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10

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DAY 183

20

PROCEEDINGS RESUME ON 28 OCTOBER 2019

CHAIRPERSON: Good morning Ms Gcabashe, good morning everybody.

ADV GCABASHE: Good morning Chairman.

CHAIRPERSON: Thank you. Good morning Mr Thabethe.

MR THABETHE: Good morning Chair.

CHAIRPERSON: Are we ready?

ADV GCABASHE: We are Chairman.

CHAIRPERSON: Yes. I think because of the lapse of time let us do
10 the oath again.

REGISTRAR: Please state your full names for the record?

MR THABETHE: Mbana Peter Thabethe.

REGISTRAR: Do you have any objection to taking the prescribed oath?

MR THABETHE: No.

REGISTRAR: Do you consider the oath to be binding on your
conscience?

MR THABETHE: Yes.

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
20 right hand and say, so help me God.

MR THABETHE: So help me God.

CHAIRPERSON: Thank you. Yes we may proceed then.

ADV GCABASHE: Thank you Chairman. Chairman the intention is to
complete the evidence of Mr Thabethe today.

CHAIRPERSON: Yes.

ADV GCABASHE: There are a few additions to the bundles that we would like to bring to your attention.

CHAIRPERSON: Yes.

ADV GCABASHE: The most significant is the filing of a supplementary affidavit by Mr Thabethe on Friday. We received it on Friday.

CHAIRPERSON: Hm.

ADV GCABASHE: For your convenience Chairman we will put it in your Exhibit HH[b] in due course but we thought we should just keep it as a separate bundle.

10 **CHAIRPERSON:** Yes.

ADV GCABASHE: For purposes of the hearing this morning.

CHAIRPERSON: Yes.

ADV GCABASHE: If I might please hand it up?

CHAIRPERSON: Yes thank you.

ADV GCABASHE: Chairman there is a slight difficulty with that affidavit because the Commissioner of Oaths has not initialled every page but for current purposes I think we can accept that it is the statement of Mr Thabethe.

CHAIRPERSON: Yes.

20 **ADV GCABASHE:** He will be testifying to the contents of that statement.

CHAIRPERSON: Yes okay.

ADV GCABASHE: And that by the end of the day that will be evidence that is before you.

CHAIRPERSON: Ja okay.

ADV GCABASHE: That is the most practical way with which...

CHAIRPERSON: Yes no that is fine.

ADV GCABASHE: We can deal with the matter. Thank you Chairman.

CHAIRPERSON: Okay, okay.

ADV GCABASHE: Chairman the other matter is – concerns affidavits that our investigators were able to find in the NPA bundle of documents. These relate to the dairy companies that Mr Thabethe says that the Department spoke to at some point to try and bring them on board on the Vrede Dairy Project. Those Chairman have been filed in
10 Reference Bundle F. We will refer to them in due course.

CHAIRPERSON: Okay. Thank you.

ADV GCABASHE: Chairman when I appeared before you last time there is a document that I referred to as the AG's Report. Mr Thabethe queried that particular document because we only had three pages of that document instead of the full report.

The full report Chairman is in fact the Annual Report of the Department of Agriculture and Rural Development for the financial year 2013/2014. So those pages are correct. So the evidence that we led were from pages that were extracted from that document. If the
20 Chairman recalls I said I had left it on my desk.

CHAIRPERSON: Yes.

ADV GCABASHE: That is the full report. We have not filed it Chairman because we have the pages that we intended to refer to.

CHAIRPERSON: Hm.

ADV GCABASHE: And with your leave might we then just leave.

CHAIRPERSON: Ja.

ADV GCABASHE: Those pages in without the rest of the report?

CHAIRPERSON: Yes. No that is fine. I take it that there will be no problem from Mr Thabethe's side because it is something that you say is in their Annual Report – the Department's Annual Report?

ADV GCABASHE: Indeed so Chairman.

CHAIRPERSON: Ja.

ADV GCABASHE: It was filed by the Department.

CHAIRPERSON: And if there is a – if there is a problem they will
10 articulate it. Okay alright.

ADV GCABASHE: Thank you Chairman. Mr Thabethe it is just to – because I have – undertook to come back to clarify where those pages came from and they are part of the report – Annual Report that you had filed in 2013/2014. That is just to satisfy you that it is an authentic report that in fact did not come from AG but was in fact filed by yourself in the Department. Are you happy with that?

