DUKWANA: “The department through the MEC
10 six orders declaring the agreements and the
 decisions to make payments to the suppliers to be
 unlawful and accordingly void *ab initio* in addition
 or in the alternative. It seeks the review and
 setting aside in accordance with the requirements
 of legality or in terms of the provisions of the
 Promotion of Administrative Justice Act No. 3 of
 2000 (“PAJA”) or broth of the department’s decision
 to conclude the agreement and make the payment.
 In consequence it seeks the review and setting
20 aside or the agreement themselves. There are two
 major grounds on which the department seeks this
 relief. The first is that the agreements were
 concluded and the payments were made in breach
 of procurement law.”

ADV PHILLIP MOKOENA SC: Huh-uh.

MR MXOLISI DUKWANA: “The second is that the agreement and payments form part of a fraudulent scheme and are tainted by fraud. The department has instituted several action proceedings in this court against contractors and suppliers who received payments from the department or who benefitted from such payments. In the actions the department seeks *inter alia* to recover what it paid over or an appropriate portion of what he paid over. The actions are listed in the schedule attached as NM2 to this application and Annexure 4 to the Notice of Motion.”

10

ADV PHILLIP MOKOENA SC: Yes. Now if I may refer you to page 133 in order for us to get a sense as to how many respondents were pursued in this application that was withdrawn. If you may read paragraph 16 into the record.

MR MXOLISI DUKWANA: “There are 106 respondents. They are the building contractors and supplies of building materials to which I have already referred. I confirm that this application and the averments made are confined to the respondents inserted in and as identified in NM1 and NM2 respectively.”

20

ADV PHILLIP MOKOENA SC: Yes and you referred earlier on to the heading you coined it to be “The Housing Heist”. Am I correct?

MR MXOLISI DUKWANA: You are correct.

ADV PHILLIP MOKOENA SC: Now may I refer you to page 1-3-4 to see whether you find comfort in what is stated from paragraph 22 to 23.5. If you can read same into the record please.

MR MXOLISI DUKWANA: “The department scheme: I have said that this application relates to a set of agreements which the department concluded in late 2010 and early 2011 with contractors and suppliers. I have also said that the agreements form part of a fraudulent scheme conceived by the department to pay out funds from its conditional funding allocation in order to avoid the funds become an unspent conditional allocation and reverting to the National Revenue Fund. It is convenient to describe the department’s scheme up front. Its major features were: one, the department concluded some 125 written building contracts with contractors. Accumulatively in terms of these contracts contractors were appointed to construct approximately 14 769 low cost houses in six district municipalities and towns across the Free State. The total value of the building contract was varied and was based on an average of R72 417 per unit or per house. The building contracts provided that the contractors were obliged to supply the necessary materials for their construction work.

The value of the building contract thus included the cost of materials. The department also concluded some 120 written tripartite supply agreements with contractors ...”

CHAIRPERSON: 1-1-2 hey? 112?

MR MXOLISI DUKWANA: 112.

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA: 1-1-2.

10 **CHAIRPERSON:** Oh, I might have misunderstood. I thought you said 120.

ADV PHILLIP MOKOENA SC: No 112 Chair.

CHAIRPERSON: 112 okay, alright. Yes.

20 **MR MXOLISI DUKWANA:** “The department also concluded some 112 written tripartite supply agreements with contractors and building material suppliers. The material term of these supply agreements was that the department will pay suppliers for building materials which the suppliers supplied to contractors. Suppliers’ claims for payment were required to be supported by one, an invoice in respect of material supplied by the supplier to the contract and two, a certificate from the contractor confirming receipt of the materials invoice. The department also agreed to the cession by the contractors to the suppliers of claims which the

contractors purported to have against the department. The cessions were documented and written material supply cession agreements signed by the contractors, suppliers and the department. The cession agreements contained instructions from the contractors to the department to pay the ceded claims to the suppliers. The department made payments to the suppliers. The total value of the payments made to the 21 suppliers over the period 10 2009/2011 exceeds R500 million. The payments were made from the conditional allocation which the department received from the National Revenue Fund via the National Department. There was no lawful cost for the payment.”

ADV PHILLIP MOKOENA SC: Yes. If I may stop you there. So the amount reflected on paragraph 23.4 accords with what you have also referred to when you testified earlier to - to the Chairperson?

MR MXOLISI DUKWANA: Correct Chair.

20 **ADV PHILLIP MOKOENA SC:** And this is the amount which could have been expanded or being paid within that short space of time when you say that it was already in December - two days before the 16th and up until the time when you came back?

MR MXOLISI DUKWANA: Correct Chair.

ADV PHILLIP MOKOENA SC: Now may I refer you to page 1-3-6 and then we can skip all these other paragraphs and concentrate on

paragraph 24. Take us through paragraph 24.

CHAIRPERSON: Before that Mr Mokoena assuming that this R500 million that is referred to in regard to this project you call “Heist” was paid for no value for money effectively. Maybe not even assuming that. Assuming that there was just corruption here. If you add the amount that was mentioned in regard to the asbestos project this - add this 500 million to that one you - you do not reach a billion as yet or do you? That other - on - on that other one the amount - the project was about two ...

10 **MR MXOLISI DUKWANA:** 255 ...

CHAIRPERSON: 255 million.

MR MXOLISI DUKWANA: Yes Chair.

CHAIRPERSON: Yes. There was some - there was a figure that we mentioned and I was saying that already you are looking at 700-and something ...

MR MXOLISI DUKWANA: Hm.

CHAIRPERSON: Million, is it not?

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: Remember you - you added ...

20 **MR MXOLISI DUKWANA:** Yes.

CHAIRPERSON: The four - the 4 000 or was - was I getting confused. There was a time when I was talking about 700-and something million ...

MR MXOLISI DUKWANA: (Indistinct).

CHAIRPERSON: But of course the total amount for the value of the

project was 2-5-5. Maybe I got confused and mentioned 700-and something. So there is no 700-and something million.

ADV PHILLIP MOKOENA SC: Mr Dukwana do you want to answer?

MR MXOLISI DUKWANA: (Intervenes).

CHAIRPERSON: I - I think I will allow the counsel for Mr Dukwana. I think ...

MR MXOLISI DUKWANA: No Chair let me assist.

CHAIRPERSON: Ja, Mr - yes, yes.

MR MXOLISI DUKWANA: 700 000 that the Chair was making reference
10 to ...

CHAIRPERSON: Ja.

MR MXOLISI DUKWANA: Has to do with onerous requests that were directed at the Premier's Office ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: And the Chairperson was saying it is 470 that has to be paid. 30 000 to an SRC President.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: That is 500 000. There is 200 - 255 ...

CHAIRPERSON: Oh yes.

20 **MR MXOLISI DUKWANA:** That is paid to a travel agent.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: Blah, blah, blah. So those ...

CHAIRPERSON: No. It was not millions.

MR MXOLISI DUKWANA: Yes. Those, ja.

CHAIRPERSON: Those are separate.

MR MXOLISI DUKWANA: Those are separate from this ...

CHAIRPERSON: Yes. No.

MR MXOLISI DUKWANA: From this one.

CHAIRPERSON: Now I understand. So - but if we add this 500 million to that 255 million where one is looking at - over 700 million in terms of the two projects.

MR MXOLISI DUKWANA: Correct.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: I have stayed deliberately from the
10 computation of the funds with the caution that I gave earlier on Mr Chair.

CHAIRPERSON: Yes, okay.

ADV PHILLIP MOKOENA SC: Mr Dukwana ...

CHAIRPERSON: You may proceed.

ADV PHILLIP MOKOENA SC: I was referring you to page 1-3 - was it
1-3-4?

UNKNOWN PERSON: Six.

ADV PHILLIP MOKOENA SC: 1-3-6 with particular reference to
paragraph 24. Take us through that.

20 **MR MXOLISI DUKWANA:** Paragraph 24:

“The reason the department implemented the scheme was this: in late October that is one and November 2010 the department was severely criticised by the National Department because it had very significantly underspent from its

conditional grant allocation. Halfway through the financial year it had spent only 10 percent of what it was meant to have spent. The National Department and National Treasury threatened that their unspent allocation would revert to the National Revenue Fund to be reallocated to provinces with better spending records. In the face of that threat the department proceeded to implement the scheme dispersing funds to the tune of more than 500 million from its conditional allocation over the 2009 to 2011 with no lawful cause for the payment made.”

ADV PHILLIP MOKOENA SC: Yes. Let us then skip the rest and go to page 1-3-8. What appears to be relevant to sketch - the relevant you know facts it is paragraphs 27 and 28.

MR MXOLISI DUKWANA: “I submit that the department scheme was a fraud on the National Government specifically on the fiscus. It was also fraud on the public on all who expect state funds to be spent properly including on improving the standard of living of the poor on those in the Free State and in other provinces with an expectation of receiving state funded housing and all taxpayers. I have described above the fraudulent aspects of the department’s scheme. It is important to point out that the contracts were all - were also unlawful

because the department did not follow any lawful procurement process before concluding them. This is and in itself a ground on which the contracts should be declared void.”

ADV PHILLIP MOKOENA SC: Yes and so in order for us to appreciate whether there was any value for this money that was paid I know that you have touched on that but it maybe also prudent for us to go to page 1-4-7 and take us through from paragraphs 64 to 66. Page 1-4-7 Chair.

CHAIRPERSON: Page 1-4-7?

10 **ADV PHILLIP MOKOENA SC:** Yes.

MR MXOLISI DUKWANA: From 64?

ADV PHILLIP MOKOENA SC: From 64 to 66.

20 **MR MXOLISI DUKWANA:** “At the time however the memorandum contemplates advance payments to material suppliers. With advance payments to be regulated via specific agreement. For an example one of the features apparently enforcing the department’s turnaround strategy is that the department will where necessary enter into agreement with material suppliers and provide them with an advance payment. That is paragraph 1.5 bullet point. Paragraph 3.6 of the memorandum states that the department may provide an advance payment to the material supplier and in such event a separate agreement shall be entered into by the

department and the service provider. The department's decisions were in clear breach of the advice given to it by the National Department via (indistinct) and the technical meetings. The department had been told that its expenditure recovery plan was not acceptable and that it should not implement it. It was also been told that paying suppliers without a supply service supplied materials was unlawful. As I set out in more detail

10 below the department proceeded to make payments to suppliers without the suppliers having supplied material. That is it made payments in advance. No written agreements were concluded governing those payments. The department did not follow any proper procurement process to identify the suppliers to which it made payments. The total value of the payments made is nearly one billion."

ADV PHILLIP MOKOENA SC: So this is very serious Mr Dukwana ...

MR MXOLISI DUKWANA: Very, very.

20 **ADV PHILLIP MOKOENA SC:** And up until now you do not know the reason why this application was not proceeded with?

MR MXOLISI DUKWANA: I do not know the reasons but I can only speculate Chair. As I said earlier once you make corruption to be normal in society things like this happen and in this case I am sitting Chairperson having worked in Government and especially in the Free

State. There is no official and I repeat there is no official that will be this brave to disregard the National Department's directive even when it - even the Treasury - when it was you do not do that.

You know the consequences that will follow but this could only - the bravery that this people got for them to be doing that is because of the backing that they have and that backing would be coming from the Premier as well as the MEC and I am saying this Chairperson because the contracts were signed in December and in January.

10 It is the period that the MEC indicated that he was going to be there overseeing the process. So what it means is he knew exactly what was happening and he could not have done that without consulting - and I am talking from experience. He would not do that without consulting the Premier.

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA: So in this case the unfortunate thing that happened was when people realised that these things were so serious the poor officials were especially the junior - some levels there suffered because of this. They push under the bush and when you expect
20 leaders to take responsibility like the MEC who said we are going to make a plan.

You would expect the MEC will be brave enough to say this is what I - I advice these people to do and take the blame instead of all the time having officials taking the blame. So this as I stated demonstrates clearly Chairperson that there is always disregard of this

but what was happening here why it was taken what the - the - what is being said sir by Tata Moekwe (?).

The question that I am asked is that the - the only reason that I can deduce from this is that you - you need to demonstrate Chairperson to the Auditor-General that we suspended people. We are going to court to get this nullified and then we will get our - our money back and you are talking about something that happened way back in 2010 and this is 2019 and nothing has happened yet.

So it demonstrates that the - this was very urgent because if
10 you stay longer many of these people we are talking about who are service providers would - would not be having any assets that you can - as a department.

CHAIRPERSON: Well let us just make sure we get everything in - we understand it in proper context. Sometime during the first half of December 2010 a meeting of the Executive Council of the Provincial Government takes place which you attended ...

MR MXOLISI DUKWANA: Yes Chairperson.

CHAIRPERSON: And that meeting is held against the backdrop that the National Department of Human Settlements had or maybe let me
20 rephrase that. That meeting took place against the backdrop that there was an understanding to say the least. Let us leave out threats and so on.

There was an understanding on the part of the MEC for Human Settlements in the province that if money that had been allocated to his Department for Housing had not been used - that

money - had not been used by the end of the financial year - that money would be taken away from the province. Is that right?

MR MXOLISI DUKWANA: That is correct Chair.

CHAIRPERSON: And - and he did not want that to happen?

MR MXOLISI DUKWANA: Not at all Chairperson.

CHAIRPERSON: And he then said at the meeting of the Executive Council which you attended that he would not go on holiday during that December holiday and they would make a plan?

MR MXOLISI DUKWANA: Correct Chair.

- 10 **CHAIRPERSON:** And the plan being to make sure that the - the money that had been allocated for housing in the province would be used - all of it would be used if possible.

MR MXOLISI DUKWANA: Correct.

CHAIRPERSON: So that there would be no money taken away from the province?

MR MXOLISI DUKWANA: The intention was to avoid money being taken away.

CHAIRPERSON: Ja. The intention was to avoid that.

MR MXOLISI DUKWANA: Yes.

- 20 **CHAIRPERSON:** And some of you at the meeting were concerned how he would do that given the short time left before the end of the financial year and the December break that was supposed to happen?

MR MXOLISI DUKWANA: There was no logic Chairperson in the sense that the - the - April to December ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: You have only - only spent 10 percent and ...

CHAIRPERSON: Ja. That is the ...

MR MXOLISI DUKWANA: You are left with February, March and then you - your - your financial year ends ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: And the question was what is it that you will do in that space of time - a short space of time.

CHAIRPERSON: So as at - as at the time of that meeting your understanding is that the Department of House - of Human Settlement
10 in the province had only spent 10 percent of its budget for housing?

MR MXOLISI DUKWANA: Correct Chair.

CHAIRPERSON: Yes and the MEC at the time who was Mr Zwane said he would not go away for the holiday. They would make a plan to avoid money being taken away.

MR MXOLISI DUKWANA: He indicated that he himself and the officials would not go on holiday.

CHAIRPERSON: Would not go away.

MR MXOLISI DUKWANA: They will work around the clock.

CHAIRPERSON: Yes and you - did you also say when you came back
20 which I assume would be after - in the New Year he made a report to the Executive Council as to how - what they had been able to do?