MR THABETHE: Okay I am fine.

ADV GCABASHE: Thank you Chairman. Chairman the – the other matter that I had undertaken to come back to you on is the status of the
20 Mohuma Mobung PTY Limited Company. I have asked that they draw a report – the CIPC Report on that Chairman. If it is convenient to you we can hand that up – a copy of that?

CHAIRPERSON: Yes that is fine.

ADV GCABASHE: Chairman those are all the preliminary matters that I – I wanted to start with.

CHAIRPERSON: Does the supplementary affidavit of Mr Thabethe relate to an issue that he was to deal with in terms of the arrangements made last time?

ADV GCABASHE: Indeed so Chairman. In fact when he had the other attorneys of record.

CHAIRPERSON: Yes.

ADV GCABASHE: Representing him.

CHAIRPERSON: Yes.

ADV GCABASHE: He undertook to furnish us with a supplementary.

10 **CHAIRPERSON:** Okay.

ADV GCABASHE: Affidavit.

CHAIRPERSON: Yes.

ADV GCABASHE: And his current attorneys have now.

CHAIRPERSON: Okay.

ADV GCABASHE: Ensured that he has done just that.

CHAIRPERSON: Okay no that is fine.

20 **ADV GCABASHE:** Chairman if we might go back to those monthly reports that Estina had presented to the Department which reports Mr Thabethe as I have understood your evidence you relied on in ensuring that payments were made. I will ask you to please turn to Reference Bundle D for Donald and we are going to go to page 1403. You have the report before you?

MR THABETHE: Yes I have got it.

ADV GCABASHE: Thank you. We established when you were here on the 4 October Mr Thabethe that in terms of this report what is written

on page 1402. Chairman do you have your report yet? Not yet?

CHAIRPERSON: I think he is still trying to find it. Is that at 1402?

ADV GCABASHE: That is correct Chairman.

CHAIRPERSON: Okay.

ADV GCABASHE: That is the October monthly report that was filed by Estina in terms of the agreement signed with the Department. Can I proceed Chairman?

ADV GCABASHE: Yes you may.

ADV GCABASHE: Now you will see from page 1402 it is something we
10 discussed last time that Estina claims to have paid R250 000.00 in the
month of September. That is a capital injection from themselves into
the project of R250 000.00 and an additional R3.75 million –
R3 750 000.00 that again they said was a capital contribution to the
Vrede Dairy Project while it was waiting for the Department to release
funds. Do you recall that evidence that we discussed last time?

MR THABETHE: Yes I do Chair.

ADV GCABASHE: And that is of course consonant with what is written
on page 102?

MR THABETHE: That is correct.

20 **ADV GCABASHE:** If we then go to the very next page please Mr
Thabethe which is headed Cash Flow Position of Estina PTY Limited
from July 2012 we again discuss some of the items here. I am just
reminding you really for – to give context. Are you there? Page 1403
Mr Thabethe?

MR THABETHE: Yes I am there Chair.

ADV GCABASHE: Thank you Sir. We – we pointed out that that opening balance did not have a figure and then in speculating we assumed that it is because of the evidence you gave. They told you they did not want to co-mix their money with that of – with that of the Vrede Dairy Project and that is why you too assumed that there was a – nothing in that particular column. Have I recalled your evidence correctly?

MR THABETHE: That is correct Chair.

ADV GCABASHE: We then looked at the R30 million which is the very
10 next figure and we agreed that that was the money that was paid in July 2012?

MR THABETHE: That is correct Chair.

ADV GCABASHE: Thank you Sir. We then looked at the R29 million that was reserved for parlour equipment.

MR THABETHE: That is correct Chair.

ADV GCABASHE: Good. Of this 29 you then gave evidence saying you had initially assumed that this money would be used for the feasibility study whereas Estina had reserved it for a different purpose?

MR THABETHE: That ...

20 **ADV GCABASHE:** We discussed that. That is on the tran –

MR THABETHE: That is correct.

ADV GCABASHE: I am just reminding you so that you get back to where we were last time. What we left you with to think about Sir was that at the time you – the Department in other words paid the R30 million the feasibility study had not been completed and this was an

advance payment in your view to enable that feasibility study to be conducted?

MR THABETHE: That is correct.

ADV GCABASHE: But we agreed last time that you signed off on the completion of the Phase 1 obligations on the 18 January 2013.