MR MXOLISI DUKWANA: We came back late January or early February.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: When the legislature opened and the

Executive started functioning and the report given was that we have moved. We at least - we are sitting at 66 percent of the spend that we should have made you know. So the question was from December to January what it is that you did. Do you build the houses and the answer was yes we - it went to - we did - we were not told that the - it was this scheme.

CHAIRPERSON: Okay. So there was an - a meeting of the Executive Council of the Province late in January?

MR MXOLISI DUKWANA: In 2011.

10 **CHAIRPERSON**: At which Mr Zwane made a report?

MR MXOLISI DUKWANA: Gave a report to the Executive.

CHAIRPERSON: And the report was in part to the effect that as at that time he was able to say his department had spent about 66 percent of the money that had been allocated for housing during that financial year?

MR MXOLISI DUKWANA: Correct and he was praised for working hard.

CHAIRPERSON: He was praised for working hard but you say you were not told as to what exactly he and his department had done within this short period to achieve such a high percentage of expenditure?

20 **MR MXOLISI DUKWANA**: No. He did not give the details.

CHAIRPERSON: You were not told?

MR MXOLISI DUKWANA: No, we were not told.

CHAIRPERSON: Okay. Thank you.

ADV PHILLIP MOKOENA SC: Yes. Let us now proceed to also refer to some of the relevant facts which corroborates what you have already

testified on before the Chair. Turn to page 149 Mr Dukwana and if you can read into the record paragraphs 72 to 74.

CHAIRPERSON: Before you - you do that I just want to - you - you are reading from an affidavit - from the affidavit of Mr Nthimotse Mokhesi which was apparently deposed to on 21 December 2016 that appears at page 2-0-7 ...

ADV PHILLIP MOKOENA SC: Hm.

CHAIRPERSON: And he - he is - he was at the time at least I do not know now. He was at the time the head of the same department. Is
10 that right?

MR MXOLISI DUKWANA: Mr Mokhesi?

CHAIRPERSON: Sorry.

MR MXOLISI DUKWANA: Are you are talking about Mokhesi?

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: Hm.

CHAIRPERSON: This - this affidavit from which you are reading.

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: Ja. Was he head of this department in 2016?

MR MXOLISI DUKWANA: The head of the department - if I am not
20 mistaken - was Tata Gift Mokoena. I think at the time there were two departments. You had the Department of Housing under one MEC - was housing and (intervenes).

CHAIRPERSON: Well he does say in the paragraph - in the - in paragraph 1 Mr Dukwana ...

ADV PHILLIP MOKOENA SC: Page 1-2-9 Mr Chair.

CHAIRPERSON: Ja 1-2-9. He does say he is the Head of the Free State Department of Human Settlements and he is saying that as at 21 December 2016. So he must have been head of the department at the time - in December 2016.

MR MXOLISI DUKWANA: At the time he prepared this, yes.

CHAIRPERSON: At the time he prepared this yes.

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: Yes. So that (intervenes).

MR MXOLISI DUKWANA: I thought the question was ...

10 **CHAIRPERSON:** My question was whether this person that - whose affidavit you are reading from was the head of the same department but in 2016, December which I think is correct.

MR MXOLISI DUKWANA: No. It would be - in 2010 he was not the - the head of the department.

CHAIRPERSON: No, no, no. I am saying he was - he was the head of department in December 2016 ...

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: But this department of which he was the head in 2016 is the same department we are talking about in 2010?

20 **MR MXOLISI DUKWANA:** Yes sir.

CHAIRPERSON: Ja. Okay.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Page 149 from paragraphs 72 to 74 - if you can read that.

MR MXOLISI DUKWANA: Can you ask if - if you allow me just to - to clarify this on - that is page - paragraph 70?

ADV PHILLIP MOKOENA SC: Yes, yes.

MR MXOLISI DUKWANA: That will clarify the concern. You remember I said it was reported as 66%, but if you check here the department responded by issuing its own, it was in response to 69, on the 18th January 2011 the National Department issued a media statement regarding a shifting of funding from under-performing provinces, the Free State and KwaZulu Natal to other provinces.

10 **ADV PHILLIP MOKOENA SC:** Yes.

MR MXOLISI DUKWANA: And then the Department responded by issuing its own media statement on the 20th January purporting to set the record straight. It stated among other things that the department would spend its entire conditional allocation by the end of the financial year. It stated the following as of to date, 20 January 2011 the Department has spent a total of 78% of the conditional grant funding. By the end of January expenditure should be around 85%.

ADV PHILLIP MOKOENA SC: Yes.

20 **CHAIRPERSON:** Ja, I see that in paragraph 67 at page 148, according to the affidavit it says on 12th January 2011 the National Department advised the Department, that must be the Provincial Department of Human Settlements that R263million of its conditional allocation was to be stopped and would be reallocated to other provinces, that's what they didn't want to happen, that is what Ms Zwane didn't want to happen.

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: So this is what they said and then media statements followed.

MR MXOLISI DUKWANA: Correct.

ADV PHILLIP MOKOENA SC: 149.

MR MXOLISI DUKWANA: By the time these statements were issued the Department had already transferred several hundred millions of rands from its conditional allocation to suppliers. It continued to make unlawful transfers in January, February and March 2011. The transfers
10 were made without the suppliers having supplied material, without written agreements in respect of or regulating the transfers, and without any proper procurement process having been followed. The Department made the transfer for the purpose of avoiding having its conditional allocation stopped and transferred to better performing provinces. It made the transfers so that it looked as if the conditional allocation had been spent. I submit that this was a fraud on the National Treasury and on the National Government more broadly as well as on the taxpayers and the public generally.

I will repeat that the unlawful transfers amount to more or less
20 R631million in total.

CHAIRPERSON: If you can stop there, just the context again, this is the Head of Department, this is the head of the same department but later, in 2016.

MR MXOLISI DUKWANA: Later.

CHAIRPERSON: In 2016.

MR MXOLISI DUKWANA: In 2016.

CHAIRPERSON: Who is making an application to court.

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: So all of these things that he says here must have been things that he has checked in the department to establish exactly when were payments made and to whom and so on.

MR MXOLISI DUKWANA: Correct Chair because he indicated that as factual issues.

CHAIRPERSON: Yes, yes.

10 **MR MXOLISI DUKWANA:** And that was under oath.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Maybe to jump ahead of myself as well, if you turn to page 208, simply to piggy-back from the Chairperson's question and maybe to also place context as to where would that information also be derived from, are you able to identify this document on page 208.

MR MXOLISI DUKWANA: This in the High Court of South Africa Free State Division Bloemfontein and in the matter between The Member of the Executive Council of the Department of Corporate Governance,
20 Human Settlement and Traditional Affairs, Free State as an applicant and Cine Group Trading 802 CC and one of five further respondents listed in Annexure 1 to the Notice of Motion ...(intervention)

ADV PHILLIP MOKOENA SC: And who is the deponent?

MR MXOLISI DUKWANA: It's Habbard Lobita.

ADV PHILLIP MOKOENA SC: Now let's see on page 209 as to who is

he, if you can read paragraph one.

MR MXOLISI DUKWANA: Paragraph one:

“Mr Hubbard Lobita states the following:

I am employed by the Special Investigating Unit, SIU, as a project manager stationed at the Special Investigating Unit office, 2nd Floor, Telkom Building, Zastrow Street, Bloemfontein.”

ADV PHILLIP MOKOENA SC: Yes, do I take it that as at the time the SIU was also involved in order to deal with the facts that you have testified about in this ...(intervention)

MR MXOLISI DUKWANA: According to this yes.

ADV PHILLIP MOKOENA SC: Yes, right. Now let’s go back to put more facts, relevant to what you have already alluded to, if you may turn to page 176, and take us through paragraph 132 and paragraph 133 Mr Dukwana.

MR MXOLISI DUKWANA: The consequences.

“The Department paid approximately 631million without having received anything in exchange. There was no evidence when the Department made these payments that it had received value for the payments and the payments made in that the houses had been built or part-built to a satisfactory standard. The department has made extensive efforts to to ascertain to what extent houses were in fact constructed and materials were in fact delivered as contemplated in the construction agreement, in other words the Department has tried to

ascertain to what extent material suppliers dealt with the money paid to them by the Department honestly and responsibly by using it to supply materials to contractors for the purpose of constructing the houses contemplated in the construction agreements and for the purpose for which the money was originally allocated and transferred by National Government to the department. This has been an exceedingly difficult point to get clarity on. In this regard I have referred above to clauses of the construction contract which obliged the

10 contractors to keep information relating to the building project up to date, to allow the department access to such information and to provide the department with monthly written progress report on the status of the project, the expenditure to date and any other information reasonably required by the Department. This was not done by any of the contractors. The contractors paperwork was either totally inadequate or simply did not exist, nor have the material suppliers ever provided proper reports to the Department.”

ADV PHILLIP MOKOENA SC: If I may stop you there, so clearly from

20 the deponent of this affidavit there was no value at all for an amount of R63.1million to be paid at all.

MR MXOLISI DUKWANA: Correct.

ADV PHILLIP MOKOENA SC: Yes, if you may turn lastly to page 203 and take us through the contents of paragraph 222, you will locate it at the bottom of the page.

MR MXOLISI DUKWANA:

“I draw attention to the following consideration in addition to those which I have already mentioned.

1. The entire scheme was fraudulent and tainted by fraud.
2. The contractors and suppliers must have known that it was unlawful for the scheme to be constructed in this manner and for payments to be made in this manner. They must have known that this was fundamentally inconsistent with the manner in which the State ordinarily and lawfully does business.

10

As I have pointed out some of the invoices submitted by contractors and suppliers were themselves fraudulent. The merit of the review I respectfully submit very strong, the sums paid over by the Department under the unlawful scheme and now sought to be recovered by the Department are very substantial.

It is in the public interest that substantial amounts of public money which have been unlawfully spent should be recovered. This is particular so where the money has been diverted from the intended purpose of delivering houses to members of poor communities who do not have access to adequate housing in fulfilment of their constitutional right. It is in the public interest that those who have benefitted from fraud and otherwise unlawful activity should not be able to retain the benefits of the fraud and illegality.”

20

ADV PHILLIP MOKOENA SC: Yes, and 223.

MR MXOLISI DUKWANA:

“Allowing the consequences of the scheme to stand is I submit inconsistent with the duty of the State to fight corruption and mal-administration particularly in relation to public money.”

ADV PHILLIP MOKOENA SC: Yes, may I now refer you back to your statement with particular reference to page 22.

CHAIRPERSON: Before you go back there you know this is a very detailed affidavit that was deposed to in December 2016, so it's two
10 and a half years later, because you live in the Free State you might know if you have heard that anybody has been arrested and prosecuted in regard to any of these matters covered in this very detailed affidavit?

MR MXOLISI DUKWANA: No sir, no Chair, nobody.

CHAIRPERSON: Were there any – or you said that there may have been or there were junior officials who were disciplined.

MR MXOLISI DUKWANA: Government it's a hierarchical animal, in the sense that even when you prepare a memo just to demonstrate, if a memo comes from a Deputy Director it will go to a Director, it goes to the Chief Director if they have one, it goes to the Deputy Director
20 General if the Department has one, it goes to the Head of the Department and it goes to the MEC, and in the time that I was there I saw many delays that were made deliberately. A report would lie prepared by the Deputy Director who may not necessarily be there say would submit to the Director who is on course, it will wait there even if it waits for a week, and then when he comes and in some instances

Chair some of the people won't read this because they realise that they are not the final decision makers.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: So all that they do they just say noted and sign.

CHAIRPERSON: They just pass it on.

MR MXOLISI DUKWANA: Others without having read this and in some instances you will find that even some of the HOD's would not have read the matter, when it comes to you if you are a person who reads
10 you would find some mistakes and you say take this matter back and you would be surprised that even the HOD in some instances did not realise the mistake, so in an event that you just sign you would find MEC's will sign without having read the whole thing, in some instances they just go to what the first page is and what the recommendations are and then you sign and you leave it there, so I am just saying this scheme would not have happened if there was no memo that came from whoever say a junior level director up in this case the CFO will be included because there is money involved. The Chief Director would be included, the DDG will be included and the HOD will be included,
20 finally the MEC would have signed this, and then that would then be implemented. Without that it does not happen, so I don't see how this could have happened, but in this situation the MEC and nothing happened to him, the HOD, nothing the DDG, nothing, the Chief Director was the and the directors and others and the CFO nothing.

So you've got these other people at a senior level nothing is

done to them and only these few people who are not decision makers, even if you are a chief director in your office, in that environment you would not make a decision without that decision going up to the DDG and to the HOD who would give it to the MEC, it comes back, so it is how these things have been done.

Maybe when I left things changed but whilst I was still there this was the process that will be followed, so I am just stating the fact that I strongly believe that if there are people who needed to be dealt with it would have been the DDG, the HOD, the CFO and the MEC.

- 10 **CHAIRPERSON:** Yes, yes. And then I would have thought that when the MEC, Mr Zwane, reported at an Executive Council meeting late in January that within effectively a period of about maybe seven weeks, maybe eight weeks which included a certain number of weeks that were shut down weeks for maybe many businesses, when you reported that he had been able to raise the expenditure of the Department from 10% early in December to 66% or thereabout late in January I would have thought that the Premier would have been interested in knowing how did you do that, exactly what did you do, please tell me more, how did you achieve that. You take eight months to spend only 10% of the
- 20 allocation, you take six, seven weeks you are able to add 40 something percent of expenditure that you have used. You don't remember in that meeting the Premier asking that type of question.

MR MXOLISI DUKWANA: No. Not that I don't remember, but he did not.

CHAIRPERSON: He did not?

MR MXOLISI DUKWANA: No he did not. The questions that were asked were coming from other members who were surprised how did you do it, but he said it was a, they worked hard throughout the ...(intervention)

CHAIRPERSON: He didn't give an answer as to exactly what he did?

MR MXOLISI DUKWANA: There was no report, there was no written report that would come to the Executive as expected.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: So it was just a verbal report just to note
10 that we have managed to prevent money taken out of the province and we made sure that money stays in the Province and we reported to the National to the fact that this is the case.

CHAIRPERSON: Ja, well we will hear from the Premier at some stage I'm sure because I think if you are the Premier and your MEC tells you this that should some alarm bells should ring, you should say no I really want to know how did you achieve that, what actually did you do to satisfy yourself that somebody in your council hasn't done anything wrong you know, but that's fine.

ADV PHILLIP MOKOENA SC: Yes Chair. Well those were also
20 addressed but I am not going to take Mr Dukwana there, just for noting from page 132 you know to 143.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Those would, could just be some of the questions that you know this application grapple with but we don't have to read that Chair.

CHAIRPERSON: Yes, can we find out Mr Dukwana whether you know whether the respondents in this matter, in this application brought by the Head of Department in the High Court for the cancellation of these contracts and recovery of the money whether they filed any papers in court to oppose or they just didn't oppose, is that something you know or is that something you don't know?

MR MXOLISI DUKWANA: I don't know Chair.

CHAIRPERSON: Okay, alright.

ADV PHILLIP MOKOENA SC: We can verify at a later stage.

10 **CHAIRPERSON:** Page 135.

ADV PHILLIP MOKOENA SC: No just for noting Chair, that some of the questions that you have posed are dealt with on those pages 142 to 143.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Yes, we also make a note for them in our submissions. If you go to page 22 Mr Dukwana you make concluding statements and those are critical and crucial, if you can read paragraph 72 to 73.

20 **MR MXOLISI DUKWANA:** I am stating here that the Government of the Free State must explain why it withdrew the application ...(intervention)

ADV PHILLIP MOKOENA SC: Page 22, paragraph 70.

MR MXOLISI DUKWANA: Oh, 70?

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA:

“Mr Zwane must explain to the Commission the extent of his

work during December 2010 holidays and how the service providers were identified and why they were paid in advance without any procurement procedures followed. It must be noted that in the application the SIU deposed to a confirmatory affidavit and yet the SIU has not in terms of its powers moved swiftly to recover the public monies appropriated unlawfully by those involved. For ease of reference I annex the SIU confirmatory affidavit as 2MD17.”

ADV PHILLIP MOKOENA SC: And that is the one that you have
10 already touched on?

MR MXOLISI DUKWANA: Yes.

“To my knowledge or recollection through this housing heist no houses were either renovated or built to this day. Mr Zwane needs to explain as the former executive authority of the department his role in this housing heist, where are the houses renovated or built. What happened to millions of taxpayers’ money? The government of the Free State must explain why it withdrew the application in issue.”

The reason that I am talking about Mr Zwane Chairperson is that
20 immediately after the – once you dissolve the Executive after the election the – when the Premier is elected and has taken an oath all the executive powers of the Province fall within his ambit and then he delegates, he delegates this either to the HOD’s, to MEC’s etcetera, certain powers and in this case as an executive authority you have got an authority in terms of the law to deal with matters that pertain to your

Department and that is why in terms of the processes that whilst people will say I don't sign it will be once there is a recommendation it goes up until the MEC, the MEC may not be involved in the adjudication of tenders etcetera but once the appointment is to be made there would be this it would come that the – this is what the relevant committees etcetera that have you know and you would have the knowledge, it might come to your attention for you for attention so that you know what has happened, it may come also for you to make – to approve whatever they should have dealt with you know from where they are

10 supposed to do so it is not correct that an MEC would claim that he did not know or that it did not happen, you know exactly what happens in your department, otherwise it will be a person who ignores his responsibility, that is why I emphasized that Mr Zwana has an explanation to do and it would be in the best interests of this Commission considering that you are talking about there's so many people, almost 14 000 units that would have covered so many families and so much money that we cannot get it this year when it happened in 2010.

CHAIRPERSON: But also in regard to this project, if you can call it a

20 project, he had the special interest in it if your evidence is true, because he went to the extent of not going on holiday.

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: In order to put together a plan from what you say he said at the meeting.

MR MXOLISI DUKWANA: Correct.

CHAIRPERSON: And he reported back.

MR MXOLISI DUKWANA: He reported back.

CHAIRPERSON: It would be difficult to think that he stayed and worked and didn't take a holiday but he didn't know how, what the plan was and how the plan was implemented.

MR MXOLISI DUKWANA: It would be – if you were to say that it would be disingenuous of him.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: Yes.

10 **CHAIRPERSON:** Yes.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: I am just about to move to a new topic Mr Dukwana, the one that you referred to it as the ...(intervention)

CHAIRPERSON: Mr Mokoena I see we are at something like two minutes to four, let's talk about what's going to happen. I am able to sit beyond four but let's just check and make sure that we are able to. From your side you are?

20 **ADV PHILLIP MOKOENA SC:** Yes Chair we find ourselves where there might be other issues of the Commission tomorrow so we are willing to proceed and deal with this.

CHAIRPERSON: Yes, are you also okay?

ADV SMANGA SETHENE: We are in agreement Chair.

CHAIRPERSON: You are in agreement, okay. Mr Dukwana you are fine if we continue beyond four?

MR MXOLISI DUKWANA: Perhaps a tea break Chair.

CHAIRPERSON: Sorry, maybe a tea break would be appropriate, but before we take the tea break I just want to have an idea that we are coming back after the tea break to continue or not. Mr Dukwana you are okay?

MR MXOLISI DUKWANA: I am okay.

CHAIRPERSON: Yes, what is your estimate of how much time we need?

ADV PHILLIP MOKOENA SC: Chair the remaining topics are fairly
10 straightforward and they are not as demanding as the ones we have dealt with, no my sense is that we might need another hour, also if we can make sure that – we are dealing here with a witness that is a politician so if he sees a microphone it might be difficult also to deal with him Mr Chair so from time to time I am reminded as to how to lead such a witness.

CHAIRPERSON: Ja, well I have had quite a number of occasions when I have also thought maybe I should intervene but it's okay, so your estimate is we should be able to go up to five and finish.

ADV PHILLIP MOKOENA SC: If we go up to five or six, there was one
20 witness also which is simply a corroboratory witness, a very, very short witness, and that is the one that is going to be led by my learned colleague and ...(intervention)

CHAIRPERSON: Ja, that one would be about five minutes.

ADV PHILLIP MOKOENA SC: I think so yes, so for Mr Dukwane if we can do one hour or so.

CHAIRPERSON: Okay, let's take a short break, let's take a short break, ten minutes or fifteen minutes.

ADV PHILLIP MOKOENA SC: Ten minutes Chair.

CHAIRPERSON: Ten minutes should do, okay, we will resume at ten past four. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes let us proceed.

- 10 **ADV PHILLIP MOKOENA SC:** Yes. Mr Dukwana we were now just about to deal with your next topic which you can locate it from page 22 from paragraph 74 referring to the housing heist through implementing agent. Can you please proceed dealing with the relevant facts under that topic?

MR MXOLISI DUKWANA: The – this...

ADV PHILLIP MOKOENA SC: Can you switch on your microphone please.

- 20 **MR MXOLISI DUKWANA:** Chairperson the – this one you have got not only the housing – in the Free State the implementing agents are all over and in some cases they speak to what I had raised earlier on of a system that is there creating redundancy on the other hand of government departments. You would have this case for instance in the FDC the – they use for – the FDC has a particular responsibility in the Free State and key to that would be to – it would deal with businesses in the province and development of also SMME's etcetera. In the – in

doing with – in dealing with that because it became difficult to get more funding for this particular thing it then created a portfolio that deals with owning properties and managing properties to get resources that would add up to your coffers as FDC. But unfortunately it did – it came out that the board decided that it will remove all those issues that were no core business in the FDC and part of it was properties. So they started selling properties you know disposing of properties. And unfortunately that was killing the – you know what was giving the money in terms of keeping to them and working out their mandates.

- 10 But what is very interesting is once you do that you take your responsibility that is not even your mandate for when the project in Vrede of 1000 houses could not be successfully completed the Department of Housing appointed FDC as an implementing agent.

CHAIRPERSON: Do you mean there was – there had been a decision to build 1000 houses in Vrede?

MR MXOLISI DUKWANA: There was a decision taken by the Department a long time ago to build houses in Vrede; a 1000 of those units.

CHAIRPERSON: Yes okay.

- 20 **MR MXOLISI DUKWANA:** But the contractor that was appointed could not do much and almost about 800 or so houses were left and you know were not built and as such [intervention].

CHAIRPERSON: Were not completed?

MR MXOLISI DUKWANA: Were not – not even built.

CHAIRPERSON: They were not even – the building did not even start?

MR MXOLISI DUKWANA: No not – it had not started.

CHAIRPERSON: In regard to 800?

MR MXOLISI DUKWANA: Almost 800 even more than 800.

CHAIRPERSON: Almost 800

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: And only about 200 were built?

MR MXOLISI DUKWANA: Less than 200 yes.

CHAIRPERSON: And those were built to completion?

MR MXOLISI DUKWANA: Some of them.

10 **CHAIRPERSON:** Or maybe not – oh some of them.

MR MXOLISI DUKWANA: Some of them.

CHAIRPERSON: Okay. Alright.

MR MXOLISI DUKWANA: Then the – at the time the new board was appointed I think this year; the FDC.

CHAIRPERSON: The new board; the FDC board?

MR MXOLISI DUKWANA: Yes. The old board had also Mr Mokhesi as a member of the FDC board. Remember Mr Mokhesi is a Head of Department of Housing and then had the Chairperson of the board is Me Hantsi Mayeza.

20 **ADV PHILLIP MOKOENA SC:** But while – while you are there is it permissible – it is possible – how is it possible that Mr Mokhesi would be part of parcel of FDC?

MR MXOLISI DUKWANA: I do not know but as I said anything in the Free State is normal.

CHAIRPERSON: Under which department did the FDC fall in terms of

the provincial government?

MR MXOLISI DUKWANA: Economic Development.

CHAIRPERSON: Economic Development.

MR MXOLISI DUKWANA: Yes Sir.

CHAIRPERSON: And this – Mr Mokhesi was...

MR MXOLISI DUKWANA: HOD.

CHAIRPERSON: In the Human Settlements?

MR MXOLISI DUKWANA: In Human Settlements.

CHAIRPERSON: Yes.

10 **MR MXOLISI DUKWANA:** In [indistinct] at some stage.

CHAIRPERSON: Okay.

MR MXOLISI DUKWANA: As according to the information that also we collected was at some stage and a member of the board.

ADV PHILLIP MOKOENA SC: And you were saying who was the Chair at the time? Who was the Chair?

MR MXOLISI DUKWANA: It was Me Mayeza – Hantsi.

ADV PHILLIP MOKOENA SC: Yes okay. Now in relation to paragraph 78 you make mention of companies called Unitel Holdings as well as Mafuram.

20 **CHAIRPERSON:** I am sorry Mr Mokoena I think I interrupted Mr Dukwana before he could complete a certain point he was making.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: About this project with a contractors having failed. I thought he was [intervention].

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: He was in the middle of a sentence to say in the light of that failure what happened.

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA: Of the?

CHAIRPERSON: Of the contractors.

ADV PHILLIP MOKOENA SC: Of the Vrede.

CHAIRPERSON: To build the houses.

MR MXOLISI DUKWANA: The Department felt that you needed to fast track the building. Appointed FDC as an implement agent and – and in
10 this case I pointed out that it is very interesting that the HOD then – these responsibilities to deal with housing you have got COCTA somebody is their HOD and you have got requisite skill or skills in the Department in terms of people who would know who would have technical knowhow in terms of making sure that they follow up all these projects and report progress engineers etcetera. Now taking this and taking it to FDC maybe when I left they amassed the skills that would allow them to be an implementing agent in the housing field wherein they – then what is very interesting is that the same – the details – this is something that I am driving to say. It needs thorough investigation
20 as to how and why was it allowed to happen? The Chairperson of the board has a company I think it is Moono or something; Moono, Moono. Is then appointed to complete the 800 units in – in Vrede.

CHAIRPERSON: In Vrede.

MR MXOLISI DUKWANA: And nobody sees that as a problem. I am the Chairperson of the board, I am appointed as an implementing agent

and then my company gets business to go and [indistinct] and do that.

CHAIRPERSON: From the board.

MR MXOLISI DUKWANA: And the argument that would be going out and response the person would say I was not involved in the – in giving out the houses but this is what I am trying to say that once things start happening people do not even see when things are wrong. And the question also is why would this be given to FDC when FDC did not possess the experience and the requisite skills that would be needed to monitor and deal with this project? And there is no explanation
10 Chairperson other than it was facilitated to ensure that it gets to the Chairperson. Other than that I cannot explain. Because you cannot have this and then it happens this way and FDC cannot explain itself and I do not think FDC other than saying the person would arrogantly indicate that I was not part therefore there was no conflict of interest in this particular [indistinct].

CHAIRPERSON: Well maybe before we proceed just tell me if you are able to. This concept of an implementing agent if you are able to; where it comes from within government because when I was hearing evidence with regard to the Vrede Dairy Farm it came up. We have not
20 finished the evidence – I have not finished hearing the evidence of Mr Thabethe who was the HOD of the Department of Agriculture at the time. But I gained the impression rightly or wrongly that it may well be that at least that department I do not know whether the whole provincial government, that department may have been using implementing agents for purposes of bypassing or circumventing procurement procedures.

So – but I have not had a chance to ask Mr Thabethe where did this whole concept come from? Did it come from the whole of government? Is it a known concept to say under certain circumstances a government department can resort to implementing agents or is it something that certain departments decided to do on their own? Is it – are you able to say anything to me about this whole concept?

MR MXOLISI DUKWANA: Mr Chairperson the – if I can indicate. The Department of Public Works, the Department of Agriculture, the Department of Health, the – I think these are the department housing.

- 10 These are the departments in the main in the Free State that are using implement agents. By way of example in fact you have a department in some instances the Department of Agriculture paid so much money in some instances almost about R905 million to some projects, to some companies implementing agents and the only reason that you can find this explanation Chairperson is to circumvent the supply chain provisions. And what also is worrying in some instances there was a report for instance in the Department of Agriculture by the Auditor General who could not get into the – the finances of these implementing agents because they are private companies and the
- 20 Auditor General cannot audit those private companies. So the Department will take their resources every – but whatever that is meant for projects, capital projects and they will take them to the implementing agent and the implementing agent would not necessarily follow processes, procurement processes or supply chain processes. Then they will appoint – so it is actually as you say it is a scheme in

the province that syphon and takes money without accounting but you can justify that I gave the Department of Agriculture. The Department of Agriculture gave about three implementing agents and I think it would be the cost for three years almost more than R3 billion. And in terms of accounting the same person who was here could not do that because they were saying we gave the responsibility to the implementing agent and the Auditor General found it very difficult to audit and raised this matter. But it is still continuing. This is a problem.

- 10 **CHAIRPERSON**: Yes but I do not – I do not understand because the Auditor General would be entitled to say you as the Department owe an explanation as to how this amount that you gave to somebody else was spent. You cannot just give money and then wash your hands off it. This is tax payers' money. Where is the need to give the money to somebody else to do what your own department is supposed to do? Because I would imagine that if you are a Department of Agriculture for example or of housing you need to identify skills that the Department must have and skills that it must have in sufficient numbers in order to implement its progress. And therefore generally speaking you should
- 20 be able to have people who will implement your programs as a department who would have the right skills. It may be that in certain circumstances and maybe they should be really very rare where you might have to go outside but generally one would expect that you have people with skills to carry out your programs. And therefore it becomes difficult to understand why is there a need for you to give a service

provider to implement your own programs? But also certainly now to – to say now you wash your hands off how that money has been used seems to be something else. But your impression – is your impression that it might be used this concept of an implementing agent might be used to bypass or circumvent or avoid complying with procurement procedures as well?

MR MXOLISI DUKWANA: Chairperson when I started I indicated that a system is built in the province and because there are no consequences once the Auditor General can make the findings that is why if you check
10 you will find that the Province is actually not performing very well and this also is extended to local government.

CHAIRPERSON: Yes but is it your impression that is what I want to know?

MR MXOLISI DUKWANA: My impression is it is meant only to circumvent the supply chain processes.

CHAIRPERSON: Supply chain – yes okay.