MR THABETHE: That is correct Chair.

ADV GCABASHE: That is correct. Now these obligations we also know included the completion of a feasibility study. So what you have asked us to accept is that the R30 million was paid as an advance payment
10 not because the feasibility study had been completed. Correct me if I have misunderstood your evidence?

MR THABETHE: That is correct Chair. It – the indication was that it was an advance payment for them to be able to proceed.

ADV GCABASHE: We – we then also – I am going to come back to some of these issues Mr Thabethe I am just trying to summarise them and make sure we are on the same page. We then dealt with the reservation in September 2012 – I beg your pardon – in October 2012 of the additional R1 050 000.00.

And the essential questions we were asking Mr Thabethe at
20 the time was did you interrogate these accounts that were presented to you and understand why these monies were being reserved and why you were being asked to pay more money? I do not know if you want to comment on that?

MR THABETHE: Ja I am trying to catch the question Chair.

CHAIRPERSON: Well ...

ADV GCABASHE: Let me start.

CHAIRPERSON: The question is whether at the time you were presented with these – your reports from Estina you interrogated the various items so that you were able to understand what those amounts were being used for or were being preserved for. That is what is being asked? Or did you just accept the reports as they were without interrogating them so that if you interrogated them one would expect that you may have picked up certain things that would not – that you would have found strange from the point of view of your department?

10 **MR THABETHE:** Ja thank you Chair. We – I did check the figures as they come – as I have raised with the – with my evidence Chair in the last that I had picked that the – there was the amount of R29 million that was reserved for equipment. Because my understanding was that it was reserved for feasibility study and those issues that we had agreed on on paper. But the – the explanation that I had received in that explanation Chair was – was satisfactory.

ADV GCABASHE: You see your explanation is important Mr Thabethe.

CHAIRPERSON: One second. Is everybody audible enough at the back? Is everybody hear – can everybody hear? They – okay it looks
20 like there are no concerns. Okay alright. Let us continue.

ADV GCABASHE: Thank you Chairman. Mr Thabethe the reason we are querying some of these figures today is because had Mr Theron giving evidence here on the 8 October and he told the Chairman that a local company Aval Laval [DeLaval] that supplies dairy parlour equipment had supplied the dairy parlour equipment that the project

used. If I recall well there were two – you know these milking machines that were supplied. A 6.1 and a 10.1. The total amount that was spent was R6 million on that purchase. Did you know about that particular purchase?

MR THABETHE: Ja. Chair I have – I have looked at the – the evidence of Mr Theron in testifying in terms of what were the cost of this equipment. The only issue here he had mentioned was only the parlour equipment.

ADV GCABASHE: Correct.

10 **MR THABETHE:** He did not – he not give further because that is all that he supplied.

ADV GCABASHE: Correct.

MR THABETHE: I am not sure if he has been referring to all inclusive that was done. Because he –

ADV GCABASHE: He...

MR THABETHE: My apology Chair. He only mentioned what he supplied in terms of parlour equipment.

ADV GCABASHE: Yes.

20 **MR THABETHE:** And my understanding is that it was more than what he had supplied.

ADV GCABASHE: Right what more do you believe had to be supplied under the item Parlour Equipment?

MR THABETHE: Chair I would – I would not be able to go into the details because that kind of work has been done by officials on the ground. To give the details of what is – because if I would speculate in

doing that then I would not be correct Chair.

ADV GCABASHE: This is our difficulty as a legal team with your evidence Mr Thabethe. We come back to you being the Accounting Officer. We come back to you being the person who authorises at the end of the day the payment of government money to a service provider. We come back to your duty under the PFMA Section 38 to ensure that you monitor and understand where this money is being deployed. You are with me?

MR THABETHE: I – I hear you Chair.

10 **ADV GCABASHE:** Yes. So when you sign off on a – or when you look at a monthly report when you discuss it with your CFO you must understand what the money you have deployed is doing for your Department. Are we in agreement on that point?

MR THABETHE: I – I agree Chair. Chair to add on that where I say I agree is that when the document comes to me from the official saying we are happy of what has happened thus far we therefore make a recommendation that you proceed with the payment. It may not be – I want to use the correct word. It may not be feasible for me to go to each and every document and say I want to go and check myself. So I
20 take it that when the document is saying to me we are happy on the ground of what has happened therefore I will then agree with that.