MR MXOLISI DUKWANA: There is no other explanation. But as I was saying also in the local government they – they would have deviations which were meant – which are meant only for emergencies but people
20 will have deviations just to avoid going through the process for something that is not even urgent.

CHAIRPERSON: As far as you know from your experience in government you do not know of any prescripts that particularly allow this thing of implementing agents?

MR MXOLISI DUKWANA: No the time that we were there it was not a

common occurrence.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: So I would not know.

CHAIRPERSON: Okay.

MR MXOLISI DUKWANA: But I think it would be there.

CHAIRPERSON: Ja.

MR MXOLISI DUKWANA: Not at the scale that is ...

CHAIRPERSON: At which it is happening now.

MR MXOLISI DUKWANA: Happening in the Free State.

10 **CHAIRPERSON**: Okay thank you.

ADV PHILLIP MOKOENA SC: You are referencing two companies in your statements. The one called Unitel Holdings and Mafure who are also the beneficiaries according to you to the Housing Heist. Are you able to tell us as to who are the individuals that might have been associated with these companies?

MR MXOLISI DUKWANA: Mafure if I – let me read this? It will be better that way to make sure that we keep to the time that we have.

“There was also a company called Mafure with links to Ms Thoko Alice Malembe the daughter of Mr Magashule. There was also a company
20 called Unitel Holdings Limited with its principle place of business in Wynberg in Johannesburg. Mr Lian Ling Lee – Mr Lee and Ms Malembe are directors of this company. For ease of reference annexed the DM – 2DM18 a copy of the NHBRC form providing the directorship both Mafure and Unitel Holdings benefitted from the Housing Heist in the Free State.

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA: Especially with regard to the Vogelfontein one.

ADV PHILLIP MOKOENA SC: Can you share with the Chair as to how would these entities or individuals have benefitted from this Housing Heist?

MR MXOLISI DUKWANA: The – the issue is these matters will not be – they will not go for competitive bidding and – and the – it will then happen as you will see also in the – in Vogelfontein and in other areas
10 that the – as you check number 80 where the modus operandi of the Housing Heist was simple in the Free State. The Free State Develop – Department of Housing would award a housing contract to build a certain number of units. Not one unit is built and the Free State government – will – do not follow up to ensure that monies from the public purse are accounted for in compliance with the PFMA. In some instances houses would be built and not completed and would be handed over to a new contractor to complete.

ADV PHILLIP MOKOENA SC: And yet

CHAIRPERSON: You do not indicate in regard to this topic the years
20 when this happened. Which years are we talking about here?

MR MXOLISI DUKWANA: The – I think we – I am not sure exactly with the years at the moment Chairperson but the – I think it was early – early 2011/2012 somewhere there.

CHAIRPERSON: Yes but at that time Mr Mokhesi was he Head of the Human Settlement Department already?

MR MXOLISI DUKWANA: When it started the Vogelfontein I think it started way back but he would have presided over it as it continues. You see like the houses in Vrede started 2013/2014.

CHAIRPERSON: Would you have – would you remember around about which year he might have become HOD of that Department Mr Mohkesi or you would not?

MR MXOLISI DUKWANA: I do not know. I do not know really.

CHAIRPERSON: Okay alright. Well I am just thinking about what you say in paragraph 77 namely that Mr Mohkesi the very same HOD of the
10 AFSDHS was a board member of the FDC but we know that at some stage it was somebody else?

MR MXOLISI DUKWANA: No I am talking about the time.

CHAIRPERSON: So in 2010.

MR MXOLISI DUKWANA: The time when this matter was referred when the FDC was appointed he was an HOD.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: But you do not remember when that was?

MR MXOLISI DUKWANA: I think because the – it would be 2015/2015.

20 **CHAIRPERSON:** Oh okay.

MR MXOLISI DUKWANA: But somewhere there 2016/2017.

CHAIRPERSON: Okay much later than 2010?

MR MXOLISI DUKWANA: Yes, yes.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: You were still explaining to the Chair

with reference to your paragraph 81 as to how would these entities benefit from the scheme.

MR MXOLISI DUKWANA: The number 81 I say:

“Alternatively the Department would appoint an implementing agent advance millions to the implementing agent and the latter would appoint service providers to build houses. In many instances the directors of the companies rendering services in this regard who will persons politically associated
10 with the Mr Magashule.”

The danger that you see in many of these it is like myself Chairperson. I would register a company, no skills whatsoever in terms of housing and then I would – I will be awarded with the tender to build let us say 1000 houses or 500 houses. Normally what these people would do they will then appoint a sub-contractor and in some instances you would just determine the amount if for instance I say all I need is R10 000 per unit without lifting a shovel [indistinct] and then the rest it is for you to complete and do – and make sure that you build these houses. So I get the tender. I am the person who applied. I get the tender but the
20 tender – I get the money. The money that I will get is just R10 000 per unit if you have it and then multiply by 1000 if those are the houses that I get that will be the money that will come to me and I would not have incurred any cost in terms of that then you would then appoint contractors. People who know the job and they will be contractors and then they will complete and do the job. In some instances because the

money that they have it is not enough to do this and also profit. Here you tempting them to actually do some things that are not correct.

CHAIRPERSON: Some shoddy work.

MR MXOLISI DUKWANA: I beg yours?

CHAIRPERSON: To do some shoddy work?

MR MXOLISI DUKWANA: Yes they would – because you want also to live. So that is what you would have in this. And – so I am just saying this needs – this matter needs to be followed up thoroughly to get the role of the implementing agents and also people who are getting these
10 tenders and check who then becomes the sub-contractor? And what is it that the person – yes the contractor did in the – in working in the project. You would find it does not happen. I mean you may have a company building a road and then sub-contracting some companies to do something but in this case in the housing some people – I just get the money and I stay and then you continue with whatever you have. And also because the company – the contract is written in my name and then I am the one who is buying the material I would then get something from that. So would claim VAT for that. So this is the thing that is happening in the province and I do not know whether it is
20 prevalent in other provinces. You have got qualified people, companies that are ready to do the building but in some cases they will not even bother because they know they will not get the work. And then you give people – I mean there are so many people you would see that they call themselves a business people but a person would not even have a truck etcetera. They would be driving in these beautiful cars but they are in

the construction business without any trucks to do the work. So I am just saying in short this is what these things are all about.

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA: Yes.

ADV PHILLIP MOKOENA SC: And then the company that is called Major Bricks would it also be one of the beneficiaries to this scheme?

MR MXOLISI DUKWANA: Yes.

ADV PHILLIP MOKOENA SC: Can you tell us about it?

MR MXOLISI DUKWANA: The – this is also the company that
10 benefitted in houses in Bethlehem and also in houses in areas in
Virginia [indistinct] and Bothaville and you can go and check some of
the shoddy work in those areas and poor people are made to sign
happy letters Chairperson. You eager – you staying in a shack and
then the house you know they are roofing etcetera and then it is not
completed and many other things are still outstanding but the
contractor will come and say for me to have this sign a happy letter.
And you can go and be security in this house. We will finish some of
the work while you there so that people do not cause problems with
your house. So poor some would then sign this not knowing that they
20 are signing happy letters. Happy letters would be that the house is
finished and everything is there and you are happy. And in some
instances for instance in [indistinct] and Bothaville people who were
tasked in terms going out and checking these they are finding it very
difficult to get this Mr Lee to repair some of the things and in some
cases he has made some remarks that I would not repeat here

Chairperson to those people who were tasked with this to make sure that they go and check these buildings.

ADV PHILLIP MOKOENA SC: Yes. Now you – and who was the owner of Major Bricks?

MR MXOLISI DUKWANA: Mr Jackie Gow[?].

ADV PHILLIP MOKOENA SC: Okay.

MR MXOLISI DUKWANA: At the time when it was still next to Hennaman.

ADV PHILLIP MOKOENA SC: You conclude that topic with reference to
10 page 25 paragraph 84 to 86. If you may take us through those paragraphs?

MR MXOLISI DUKWANA: Chairperson it needs to be emphasised that the implementing agency scheme in the Free State was operating in various departments and municipalities. Central to it I was to transfer monies outside government department to an entity that would perpetually execute a project. Once the funds have been placed with an implementing agent the latter appoints without a due process service providers and that is the beginning of the distribution of sharing ill-gotten tax payers' money. The feast commences and the indigence
20 bear the brunt of those whose time it is to eat. But the caveat was that looting of the public purse at a scaling explicable has to be carried out to advance corrupt interest of our leaders such as Mr Magashule, Mr Zwane and others. And Mr Lee has close links with Mr Magashule it is a known fact. I cannot rule out the possibility that Mr Lee and Ms Malembe's business ventures were facilitated and blessed by Mr

Magashule especially going to Vogelfontein that if we were to invite the Mayor the then Mayor in the area in Bethlehem to come and deal with this and collaborate what I am saying Chairperson. I invite the commission to investigate.

CHAIRPERSON: What is the name of the Mayor?

MR MXOLISI DUKWANA: Tjhetane Mofokeng. It is Mr Mofokeng.

CHAIRPERSON: Mr Mofokeng?

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: And - and the name?

10 **ADV PHILLIP MOKOENA SC**: Tjhetane.

CHAIRPERSON: Okay, thank you. Yes continue.

MR MXOLISI DUKWANA: "I invite the Commission to investigate their business relationship and the circumstances that led to Government resorting to implementing agency scheme for services delivery purposes."

And this has to do with the departments that I have mentioned. In some instances Chairperson you had people who were directors in some departments in some regions who would not do
20 anything. They - because the work that they were supposed to be doing is now being carried by the implementing agents and some of these directors were coming to the office to sign leave forms and others.

So that - that is the - the frustrating impact of all this. The implementing agents (intervenes).

CHAIRPERSON: So effectively with this - with the use of implementing agencies you could have a situation where personnel within the department who are supposed to do that job are not doing that job but that job is being done by an implementing agent and the department is basically paying two sources for the same job.

Paying the officials that it employed to do this kind of job and paying the implementing - implementing agent?

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: Ja, okay.

- 10 **ADV PHILLIP MOKOENA SC:** Mr Chair before moving to a new topic my learned colleague Mr Manyi has quite important information which is almost in line with the evidence that was given by Mr Dukwana pertaining to the application ...

CHAIRPERSON: Oh yes.

ADV PHILLIP MOKOENA SC: Which you were asking yourself questions as to what could have happened with it.

CHAIRPERSON: Oh yes.

ADV PHILLIP MOKOENA SC: Maybe I should allow him ...

CHAIRPERSON: Allow him to, yes.

- 20 **ADV PHILLIP MOKOENA SC:** To just place it on record. It is quite important and ...

CHAIRPERSON: Yes, thank you.

ADV PHILLIP MOKOENA SC: In all fairness as well.

CHAIRPERSON: Thank you.

MR MZWANELE MANYI: Thank you Chair.

CHAIRPERSON: Yes.

MR MZWANELE MANYI: Chair it has since transpired that indeed the question that the Commission was puzzled with as to whether - what happened to the application that was brought to the High Court in Free State by the MEC Nthimotse Mokhesi. That matter has been finalised. The order is indeed as follows Chair: that the agreements and the decisions pertaining thereto are reviewed and set aside and bar for the second and 44th and 65th respondents in that application that actually wanted to proceed and challenge the issues on the merits in the court
10 but for the other 103 - 102 applicants indeed the order was given and the ...

CHAIRPERSON: They did not oppose?

MR MZWANELE MANYI: They did not oppose.

CHAIRPERSON: Hm.

MR MZWANELE MANYI: The date of the order is 26 August 2019. It is (intervenes).

CHAIRPERSON: Oh. It is Monday this week?

MR MZWANELE MANYI: Indeed so.

CHAIRPERSON: Oh, okay. Do you know whether it is just an order or
20 there is a full judgment?

MR MZWANELE MANYI: Chair I am not certain.

CHAIRPERSON: You are not sure.

MR MZWANELE MANYI: This just came now ...

CHAIRPERSON: Oh, okay.

MR MZWANELE MANYI: To me as - as I have indicated earlier on.

This would have been part of the ...

CHAIRPERSON: Yes.

MR MZWANELE MANYI: Response if indeed Mr Mokhesi ...

CHAIRPERSON: Yes.

MR MZWANELE MANYI: Had received a notice that he alluded to earlier on.

CHAIRPERSON: No thank you very much. That is useful information. Thank you.

MR MZWANELE MANYI: Thank you Chair.

10 **ADV PHILLIP MOKOENA SC:** It would be also interesting to lay our hands to the judgment Chair to see ...

CHAIRPERSON: Yes, yes and - and all the papers.

ADV PHILLIP MOKOENA SC: All the papers Chair.

CHAIRPERSON: Ja. Okay.

ADV PHILLIP MOKOENA SC: Now the next topic Mr Dukwana is Blacky Seoe not Sue as some of the people refer to him. Now can you tell us about his relevance to the issues that are to be determined by this Commission and what you wish to highlight in relation to him.

MR MXOLISI DUKWANA: The - so when I was the MEC for Economic
20 Development. Mr Blacky Seoe was the Chairperson of the FDC.

CHAIRPERSON: Just raise your voice a little bit again.

MR MXOLISI DUKWANA: I am saying ...

CHAIRPERSON: Bring ...

MR MXOLISI DUKWANA: At the time when I was MEC at least up until 2012 Mr Seoe was - Blacky Seoe was the Chairperson of the Board and

it transpired that the - at the later stage what actually happened the FDC decided as I said earlier to dispose of the - some of the properties that they had. It - it had ownership of filling stations. It had buildings.

It had also a number of student accommodation etcetera and those as I said were source of revenue for FDC. I do not have the - the benefit of the reasons and the - the logic behind the FDC deciding this matter. Probably the MECs that came after me would know why this matter that happened the way it happened and in - in the same vein Chairperson that some of these people then benefitted and some of
10 these people that benefitted in the whole scheme of things are also in some boards.

They are either Chairperson or members of the boards in the Free State and the close knit group of people around Mr Magashule. In this case he would have Mr Blacky Seoe who would have benefitted a lot in terms of the properties etcetera and we would know at some stage up until 2008 that Mr Blacky Seoe and Mr Magashule were part of the - were directors of a company called Sambal and - and at the time Chairperson when Mr Magashule was MEC for Sports Mr Blacky Seoe benefitted a lot in terms of promotion and using the Rob's Promotion as
20 the company and became the highest paying if you like or among the highest paying promoters in boxing at the time but interestingly to note immediately Mr Magashule moved to the other department and Mr Khotso Sesiwe (?) came in, in the department.

The - Rob's Promotion just disappeared and then that would tell you the whole story and in this case Mr Glen Netshivhodza also

being part of the times the Tourism Board etcetera a very close friend or very, very close person to Mr Magashule. I know this for a fact Chairperson because I know Mr Glen Netshivhodza quite well and - and also Mr Magashule and their relationship coming back - far back from Parys etcetera and you will see the benefit in some of this and the - in fact there was student accommodation that were getting - were putting some income into this and at some stage these were given or supposedly purchased by Mr Netshivhodza and - and as such the FDC would not have enjoyed the benefits of the - using these you know

10 monthly.

The income that it will come back into the coffers of the FDC. So I am just stating the fact that sometimes these things look innocent but the - these some of the things that need to be investigated thoroughly to understand why exactly this has happened and the - especially when you look into the Rob's Investment portfolio. It will be interesting Chairperson to note you know that from April 2018 to March 2019 Rob's Investment Property had buildings like civilian building, housing social development.

What the company benefitted through rentals from that period

20 20 - April 2018 to March 2019. It is almost 10 485 298 and the sitting - social development it is 4 865 000 and you also have sitting economic development is there - the first floor - 379 000. Silodal Education is there 6 540 000 and Alan Building Corporative Governance 13 359 000 and then you have got Sambal Investment where Mr Blacky Seoe is also the owner.

You have Warden Building housing sports arts - six million, business partners' sports arts - six million - 6.5. Syfrets Building/Old Sanlam Building and all these from that period to this you are talking about almost 64 million.

ADV PHILLIP MOKOENA SC: Who - who would be the tenants of those buildings?

MR MXOLISI DUKWANA: I - I said I was mentioning social - social development and arts...

ADV PHILLIP MOKOENA SC: It would be Government - Government
10 departments?

MR MXOLISI DUKWANA: Yes. Government departments.

CHAIRPERSON: But - what - what page were you reading from.

ADV PHILLIP MOKOENA SC: We - we do not have - we do not have the benefit of that information Mr ...

CHAIRPERSON: Yes. I am trying to

MR MXOLISI DUKWANA: No.

CHAIRPERSON: To look for these figures.

MR MXOLISI DUKWANA: I must - I must indicate - just to indicate
Chairperson I think it - there was some miscommunication because
20 even with my attorneys when we - when I met with the investigators of the - of - of the Commission I - I gave them this information. I - you know ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: And unfortunately every time I was looking for it I thought - because they said they had given the information to my

attorneys ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: And - and this also led to this kind of a situation.

CHAIRPERSON: Not being included?

MR MXOLISI DUKWANA: Not being included.

CHAIRPERSON: Oh.

MR MXOLISI DUKWANA: And we preparing this ...

CHAIRPERSON: Yes.

10 **MR MXOLISI DUKWANA:** But I am just stating that ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: I think if the Chairperson allows ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: We can ask my - my legal team to also prepare ...

CHAIRPERSON: A supplementary ...

MR MXOLISI DUKWANA: A supplementary ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: You know - affidavit.

20 **CHAIRPERSON:** Yes.

MR MXOLISI DUKWANA: That would have all these details written down and everything.

CHAIRPERSON: Ja that would - that would be ...

MR MXOLISI DUKWANA: And if that is - is allowed Chairperson ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: It would mean that we can leave this matter and I can provide a detailed ...

CHAIRPERSON: A supplementary, *ja*.

MR MXOLISI DUKWANA: A very, very to the details as well as the implementing agents and how much ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: These implementing agents found ...

ADV PHILLIP MOKOENA SC: Yes.

MR MXOLISI DUKWANA: Received from Government. So if
10 Chairperson allows that. That is what I will suggest we do.

CHAIRPERSON: It may be very useful and important information. The only thing is that if they do not know what it is there might be a problem but they - if they know what it is they might be able to say even if you talk to it now. It is fine. I would rely on them but if they do not know what information is they will - it will be better that a supplementary affidavit be done later.

ADV PHILLIP MOKOENA SC: It will be better Chair because remember that when we - when we commenced with our opening ...

CHAIRPERSON: Yes.

20 **ADV PHILLIP MOKOENA SC:** We referred to quite a number of documents.

CHAIRPERSON: Notices.

ADV PHILLIP MOKOENA SC: Notices ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: And also affidavits and I believe that ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Mr Seoe is one of the people that reacted to also Mr Dukwana's statement ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: And those things have to be put to Mr Dukwana for him also to deal with them accordingly.

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: In all fairness so that we do not leave out any ...

10 **CHAIRPERSON:** Hm.

ADV PHILLIP MOKOENA SC: Affidavit of any witness and that he must (intervenes).

CHAIRPERSON: It is better to deal with it ...

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: In a supplementary statement.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay.

20 **MR MXOLISI DUKWANA:** I would agree Chairperson with that and also because I was very reluctant in - in terms of also providing some information because it involves also some institutions ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: In terms of what has happened ...

CHAIRPERSON: Yes, okay.

MR MXOLISI DUKWANA: But safe to say in some instances Chairperson that what would be demonstrated will be company A the

same company. Company A would have this and then the holding company. You buy a building say for 29 million. You sell it to your own company for eight - 89 million. You approach the - the bank and then you bond the property for 200 million.

So I am just saying these are some of the things that I think not referring to any particular person here.

CHAIRPERSON: *Ja.*

MR MXOLISI DUKWANA: I am saying one thing that ...

CHAIRPERSON: A practice?

10 **MR MXOLISI DUKWANA:** I would have provided in terms of the information that we have ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: And that is why I am saying for all these people in fairness to many of these people ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: If I can be allowed to ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: Put in a supplementary affidavit ...

CHAIRPERSON: Yes.

20 **MR MXOLISI DUKWANA:** That will also be fair to some of the people that are ...

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: Are mentioned here.

CHAIRPERSON: No that is fine. That is the arrangement.

ADV PHILLIP MOKOENA SC: Yes. From para - yes.

CHAIRPERSON: I - I think it looks like we - we all agree that that is the better route to follow.

ADV SMANGA SITHINI: Yes Chair. It - it is and I did intimate to Mr Mokoena that we have obtained ...

CHAIRPERSON: Further information.

ADV SMANGA SITHINI: Further information ...

CHAIRPERSON: Yes.

ADV SMANGA SITHINI: Part of it I think Mr Dukwana deals with in his supplementary statement ...

10 **CHAIRPERSON:** Yes.

ADV SMANGA SITHINI: And I think it would be - we have already contacted the investigation team ...

CHAIRPERSON: Yes.

ADV SMANGA SITHINI: To - to get information from us ...

CHAIRPERSON: Okay.

ADV SMANGA SITHINI: And I think by way of a supplementary statement it was (intervenes).

CHAIRPERSON: It should be fine.

ADV SMANGA SITHINI: But it is quite voluminous ...

20 **CHAIRPERSON:** Yes, okay.

ADV SMANGA SITHINI: Of the implementing agents.

CHAIRPERSON: Okay.

ADV SMANGA SITHINI: It is as recent as last June.

CHAIRPERSON: Okay.

ADV SMANGA SITHINI: It is as recent as June ...

CHAIRPERSON: As June.

ADV SMANGA SITHINI: Chairperson ...

CHAIRPERSON: Yes.

ADV SMANGA SITHINI: And Mr Dukwana will deal with some of the aspects as we go on.

CHAIRPERSON: Ja.

ADV SMANGA SITHINI: Yes.

CHAIRPERSON: Okay. No that is fine. Thank you.

MR MZWANELE MANYI: Sorry Chair on that note the - and I am sorry
10 to interject Chair. The version has been - a different version has been provided in the statement of Mr Seoe.

CHAIRPERSON: Yes.

MR MZWANELE MANYI: Referencing certain paragraphs ...

CHAIRPERSON: Hm.

MR MZWANELE MANYI: That he was referred to, to respond to.

CHAIRPERSON: Yes.

MR MZWANELE MANYI: That Mr Dukwana indeed has alluded to. So
...

CHAIRPERSON: Yes.

20 **MR MZWANELE MANYI:** It would only be fair ...

CHAIRPERSON: Yes.

MR MZWANELE MANYI: If indeed that version was placed before Mr Dukwana ...

CHAIRPERSON: Yes.

MR MZWANELE MANYI: And it will address some of the confusion that

is now emanating ...

CHAIRPERSON: Yes.

MR MZWANELE MANYI: From the evidence that he is now giving.

Thank you Chair.

CHAIRPERSON: Yes. I am sure Mr ...

ADV PHILLIP MOKOENA SC: Chair we are aware about that.

CHAIRPERSON: *Ja.*

ADV PHILLIP MOKOENA SC: The only problem that we operate within the rules ...

10 **CHAIRPERSON:** Hm.

ADV PHILLIP MOKOENA SC: And those documents that were received were as a very - were received this week some of them.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: Others last week Friday ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: And with all fairness to Mr Dukwana or anyone else one could not even have dealt with them.

CHAIRPERSON: There has not been enough time.

ADV PHILLIP MOKOENA SC: Definitely Chair.

20 **CHAIRPERSON:** Yes.

ADV PHILLIP MOKOENA SC: If we were provided with this information within the time prescribed one would understand ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: What is being conveyed to you now ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: But in all fairness all that we said we said we will compile all the documents relevant. We will make them available to Mr Dukwana and he will react according to them.

CHAIRPERSON: And - and he can - he can if necessary file an affidavit that responds to ...

ADV PHILLIP MOKOENA SC: Definitely.

CHAIRPERSON: To that and then if - if there is a need he can come back to deal with all of those issues.

ADV PHILLIP MOKOENA SC: And not only that. It will also be fair and
10 interesting ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: To have those that are submitting letters and affidavits ...

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: To avail themselves to the Commission.

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: Let them come and sit like Mr Dukwana. Let them be confronted with the issues arising from there.

CHAIRPERSON: Ja.

20 **ADV PHILLIP MOKOENA SC:** That will also give common sense and meaning to this paramount concept of fairness.

CHAIRPERSON: Yes.

UNKNOWN PERSON: Chair ...

CHAIRPERSON: No that is - that is fine.

UNKNOWN PERSON: Chair ...

CHAIRPERSON: Yes.

UNKNOWN PERSON: The - the notices were received as we indicated yesterday that were received only on the 17th of August and they were responded to.

CHAIRPERSON: Yes.

UNKNOWN PERSON: And there indeed also tabulate as to what options are available to the receiving party of that notice.

CHAIRPERSON: Yes.

UNKNOWN PERSON: If indeed one decides to respond to that in a
10 form of a statement ...

CHAIRPERSON: Yes.

UNKNOWN PERSON: It is also very acceptable because it is an option that is availed ...

CHAIRPERSON: Yes.

UNKNOWN PERSON: To their response. So

CHAIRPERSON: I - I ...

UNKNOWN PERSON: (Intervenes) what Mr Mokoena saying ...

CHAIRPERSON: Yes.

UNKNOWN PERSON: As far as availing themselves and being
20 subjected to cross-examination or whatever.

CHAIRPERSON: Yes.

UNKNOWN PERSON: They have exercised (intervenes).

CHAIRPERSON: Ja. I think - I think the bottom line is that what Mr Mokoena is saying is those statements have been received. There may be something about when they were received but he is saying

there has not been enough time for - for them to be given to Mr Dukwana to consider them but also part of what the legal team and the investigators are supposed to do after receiving such responses is to see whether there is anything to investigate in relation to the contents of those statements and - and when that has been done then they come back to the legal team to say okay this is what we find about what is said here.

Maybe this is true or this is not true. This we are not sure about. So when it is put to the witness it - it ensures that there is
10 fairness. I think what - what he is simply saying is yes and opportunity will be created but it might not be the right time now because there has not been enough time for Mr Dukwana to consider them.

UNKNOWN PERSON: Accepted Chair.

CHAIRPERSON: *Ja.*

UNKNOWN PERSON: But the time the horse has already bolted and ...

CHAIRPERSON: Well no, no, nobody can - nobody can - can say that your client's version would have been put to Mr Dukwana as of today if it is not put but I think that most of the time what we have heard since
20 last year is that the versions have come later than the time when the witness has given evidence because even those who apply for leave to cross-examine usually they - they come late and so on.

I think as long as the public understands that there is another version that - that maybe coming or that is - that will be put to him.

UNKNOWN PERSON: Thank you Chair.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Chair also to clarify one or two things.

Mr Blacky Seoe was served with a Rule 3.3 (intervenes).

CHAIRPERSON: Your voice has gone down again.

ADV PHILLIP MOKOENA SC: He was - he was served with a 3.3 Notice on 1 August.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: 26 days before today's hearing.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: He was consulted with ...

10 **CHAIRPERSON:** Hm.

ADV PHILLIP MOKOENA SC: By the investigators on three occasions ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: And I think we should place those on record ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: And the statement that we are receiving now is - we will leave it there.

CHAIRPERSON: Ja. Let us leave it on the basis that I have indicated.

20 **ADV PHILLIP MOKOENA SC:** Yes.

CHAIRPERSON: Let us leave it on that basis.

ADV PHILLIP MOKOENA SC: But there are facts to deal with these things.

CHAIRPERSON: Yes. We are at 5 o'clock. Let us ...

ADV PHILLIP MOKOENA SC: Move on Chair.

CHAIRPERSON: Let us try and - and finish because I think we ...

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: We are close to finishing.

ADV PHILLIP MOKOENA SC: We are.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: From page 27 paragraph 92 you are then dealing with a person who is a former - who is the former employee of the Free State Legislature. Can you give us the name and give us the context upon which we have to understand your evidence?

10 **CHAIRPERSON:** I am sorry. You said from page?

ADV PHILLIP MOKOENA SC: Page 27 paragraph 92 Mr Chair.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: To paragraph 95.

MR MXOLISI DUKWANA: I - I thought Chairperson ...

CHAIRPERSON: Hm.

MR MXOLISI DUKWANA: This will also include in terms of what we have agreed on ...

ADV PHILLIP MOKOENA SC: Yes.

20 **MR MXOLISI DUKWANA:** Because it falls into the element of the properties. So that we give all the details.

CHAIRPERSON: Yes, oh.

MR MXOLISI DUKWANA: So I will suggest that this - this should be ...

CHAIRPERSON: You deal with it later?

ADV PHILLIP MOKOENA SC: We will deal at some point.

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: Okay. That is fine.

ADV PHILLIP MOKOENA SC: Alright. We can now move to the concept that might be known to many. Starting from page 28 at your paragraph G and it is Operation Hlasela and you can tell the Chair about it and its relevance to your testimony.

MR MXOLISI DUKWANA: Chairperson sometime in 2009 after the elections the Premier of - the newly elected Premier Mr Magashule ordered all members of the Executive Committee that were newly appointed as members of the Executive Committee to attend a service
10 that was held in Bloemfontein by a church called (indistinct). An Apostolic Church and during that there was a big banner - that was 2009.

There was a big banner that was written Operation Hlasela one million members by December 2009 and after the - the service when ...

CHAIRPERSON: And you were an MEC at the time?

MR MXOLISI DUKWANA: Yes. We were ...

CHAIRPERSON: You attended.

MR MXOLISI DUKWANA: We were newly appointed MECs ...

20 **CHAIRPERSON:** Hm.

MR MXOLISI DUKWANA: In 2009 and then the - I am just scratching the origin of this thing - and Mr Magashule noticed that and when it was time - when he was given an opportunity to address the congregates he then asked permission from the head of the church to use the operation Hlasela.

CHAIRPERSON: The name or - that phrase?

MR MXOLISI DUKWANA: Yes.

CHAIRPERSON: Ja.

MR MXOLISI DUKWANA: Yes and it was granted and then because he was saying this Government who use to - to - Hlasela is to attack.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: So it would be used to attack poverty, crime everything ...

CHAIRPERSON: Huh-uh.

- 10 **MR MXOLISI DUKWANA:** And then when we came back there was this Operation Hlasela. It was all over. When we started we would - departments would be asked that - if it goes to Welkom for instance departments asked to indicate what is it that they would contribute in terms of development in the area and so departments will - will then do that.

- That as - as when he started earlier and what was very interesting in that was the fact that the Premier of the Free State - the then Premier of the Free State would be having this mic and some people would come and then a person would say I am so and so. I
20 have a degree in sports management and all this and the person would then be there and there you would be told you are - you are appointed.

Come - go to this department and then they would deal with the matter or some people would then write the details - who - everything. So it created the whole excitement that you got a person who moves - who is moving, who is implementing but it was made

difficult for officials because at the time all of you as MECs, officials, senior officials you must be there and when this thing happens.

So it created quite a problem and at the time then the ANC then wanted to deal with the matter so that you give it content and the Secretary at the time was Comrade Besani - Sibongile Besani. We - we tried to - to bring - to bring some content into that and - and make sure that it is about coordination of Government work and make sure that you destroy these laws and make sure that Government works as Government not department going there but little did we know that it
10 was not this noble idea.

It is actually to centralise everything in this office. For instance I will make an example in the department that I - you know - I headed. It will be as we - one understood that as an MEC you are actually playing your role of advising the Premier. It is your responsibility to protect the Premier and make sure whatever comes to the perennial head of Government at the time is processed properly and this is what we thought we would do and do that but it was difficult because Mr Magashule the Premier then would meet with the officials without us knowing.

20 We would be there with - some would not even be the HODs in the department. It would be people who are - you know - appointed to deal with Hlasela Projects. In the case - in my case for instance when the project was going to Hlasela was visiting - they have about five towns and the - the late Dr Mathebula then came to me to say he was from a meeting and the meeting wanted - in the meeting they were

told by the Premier that they must contribute and the department was supposed to contribute 50 000 per town for - for car washes and when they came to me demanding that I advised them that I will speak to the Premier.

I did that exactly to say we cannot do this in this particular way. He created some problems but what I am trying to say is this is what you would find that Hlasela ended up not being what the concept that you see there that I have indicated that - that it - it will - it was meant to facilitate good governance, effective leadership, effective
 10 service delivery, coordination of activities, to make sure that services are delivered.

Instead it ended up ensuring total control of public procurement by the - by the Premier. It became clear that the Premier wanted to know exactly what each department was doing and make sure that you know - so - and you are able to direct everything and make sure that you are in control and - and it - it goes as I am saying this Operation Hlasela.

In some instances it affected Local Government. We ended up treating Local Government as we are a big brother as the province and at any
 20 given time a meeting will be called and then all CFOs or all Municipal Managers and Mayors are called. So you leave whatever. You come over. It was not something that will be properly planned. Respecting this other sphere of Government and what the Constitution stipulated that you need to - it has a role to play and also you do not need to be encroaching into the space of the other sphere of Government but from

time to time provincial government needed to help the municipalities in terms of dealing with their work and you needed also to have that inter relationship between National, Provincial and Local Government but as I am saying Hlasela destroyed all that.

ADV PHILLIP MOKOENA SC: Now tell me in terms of the appointments that you alluded to that you will be required or instructed to make will there be any processes that are followed, were there any vacancies for those positions?

MR MXOLISI DUKWANA: You know I remember when we had a
10 meeting in Welkom of the unemployed graduates, the hall was filled, the hall was full, and everyone would raise whatever they have everything and all that and people will be promised you must go there, you must go there, you must go there. In one occasion Chairperson I was confronted by people who were appointed at Operation Hlasela meeting, who came to the department and they were saying they are sent, they must start today and at the time there were no advertisement, there was on vacancy and all I did was to say I did not appoint you, did you see me, the department having an advertisement, no, but now how do you come, you have never been, you have never
20 gone to an interview.

CHAIRPERSON: You have never applied for a job.

MR MXOLISI DUKWANA: You have never applied ,you have not gone to an interview, but here you come and you want to, you say you were sent and then I sent them to the Premier, I even phoned him to say there are two people who are here and then I am sending them, he said

please attend to them, I said I can't, I don't have any space.

So I am just saying this was a noble idea when it started, but
...(intervention)

CHAIRPERSON: Were they not sent to at least, at these Hlasela meetings was did the Premier maybe not say please go to that department and see whether there's a vacancy and so that you can apply and then – and so on, did he say you are appointed, you are going to start on that and that day?

MR MXOLISI DUKWANA: In some instances Chairperson they would
10 say you, if you say and then you come and say I have this and you say
okay go to department so and so, in some instances okay you may
start, you are appointed, and you could see the excitement in the hall,
people had worked out that yes the Premier is working, you are
appointed in this, you are appointed, in some instances I think it also
became unbearable to him to realise that it is not sustainable to deal
with the matter in that fashion but as I am saying it became very
difficult also to protect the Premier in the sense that when you get into
– he will be the one who introduces his team, he will be the one who is
the project you know as MEC of the whole event, from morning up until
20 we leave it will be him with the mic and engaging people, so it became,
it created a cult if you like, he was then seen as this person who is a
mover, who is doing all these things, but the unfortunate thing you were
putting MEC's in a corner, MEC's in the department would not have
budgeted anything for that particular area, you get into a hall and the
MEC of Public Works sees that hey there's something wrong here, and

when she is asked because we were made to stand up and say this is what I will do and this is what I will do and then a person will stand up and say no I am going to fix this hall, I am going to do this, I am going to do that, and I mean it became a mockery if you like, and this is the problem that we experienced and even if we tried but it was working for him in terms of you know creating that euphoria and people getting excited, it was good for that, but unfortunately it was a nightmare for even administrators in terms of what you need to do, but also causing problems, because we would have a person in a particular space, who

10 has been in the department quite a long time, no promotion, you come in and then you appoint a Deputy Director or something without going through the processes so I am just saying this became a problem, this operation Hlasela instead of helping but for other people out there as it was an excitement, it created excitement.

It created you know in some instances Chairperson in Virginia just to make an example, a painful experience you know happened. There is a mother who is saying with a family etcetera in a shack and across the street it is a two-roomed house and a shack and because it was decided that we are going to destroy the two-roomed houses and

20 then build the better houses for these people and this mother when people were destroying you know the Premier would get into this Gandaganda and get into the house and destroy the house.

CHAIRPERSON: The Premier would drive the tractor?

MR MXOLISI DUKWANA: He will be there Chairperson, demonstrating and then he goes there and destroys this and people are excited. This

mother then said why don't you take my side and build a house there and move me from this mukuku and please and get me this two-roomed at least, but you know you could not, we could not answer these because already the house was done.

So I am just indicating ...(intervention)

CHAIRPERSON: Were the shacks being destroyed before another house is being built or what?

MR MXOLISI DUKWANA: Well you get there Chairperson, you don't have the (indistinct) of a house etcetera, you get there just to
10 demonstrate that you are going to work and then you would be told we will get accommodation somewhere for you. In some instances we had families that stayed longer because these were not forthcoming, but as I am saying it is – it would happen in some areas, in some areas when some of the things worked and things were, people would be happy but in some cases you will find we will leave, there's excitement when we are there, we leave and nothing actually happens, even people who were promised that they will go back and do this and do this it will not be done.

So I am just saying this created a lot of problem for us as
20 MEC's and for administrators but it was a noble idea and planned properly it would have helped the Province.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Yes you are touching also on a topic which the Chair have heard from many witnesses in other streams pertaining to the TNA, and how the media communications,

procurement of these people were sourced, we can deal with that within the context of the Free State and what you know.

MR MXOLISI DUKWANA: If the Chairperson allows ...(intervention)

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: ... there's detailed information with regard to this, I would suggest that would outline everything, I would suggest that from this file we prepare something instead of dealing with it piecemeal.

CHAIRPERSON: Yes, okay, no that's fine.

- 10 **ADV PHILLIP MOKOENA SC:** And the next topic, the Executive Council Meetings, you did allude to it but I think you might want to elaborate on that topic.

CHAIRPERSON: Did you deliberately skip the other topics or he has dealt with them ...(intervention)

ADV PHILLIP MOKOENA SC: No he has dealt with them Chair.

CHAIRPERSON: Oh and the scholarship, okay.

MR MXOLISI DUKWANA: It is Operation Hlasela.

CHAIRPERSON: I think there is somebody who wishes to say something?

- 20 **ADV SMANGA SETHENE:** I think he skipped page (indistinct – microphone off) Commissioner.

ADV PHILLIP MOKOENA SC: No that is still coming.

CHAIRPERSON: Yes okay.

ADV PHILLIP MOKOENA SC: G was Operation Hlasela, H that is where we are Chair.

MR MXOLISI DUKWANA: And that is what I suggested I asked Chairperson that if I can be given the permission to provide detailed information.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: And that's why then I went to I.

ADV PHILLIP MOKOENA SC: Yes, yes.

CHAIRPERSON: We have agreed that Media and Communications will be dealt with later because you want to supply more information.

MR MXOLISI DUKWANA: Yes Chair.

10 **CHAIRPERSON:** Ja, okay.

ADV PHILLIP MOKOENA SC: And that's why Chair we are then on page 30.

MR MXOLISI DUKWANA: Yes sir.

ADV PHILLIP MOKOENA SC: Then that's I?

MR MXOLISI DUKWANA: Yes sir.

ADV PHILLIP MOKOENA SC: Alright.

CHAIRPERSON: Okay.

20 **MR MXOLISI DUKWANA:** Chairperson in times of the Constitution and also what governs the Province as the Executive Council would be your cabinet and people who sit in Executive Council would be people who have taken a oath of confidentiality and all those things.

CHAIRPERSON: Yes.

MR MXOLISI DUKWANA: And that would be the MEC's and the Director General and a person would be appointed as a Secretary of the – of the Executive Council. My experience throughout, I have

served in a number of these with a number of other Premiers, but when it came to 2009 in this case Chairperson you would have just to protect the Executive there were processes that would be put in place, sub-committees of cabinet or of Executive Committee etcetera and making sure you process anything that needs to serve before the Executive Council.

Something very strange started happening, in this case you would have an Exco meeting starting at nine o'clock ...(intervention)

CHAIRPERSON: In the morning?

- 10 **MR MXOLISI DUKWANA:** In the morning, that's every second Wednesday, it starts at nine o'clock and once you are there you will find that you have HOD's, CFO's in the meeting, huge, you know huge church now and you then get people coming in to make presentations. Business people would come in and make presentation and in some instances you would see that there was contact between these people and the Chair and the person who is chairing, in this case the Premier, and they will always come from the Office of the Premier, meaning they would have started there and the Premier would then take them to the Executive Council so what would then happen in those meetings you
- 20 would make a presentation, you listen to presentations Chairperson, I am not exaggerating this, from nine o'clock and in some of these cases ten o'clock up until four o'clock, you listening to presentations, people present and they leave and then the impression created at that time is that the officials who are there and then as the Chair I then say to you, say you come and introduce that you can construct a road using this

particular method etcetera and the question would then come in after interrogation, after presentation if we are to give you something, a space there and you pilot this, would you agree to such a thing, and ultimately the business person will say yes, and now you've the MEC, you've got the HOD, you've got the CFO, they're sitting there and once the person is then, once he agrees and then refer to the HOD, the problem that the person had agreed to do you know a pilot so you are sent to a department to facilitate that, so the HOD would not say no, the MEC's were there, the executive was there, so they would then take

10 the matter and you start doing the work and before you know this company would have been appointed without following processes etcetera and do some work, but what actually also created problems is that after that when you now go down we normally said start, you go to the eighth floor and then when you go to the Executive Council you go to the fourth floor, and then you would be sitting as an executive and you will not take matters that were coming from there, from the presentations that you – you start with the Agenda of the Council and you finish with the Agenda, but you would see things starting to happen and people would do things and you will see my problem with this and I

20 also raised this specifically with the Chair to say we need to avoid and work because there were committees established, so whoever wanted to come and make a presentation must start there, so let's you know you process everything ...(intervention)

CHAIRPERSON: Should start with a sub-committee.

MR MXOLISI DUKWANA: Go to the sub-committee and the sub-

committee will be the one that will come and make a submission and come and make this submission to the Executive. The sub-committee will determine whether this matter needs to be dealt with in a particular way without it serving before the Executive. Without that, without that processing opportunity you are opening the Executive Council to a whole range of things and that was the problem that we experienced, but every time the – you raise the matter the then Premier would say this is – you cannot control me, you know you want to manage me, this is my way of doing things, you better wait for your moment, so at the
 10 end you decide you know ...(intervention)

CHAIRPERSON: Is that wait for your moment to be Premier or what?

MR MXOLISI DUKWANA: Yes, yes, and for now it is being controlled.

CHAIRPERSON: Okay.

MR MXOLISI DUKWANA: So allow me to do as I feel, and this also as way of an example Chairperson, and I think the – what I am saying calling MEC's that were there would also confirm.

CHAIRPERSON: Well I have heard evidence, I think in relation to either it might not be Vrede, I think it may have related to the Aviation Sector I have had evidence which is along those lines, that there would
 20 sometimes be meetings of the Executive Council that would start – or maybe I am getting confused, but I heard evidence along the lines that an Executive Council meeting would start at nine am and would take the whole day if not more and at those Executive Council meetings people outside of the government would come and would attend sometimes, so I am just not sure whether it may have been Free State

or whether it was North-West, but I seem to think it was the Free State.

Yes, okay, alright.

MR MXOLISI DUKWANA: Yes, that was our experience Chairperson and the Executive would go up until very late, dealing with the matters, but what I wanted to as a way of an example how compromised the Executive Council would be, in one instance Chairperson as an example without also mentioning names, there was a project that was suggested, it was dealing with speed boats, and you have an entity called Pakisa Major Sports Events that would deal with such issues but
10 the person who was in the marketing ...(intervention)

CHAIRPERSON: I am look at Mr Mokoena and your counsel ...(intervention)

ADV PHILLIP MOKOENA SC: I was getting worried.

MR MXOLISI DUKWANA: No, no I am not, I am just making an example.

CHAIRPERSON: (laughing) maybe it should be dealt with later if it is going to mention entities names. I think ...(intervention)

MR MXOLISI DUKWANA: No, all I needed to say Chairperson there was a decision that was taken on the matter and without the matter
20 being discussed in the Executive Council. It was skipped for whatever reason and later when the Chairperson was about to close the MEC of Finance indicated that we have an outstanding matter that was not dealt with and the Chairperson just said maybe you were not listening or you were outside and when he said it was not discussed he said according to me this matter was discussed, so the Executive Council,

the decision then stood as the Executive has discussed the matter and it had financial implication that matter, but later on during the meeting of the Budget Committee the same matter that had served before the Executive Council, with a request of a particular amount, two days later the amount was – it was R600 000 but the amount when it went to the Budget Committee was a million, so I am just saying these are some of the ...(intervention)

CHAIRPERSON: The way of doing things.

10 **MR MXOLISI DUKWANA:** The way of doing things without following process and undermining your processes and I think these are the problems that we are sitting with and the Executive Council and how it operated.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Yes. You are dealing with another topic, of the sanitising of forensic reports. Explain how this had happened.

CHAIRPERSON: What part is that?

ADV PHILLIP MOKOENA SC: On page 31 Chair, paragraph J.

CHAIRPERSON: Paragraph J.

20 **MR MXOLISI DUKWANA:** Chairperson I wanted to ...(intervention)

CHAIRPERSON: Sorry, I just want to, page 31?

ADV PHILLIP MOKOENA SC: That is at paragraph J, the topic is starting there Chair.

CHAIRPERSON: The topic there is Executive Council meetings.

ADV PHILLIP MOKOENA SC: No J, page 31, three one Chair.

CHAIRPERSON: Oh you see I don't have page 31, I have got page 13 to 33.

ADV PHILLIP MOKOENA SC: I am not sure how that happened Chair.

CHAIRPERSON: Well maybe deal with it whilst somebody is getting me the page. Continue, yes.

MR MXOLISI DUKWANA: Chair maybe it's for a good cause that you do not have it, in fact through you I want to find out (indistinct)

CHAIRPERSON: If we can deal with it some other time?

MR MXOLISI DUKWANA: Yes, because there is a detailed letter from
10 Mr Fivaz that seems to shed light as to what might have happened.

CHAIRPERSON: Okay, okay, so I guess then let's deal with it another time.

ADV PHILLIP MOKOENA SC: That is fine Chair, that is in order, as long as the legal team of the witness has seen that.

CHAIRPERSON: Okay, okay.

ADV PHILLIP MOKOENA SC: Not only Mr Fivaz but I think Mr Ramathi has also (indistinct) to it.

CHAIRPERSON: Yes okay.

ADV PHILLIP MOKOENA SC: And then let's deal with the one on page
20 31, international scholarship program, anything that you wish to highlight to the Chair?

CHAIRPERSON: Where are we now, are we now coming to the conclusion?

ADV PHILLIP MOKOENA SC: On page 31, no Chair there is one topic before the conclusion, page 31.

CHAIRPERSON: Page 31 oh that is the one I don't have, give it to me.

ADV PHILLIP MOKOENA SC: You will see there is a topic
...(intervention)

CHAIRPERSON: I had seen such a page.

ADV PHILLIP MOKOENA SC: Okay.

CHAIRPERSON: Oh no this is page 32 that looking at, oh it's 31 but 31
has been written, one has been written in a way that – maybe I have
got it, it's just that I am misreading it.

ADV PHILLIP MOKOENA SC: It is that time of the day Chair.

10 **CHAIRPERSON:** No I don't have it, but I think I did see it. Okay,
alright continue, let's try and finish,

UNIDENTIFIED SPEAKER: Chair may I just indicate in the same vein
that the previous topic has been decided to be shifted or be put in
abeyance pending the letters that gives a different version, in the same
breath there has been a version, a detailed version that has been
procured for the evidence leaders and of course Mr Dukwana legal
representative, exactly dealing with this aspect as well, we don't know
whether indeed they have had sight of it or they also want to you know
leave it for later determination, I don't know, but there has been a
20 version that has been given detailed with all annexures.

CHAIRPERSON: I think maybe let's deal with it some ...(intervention)

ADV PHILLIP MOKOENA SC: Is it K Mr Chair?

UNIDENTIFIED SPEAKER: Indeed , by the DG.

CHAIRPERSON: K, international scholarship ...(intervention)

UNIDENTIFIED SPEAKER: Indeed so ja.

MR MXOLISI DUKWANA: Chairperson can I ask something? In dealing with that in that particular matter in that particular way can we also ask that the following things that would instead of rebutting and doing all that, that the following information should be provided to the Commission that would help in fact for instance the policy outlining this scheme, the Bursary, and I think it would help a lot if we get that ...(intervention)

CHAIRPERSON: No, no, that's ...(intervention)

MR MXOLISI DUKWANA: With all the issues that we are raising.

- 10 **CHAIRPERSON:** That's fine, I think what should happen is mention to your legal team the kind of information that you believe would be necessary and they will share that with the Commission's legal team and the Commission would try and get it from the Free State Provincial Government so that then the Commission could have a full picture but let's not bother to itemise what information would be required now, if that can be done ...(intervention)

UNIDENTIFIED SPEAKER: Chair if I may assist the response that has been provided is detailed.

CHAIRPERSON: It might have some of ...(intervention)

- 20 **UNIDENTIFIED SPEAKER:** It has almost everything that Mr Dukwana wants to be canvassed in that report.

CHAIRPERSON: Yes, but whatever else is required you would cooperate to ...(intervention)

UNIDENTIFIED SPEAKER: Indeed so.

CHAIRPERSON: Okay thank you.

ADV PHILLIP MOKOENA SC: It makes our duties simple Chair, then we don't have to deal with the topic on the letter K, and that concludes Mr Dukwana's evidence but I would like for him to deal with this conclusion from page 33, paragraph 117 Mr Dukwana.

CHAIRPERSON: What page?

ADV PHILLIP MOKOENA SC: Page 33 Chair, I hope you are having it, page 33.

CHAIRPERSON: Is that the conclusion?

ADV PHILLIP MOKOENA SC: Yes.

10 **CHAIRPERSON:** Yes, okay, let him deal with the conclusion.

ADV PHILLIP MOKOENA SC: Mr Dukwana.

MR MXOLISI DUKWANA: Chairperson thank you for this opportunity, I believe that as one person who had worked in the Province, stayed there, and also in the leadership, both of the Party and the Government, I am well versed with the affairs of the Province and how the system has concealed corruption and also encouraged it to happen and I would anticipate that it would be difficult for the Commission to get any cooperation from the Free State Government and as well as from the officials who would want to – I am raising this matter that even
20 as late as yesterday some of the people were calling me to say we would like if there was an opportunity for the Commission to hear some of the information that we have *in camera*, we can provide such information, but people would like to give some information to us and because they are afraid of the consequences that might follow, especially with regard to officials.

As I explained the other day that if you – if a person were to come here as an official and say things that are not accepted they would find a way of suspending the person and they would make it very difficult for the person as I say, people believe that because I am in government I have you know an access to resources that is unparalleled and you as an ordinary member you would suffer because you would be using your own resources, so I am just asking that it could also be helpful and – but also I think the Free State situation that involves also the administration at the Local Government level you would know that

10 with the reports that have been released we are performing very bad, and in fact technically I must say Chairperson we – you don't have a government in the Free State and I would suggest you know just putting to the Commission to raise the issue that if this matter, if the Commission has to do some thorough work in terms of helping the process and rebuilding that trust in terms of government you need the President of the Republic needs to act in terms of Section 100 of the Constitution and put the entire province under administration.

It has happened in Limpopo and I do not understand why the Free State as we see, only the Department of Finance it was Health

20 and as well as Education at some stage were put under administration but I am just saying if we are really serious about dealing with this and uprooting them there is a need for the President to think of applying Section 100 of the Constitution and put the entire province under administration. In this way a multi-disciplinary team of untainted and independent professionals with no links to Mr Magashule and his

network be put in charge of the government affairs and render assistance to the Commission.

I can tell you that you will unearth many things that you know many people will be surprised that these things do happen. And the principal aim of the team would be to audit every contract in the government departments, State entities and municipalities in the Free State. Without such assistance or intervention, I'm afraid to say that the Commission will be constrained in its performance of its Constitutional obligation. I have spoken to a number of government
 10 officials in the Free State province and they are eager to provide information or render assistance to the Commission. Their only fear is that there is no independent vehicle through which they could be of assistance to the Commission and this is my humble plea in conclusion, Chairperson.

CHAIRPERSON: No, you very much Mr Dukwana. I have, I have identified a special task team that is dealing with the Free State and reporting directly to me. And in regard to the Free State and both Mr Mokoena and Ms Rangata are part of the test team. They are also investigators. We might have to add more; the investigators are not
 20 many that have to report directly to me about whether there are, how the investigations are going and if there are challenges report directly to me. So, I know that for a number of months you and your legal team have been very helpful to the Commission. Please share with them whatever it is that you have in mind could be done to get more information including the issue of officials who wants to assist the

Commission but who may be scared of certain things. And they'll report back to me and so that we find a way of making sure that we can get as much information as possible. Ja, okay.

MR MXOLISI DUKWANA: I will do that Chairperson.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: That concludes the evidence of Mr Dukwana.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: We have one short witness.

10 **CHAIRPERSON:** Yes.

ADV PHILLIP MOKOENA SC: Ms Mokalobe who will be dealt with by my learned colleague, Ms Rangata.

CHAIRPERSON: Yes, I know that we always had in mind that there would be that witness but I wonder whether. I know it's a very short witness. Maybe he or she will be five minutes and maybe ja.

ADV PHILLIP MOKOENA SC: She is short.

CHAIRPERSON: I think we will excuse Mr Dukwana. You are excused Mr Dukwana.

MR MXOLISI DUKWANA: Thank you, Chair.

20 **CHAIRPERSON:** Maybe we'll take that witness and from what I know the witness will talk about, it shouldn't really be more than five minutes. Okay, Ms Rangata?

MS BAITSENG RANGATA: Good afternoon, Chair.

CHAIRPERSON: Good afternoon.

MS BAITSENG RANGATA: Thank you very much.

CHAIRPERSON: Call the witness.

MS BAITSENG RANGATA: Thank you, Chair.

CHAIRPERSON: Hm.

MS BAITSENG RANGATA: Our next witness is Ms Mokalobe, Mpolokeng Mokalobe.

MS MPOLOKENG MOKALOB: You will have to spell the name and surname. We haven't been doing that with Mr Dukwana. The transcribers will have to talk to.

MS BAITSENG RANGATA: Yes.

10 **CHAIRPERSON**: To you people to make sure that what they will write there is something we can recognize.

MS BAITSENG RANGATA: Yes, Chair.

CHAIRPERSON: Yes.

MS BAITSENG RANGATA: Her name is Mpolokeng M P O L O K E N G. her surname is Mokalobe M O K A L O B E.

CHAIRPERSON: Ja, that's fine.

MS BAITSENG RANGATA: Mpolokeng Mokalobe.

CHAIRPERSON: Thank you. Administer the oath or affirmation.

MS BAITSENG RANGATA: Thank you, Chair.

20 **REGISTRAR**: Please, please state your full name for the record.

MS MPOLOKENG MOKALOB: My name is Mpolokeng Mokalobe.

REGISTRAR: Do you have any objection to taking the prescribed oath?

MS MPOLOKENG MOKALOB: No, I do not have any problem.

REGISTRAR: Do you consider the oath to be binding on your conscious?

MS MPOLOKENG MOKALOBE: Yes, I do.

REGISTRAR: Do you swear that the evidence you will give will be the truth, the whole truth and nothing but the truth? If so, please raise your right hand and say so, help me God.

MS MPOLOKENG MOKALOBE: So, help me God.

CHAIRPERSON: Thank you.

MS BAITSENG RANGATA: Thank you very much, Chair. I know that we've got challenges; it's been a long day. I'm going to try and be to the point. Ms Mokalobe, thank you very much for coming. I know that
10 your evidence is quite limited. I'm going to take you through the, Chair we are going to be taking this witness through a document called with your leave if we can label it. It's marked Exhibit 6, X6.

CHAIRPERSON: The file containing the affidavit.

MS BAITSENG RANGATA: Yes, the affidavit of Ms Mokalobe.

CHAIRPERSON: Of Ms Mpolokeng Mokalobe will be marked Exhibit X6.

MS BAITSENG RANGATA: Yes, Chair.

CHAIRPERSON: Yes.

MS BAITSENG RANGATA: Thank you very much. Ms Mokalobe, you've got the Annexure X6 in front of you. Can we please go to page 1? If you
20 look at the document on your extreme upper right side there are numbers there. It's MM01. I'll just say one when I called the number. So, that's page 1.

MS MPOLOKENG MOKALOBE: Okay.

MS BAITSENG RANGATA: Can you identify that document for us?

MS MPOLOKENG MOKALOBE: It's an affidavit that was undersigned

by Mpolokeng Mokalobe under with the ID 76091306... (intervenes).

MS BAITSENG RANGATA: Is that your details?

MS MPOLOKENG MOKALOB: Ja, those are my ID numbers.

MS BAITSENG RANGATA: Thank you. If you turn to page 8, are you there?

MS MPOLOKENG MOKALOB: Yes, I am there.

MS BAITSENG RANGATA: Yes, there is a signature there is just under that is all I wish. Is that your signature on page 8?

MS MPOLOKENG MOKALOB: Yes, that's my signature.

10 **CHAIRPERSON**: Well, there are three signatures there on that page.

MS BAITSENG RANGATA: I beg your pardon, Chair?

CHAIRPERSON: There are three signatures on that page.

MS BAITSENG RANGATA: Yes.

CHAIRPERSON: Which one are you talking about?

MS BAITSENG RANGATA: There's one just after the sentence that is all. That is the first signature.

CHAIRPERSON: The first signature on the page?

MS BAITSENG RANGATA: On the page yes, Chair. On page 8.

CHAIRPERSON: Whose signature is that?

20 **MS MPOLOKENG MOKALOB**: That is my signature.

MS BAITSENG RANGATA: The second signature just almost in the middle of the page. Is that your signature?

MS MPOLOKENG MOKALOB: It's my signature.

MS BAITSENG RANGATA: Thank you. I would want to believe that you've read the document. Do you agree to the contents and the

correctness and truthfulness of the document?

MS MPOLOKENG MOKALOBÉ: I agree to the contents.

MS BAITSENG RANGATA: Thank you. Chair, I'm going to take this witness through this... (intervenes).

CHAIRPERSON: You, I'm sorry. You deposed to this affidavit on the 12th of August 2019. Is that right?

MS MPOLOKENG MOKALOBÉ: That is right, Chair.

CHAIRPERSON: Okay. Yes, Ms Rangata?

MS BAITSENG RANGATA: Thank you. I'm on page 1 of the affidavit.

10 **CHAIRPERSON**: Yes.

MS BAITSENG RANGATA: Under paragraph two, can you just read it into the record? I depose...

MS MPOLOKENG MOKALOBÉ: I depose to this affidavit with the aim to provide the Commission of Inquiry into State Capture with information at my disposal in relation to my knowledge about the City of tomorrow project.

MS BAITSENG RANGATA: Thank you. So, your evidence today will be restricted and limited only to that aspect relating to the City of tomorrow.

20 **MS MPOLOKENG MOKALOBÉ**: Yes, Chair.

MS BAITSENG RANGATA: Thank you very much. What are you doing currently? What is your position currently?

CHAIRPERSON: I'm sorry, Ms Rangata.

MS BAITSENG RANGATA: Yes, Chair.

CHAIRPERSON: Isn't her evidence simply about identifying whether a

certain signature is Mr Dukwana's signatures?

MS BAITSENG RANGATA: Yes, Chair.

CHAIRPERSON: I think you must just go there.

MS BAITSENG RANGATA: Thank you, Chair.

CHAIRPERSON: You must indicate if she knows Mr Dukwana's signature, how she knew it and.

MS BAITSENG RANGATA: Thank you.

CHAIRPERSON: And indicate which one whether a particular one is Mr Dukwana's signature. So, that's all we need.

- 10 **MS BAITSENG RANGATA**: Thank you, Chair. From the evidence that you, sorry from your affidavit you've indicated that you consulted with investigators of the Commission.

MS MPOLOKENG MOKALOBÉ: Oh, maybe I'm sorry may be confusing you. I think you may have to let her say what her position is, which department she is now, in which department she was at a particular time and what her position was that; how she knows Mr Dukwana and then go straight.

MS BAITSENG RANGATA: Thank you, Chair.

CHAIRPERSON: Okay.

- 20 **MS BAITSENG RANGATA**: Okay. Ms Mokalobe, what is your current position?

MS MPOLOKENG MOKALOBÉ: I'm currently the director for sector development in the department of economics small business development towards him and environmental affairs.

MS BAITSENG RANGATA: And when did you join the department?

MS MPOLOKENG MOKALOBÉ: I joined the department in 2008, August 2008.

MS BAITSENG RANGATA: Okay. I see on paragraph, I'm on page 2 of your affidavit where under paragraph four you've mentioned that you have been part of the task team for the City of tomorrow. Is that correct?

MS MPOLOKENG MOKALOBÉ: That is correct.

MS BAITSENG RANGATA: Okay. In your involvement in that project, what was the responsibility or what was your role?

10 **MS MPOLOKENG MOKALOBÉ:** Maybe Chair what I can explain is the task team was meant for the City of tomorrow. It was a task team that was meant to be more like an engine for all high-impact projects in the Department of Economic Development at the time. It just happened that the City of tomorrow became one of the projects that were dealt with.

MS BAITSENG RANGATA: Yes, you're dealing with the project at some stage you were provided with documents. I'm going to take you through before I deal with how you know Mr Dukwana. I'm going to take you through to page 5 of your affidavit. Are you there?

MS MPOLOKENG MOKALOBÉ: Yes, I am there.

20 **MS BAITSENG RANGATA:** Okay. On page 16 you are dealing with your consultation with investigators of the Commission.

MS MPOLOKENG MOKALOBÉ: Pardon? Yes, Chair.

CHAIRPERSON: On paragraph 16?

MS BAITSENG RANGATA: On paragraph 16, thank you. On paragraph 16 you're dealing with your consultation and you've mentioned there

under paragraph 17 that you were shown some documentation. If I go to 17.1 you've indicated a document master plan agreement as Annexure MM2. Can we go to page 11 of your affidavit or of Annexure X6? Can you see the document there? Is this what the investigators have shown to you?

MS MPOLOKENG MOKALOBÉ: Yes, this is one of the document that was shown to me.

MS BAITSENG RANGATA: Okay. And have you read the document?

MS MPOLOKENG MOKALOBÉ: I didn't get the, I didn't go into details.

10 **MS BAITSENG RANGATA:** Yes.

MS MPOLOKENG MOKALOBÉ: I've just read parts of the agreement.

MS BAITSENG RANGATA: Sorry, you just did what?

MS MPOLOKENG MOKALOBÉ: I just read part of the agreement. I didn't go through in details.

MS BAITSENG RANGATA: Okay. I'm just quickly going to take you to page 17 paragraph five, appointment and work schedule. Can you read 5.1 for the Chair?

MS MPOLOKENG MOKALOBÉ: 5.1 reads,

20 Free State hereby appoints a Consortium to undertake
the project in accordance with the terms and conditions of this
agreement and the Consortium accepts such appointment.

MS BAITSENG RANGATA: Thank you. I think that is sufficient. I'm going to take you to, can you please turn to page 26 of X6? Excuse me 27, page 27. Just there towards the bottom there is a signature there under the, on top of that signature there is a writing there. The

provincial government of the Free State acting through its Department of economic development tourism and environmental affairs. Can you see just underneath there, there is a signature there? Can you see the signature?

MS MPOLOKENG MOKALOBÉ: Yes, Chair I can.

MS BAITSENG RANGATA: Okay. Can you observe just below there as to what is the name of the person who signed there?

MS MPOLOKENG MOKALOBÉ: The person who signed here is MA Dukwana.

10 **MS BAITSENG RANGATA:** Yes. Can you identify with the signature? Do you know that signature?

CHAIRPERSON: I'm sorry. Unless you were there and unless you are already saying you know that this is Mr Dukwana's signature. There is just a name MA Dukwana written below the signature and then there's a signature above.

MS BAITSENG RANGATA: Yes.

MS MPOLOKENG MOKALOBÉ: Yes, Chair.

CHAIRPERSON: So, I just want to make sure. I don't know whether you're going to say this is Mr Dukwana's signature.

20 **MS BAITSENG RANGATA:** Yes.

CHAIRPERSON: Or you're going to say it is not but if you say the name of the person who signed is Mr Dukwana you are already saying the signature is Mr Dukwana's signature but you might not be intending to say that.

MS BAITSENG RANGATA: Yes, Chair.

CHAIRPERSON: Okay.

MS BAITSENG RANGATA: I think I might have misled her. Just under the signature there's a name that's written there. So, after you have read the name, I want to take you back to the signature. If you look at the signature again.

CHAIRPERSON: Well, she doesn't even have to look at the name. If she knows the signature whose signature it is, she might be able to say, I know whose signature this is.

MS BAITSENG RANGATA: Can you identify this signature that appears
10 on the page?

CHAIRPERSON: Do you know that signature?

MS MPOLOKENG MOKALOBÉ: I couldn't recognize the signature from the... (intervenes).

CHAIRPERSON: You could not recognize it?

MS MPOLOKENG MOKALOBÉ: From the time when the investigators gave me this document.

MS BAITSENG RANGATA: Yes.

CHAIRPERSON: Yes.

MS MPOLOKENG MOKALOBÉ: And even now, Chair I still think it
20 doesn't look like I don't know the signature.

MS BAITSENG RANGATA: You don't know the signature?

MS MPOLOKENG MOKALOBÉ: Yes.

MS BAITSENG RANGATA: Thank you. And if you turn to page 28, there's a signature on top there. Do you know that signature?

MS MPOLOKENG MOKALOBÉ: No, I do not know the signature, Chair.

MS BAITSENG RANGATA: Okay.

CHAIRPERSON: That's the first signature on page 28.

MS BAITSENG RANGATA: Yes.

CHAIRPERSON: Where, under the words the provincial government of the Free State. You don't know that signature?

MS MPOLOKENG MOKALOBÉ: No, I don't know the signature.

CHAIRPERSON: Okay.

MS BAITSENG RANGATA: Alright. Thank you, ma'am. We know that you are not an expert when it comes to signatures. I've shown you
10 those two signatures in particular and you've said that you don't know them. Can I understand, have you been, have you worked with Mr Dukwana before?

MS MPOLOKENG MOKALOBÉ: Yes, Chair. I worked with Mr Dukwana in the task team that we alluded to, the high-impact project task team but I was also at the time when the task team was operational. I was also head of planning, strategic planning and the department and in the department I usually directly with different managers. Especially the head of the department and the MEC in the department.

CHAIRPERSON: Okay.

20 **MS MPOLOKENG MOKALOBÉ**: So, that's how I got to work with Mr Dukwana.

CHAIRPERSON: Yes, let me ask the question. Is this signature on page 27 not Mr Dukwana's signature?

MS MPOLOKENG MOKALOBÉ: To my eyes it doesn't look like Mr Dukwana's signature and I'm saying that having been responsible for

planning. He would sign a number of my documents; the departmental documents. That would be the annual reports and I was responsible for that. And as part of that in terms of printing and making sure that we have those documents in the department I would be the one responsible to source his signature and he would normally sign on a paper about three signatures and I would take them to the printers. So, I got accustomed to, to the signature. But when I look at it for both signatures that I looked at they look different from what I was used to seeing.

- 10 **CHAIRPERSON**: Are there any particular features of this signature that you recognize that make you think it's not Mr Dukwana's signature or are there none? You just don't recognize it as his signature?

MS MPOLOKENG MOKALOBÉ: Thank you, Chair. I think, I must repeat she said that I'm not a handwriting expert but Mr Dukwana's signature was a bit broader; was a bit broader and I think it had two, two levels if I recall well. There would be a little signature on top and a slightly another one at the bottom about as a lame person I would not exactly say what it is that is but it looks different.

MS BAITSENG RANGATA: Okay.

- 20 **CHAIRPERSON**: Is there another signature?

MS BAITSENG RANGATA: Yes, yes, Chair.

CHAIRPERSON: Ja.

MS BAITSENG RANGATA: If you go back to your affidavit on page 5, you are making for the reference to an appointment letter which we find on page 10. Are you on page 10? Can you identify that letter?

MS MPOLOKENG MOKALOBÉ: The letter has the letterhead of a member of the executive Council. It is directed to Mr... (indistinct) Balshama and Mr John Thomas.

MS BAITSENG RANGATA: Yes, and the date below there?

MS MPOLOKENG MOKALOBÉ: The date that has of the signature seem to be the 3rd of November 2011.

MS BAITSENG RANGATA: Thank you. Just above the date there, there's a signature. Do you know the signature?

MS MPOLOKENG MOKALOBÉ: I do not know the signature.

10 **MS BAITSENG RANGATA:** So, from what you've seen from the two previous signatures that we've just been through from page 27 and page 20 sorry, 27 and 28. Would you say that the same answer applies to this one?

MS MPOLOKENG MOKALOBÉ: Yes, I would say that it applies.

MS BAITSENG RANGATA: Okay. I just want you to read into the record on your affidavit on page 6 of your affidavit. Maybe we should start.

CHAIRPERSON: I mean what is, what do you want her to read?

MS BAITSENG RANGATA: I want her to read, Chair on her, the response that she provided on Annexure MM2 which appears on
20 paragraph 18.

CHAIRPERSON: Ja, but why must she read?

MS BAITSENG RANGATA: It just confirms what she has just... (intervenes).

CHAIRPERSON: Why don't you ask her the question and let her answer?

MS BAITSENG RANGATA: Sorry, Chair?

CHAIRPERSON: Why don't you her ask the question? Let her answer.
What you want her to read?

MS BAITSENG RANGATA: She already answered, Chair. I just wanted to put it formally into the record.

CHAIRPERSON: What?

MS BAITSENG RANGATA: What she says in terms of the signature; what she has actually captured in particular paragraph 18.4.

CHAIRPERSON: She has already said she doesn't know the
10 signatures. What more do you want her to say?

MS BAITSENG RANGATA: No, it's okay, Chair.

CHAIRPERSON: Hm?

MS BAITSENG RANGATA: No, she's not going to give me a different answer. I wanted her to read it into the record. So, I think you've answered the question sufficiently. If I can just move to the last point on paragraph, paragraph 22 on page 7 of your affidavit. You mentioned documents that you have been missing from your office.

MS MPOLOKENG MOKALOB: Paragraph 22?

MS BAITSENG RANGATA: Page 7, page 7 paragraph 22.

20 **MS MPOLOKENG MOKALOB**: I got it.

MS BAITSENG RANGATA: Yes, you've made reference to documents that have gone missing, right on that paragraph? Do you want to quickly just explain to us how the documents, how you missed the documents or how they went missing?

MS MPOLOKENG MOKALOB: Chair, I wouldn't want. Okay, the

documents are missing and I'm not very certain how they, they got lost or.

CHAIRPERSON: Yes.

MS MPOLOKENG MOKALOB: And the reason is, it's documents that I dealt with in 2011/2012 that were now filed, kept in a cabinet somewhere and the only time I went back to look for them was when the Commission came to the department and some information was requested from me. When I went to the cabinet there was no file. It was mostly projects in there; presentations from, from the different projects
10 that we were dealing with. So, I wouldn't be able to tell if they were stolen, somebody took them and it was at the time; it's after a time when we moved offices. We moved from the offices that we are. So, I'm not so certain what happened to the documents but ja, I couldn't find the documents that were needed for us to supply the Commission with.

MS BAITSENG RANGATA: Thank you. Except for the documents, what else went missing?

CHAIRPERSON: Where are we going with all of that? I thought this witness was about a signature only and when I asked you agreed. You said that's what she's coming to testify about.

20 **MS BAITSENG RANGATA**: Yes, Chair. We done neh?

CHAIRPERSON: Well, maybe you know. If you know that there is something then you can tell me.

MS BAITSENG RANGATA: Chair, it will just conclude what I've just asked.

CHAIRPERSON: Ja, what is that? Repeat the question so I understand

because I must follow what the question.

MS BAITSENG RANGATA: I asked about the documents which she has just explained that the documents went missing but she can't say they were stolen. So, I'm asking.

CHAIRPERSON: Ja, but what are the documents about?

MS BAITSENG RANGATA: Okay. Chair, let me leave that question.

CHAIRPERSON: Hm.

MS BAITSENG RANGATA: Ma'am, last question from me. I'm going to take you to page 6 paragraph 18.3. You've indicated the, that the name
10 that has been spelt for Mr Dukwana is incorrect. Can you explain why? Why do you say so?

MS MPOLOKENG MOKALOBÉ: Chair, what I indicated was that I've never come across a time when Mr Dukwana signed and he wrote his name with D U K O A. All the signatures that I have seen was with K W A in the middle. So, I didn't know this name as it is written here.

CHAIRPERSON: Well, that can't be signatures because the signatures, his signatures are such that you can read any letters are there you know. You say in the names because as I see these signatures, I don't think you can read the letters from the signature.

20 **MS MPOLOKENG MOKALOBÉ**: Chair, perhaps what I want to say is more often than not before you sign or after you sign you write your name.

CHAIRPERSON: Yes, no that's what I mean.

MS MPOLOKENG MOKALOBÉ: And I have never seen his name written with a D O A. It's always, what I've seen was always with a K W A.

CHAIRPERSON: Okay.

MS BAITSENG RANGATA: Thank you. Chair, that's all for this witness.

Thank you, ma'am.

CHAIRPERSON: Thank you very much. You are excused. I think in regard to the signatures you may have to look for a handwriting expert.

MS BAITSENG RANGATA: Yes, Chair.

CHAIRPERSON: To assist us on.

MS BAITSENG RANGATA: The difficulty was we couldn't obtain the original documents but that was, there were attempts that have been
10 made to get the original documents.

CHAIRPERSON: Ja, but even if you have a copy it should be possible.

MS BAITSENG RANGATA: Yes, yes, it's being attended to, Chair.

CHAIRPERSON: Because the handwriting expert would just need to be shown to signatures.

MS BAITSENG RANGATA: Yes.

CHAIRPERSON: One being Mr Dukwana's one.

MS BAITSENG RANGATA: Yes.

CHAIRPERSON: And then another one obviously he need not be told much or she need not be told much and must compare the two
20 signatures and indicate if it's the same person.

MS BAITSENG RANGATA: Thank you, Chair.

CHAIRPERSON: Ja.

MS BAITSENG RANGATA: It shall be done. Thank you.

CHAIRPERSON: Okay. We are going to adjourn and tomorrow we start at 10 but thank you very much to everybody for all the cooperation. We

adjourn.

MS BAITSENG RANGATA: Thank you.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 29 AUGUST 2019