CHAIRPERSON: I was going to ask a question but I am giving you a chance to -

ADV GCABASHE: Thank you Chair.

CHAIRPERSON: You might wish to ask a question?

ADV GCABASHE: I would – I would like to pursue this point Chairman. Mr Thabethe if you had at the very least firm information on what the people on the ground might have reported to I might understand your answer.

MR THABETHE: Yes.

ADV GCABASHE: But from your strategic position you would look at a monthly – in fact this is a quarterly report and understand that you had a balance as of October 2012 of R24 million that had been reserved for parlour equipment. Am I right?

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

ADV GCABASHE: All – at the same time you would look at items under September and October and the report itself and try to understand why Estina was saying they were putting in a cash injection of R250 000.00 in September and then seek to understand again why Estina was saying they were putting in a cash injection of R3.7 million – 75 million – R3 750 000.00 in October. You would want to understand why? Because their obligation was in respect of the processing plant.

MR THABETHE: That is correct Chair.

ADV GCABASHE: Yet you are telling this commission that you did not
20 ask these questions.

MR THABETHE: Chair I was – I think this – this question was also discussed before where my indication has been that Chair will remember that the commitment that we had made was about 114 per annum of which work had to be done. We were not able to – to make that money available and we had made a commitment that the work

should proceed on the ground. It was on that understanding that then they proceeded with the work with an understanding that the Department will then later make that money available. So that that was my understanding Chair that they would proceed with the work and when we have the money available we will then be able to pay that money.

ADV GCABASHE: You see Mr Thabethe I am actually stretching the discussion we had on the 4 October beyond the point where we stopped.

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

ADV GCABASHE: Because if you go to page – same file – page 1372. Same file 1372. Are you there?

MR THABETHE: I am there Chair.

ADV GCABASHE: You find there a letter signed by Mr Vasram to the exchange control department dated the 28 July 2014. And if you look at the schedule – the monies that are set out here they essentially asking if they can pay this money to Gateway PTY Limited which is a company that is registered in Dubai. The amount here – the first amount is the amount I would like to deal with. It is for US \$5 million.

20 Alright you are with me?

MR THABETHE: I hear you Chair.

ADV GCABASHE: Right if you then turn over the page the very next letter is a continuation of just Standard Bank writing to the directors again dealing with the exchange control element. Just a regulation of how this money would be paid. Yes? It is just the formality really all

banks have to check on why monies are going out of the country. Alright. I then want you to turn to page 1375 which is the invoice of Gateway Limited sent to Estina PTY Limited.

And it would appear to be that this money is money that was – that they are asking for the total at the bottom you can see if US \$5 million. That amount appears to be for the development of feasibility study reports. First item being the drawing up and presentation of comprehensive feasibility study and there is an amount of 2.6 just over \$2.6 million for that first exercise. You have seen that?

10 **MR THABETHE**: I see it Chair.

ADV GCABASHE: Ja. The next item development of the project reporting template and systems to ensure compliance by the contractors. Yes? US \$869 000.00.

The next amount develop and implement systems to manage the entire project cycle \$869 000.00. The last one disbursements that came in at \$652 000.00. All of these in US dollars I take. It actually does say unit price US dollars at the top just so that there is no argument whether these are US dollars or some other – other denomination. Are you satisfied with that?

20 **MR THABETHE**: I see Chairman yes.

ADV GCABASHE: I want you to then go over the page and if you look at the – this – so this is Standard Bank transferring the money. If you look at the telegraphic transfer you see that the USD 2000 US dollars came to 19 – I beg your pardon 2 million US Dollars came to R19 780 000.00 South African rands. You see that number – you see

the figure? If you come down telegraphic transfer. You see the words telegraphic transfer in bold – in capital letters.

MR THABETHE: Ja.

ADV GCABASHE: Telegraphic transfer. I just want to make sure you are with me Mr...

MR THABETHE: I see it.

ADV GCABASHE: You see them?

MR THABETHE: Yes.

ADV GCABASHE: And then below that you see R19 780 000 SAR
10 being South African Rands. You see that number?

MR THABETHE: Ja.

ADV GCABASHE: Below that you see that what was sold was 2 million US Dollars. You are with me? What was bought in Rands it came to that R19 780 000.00. Okay. That is the first amount. Accounting for – remember it is 5 million US Dollars that you were being charged for a feasibility study.

MR THABETHE: Okay Chair.

ADV GCABASHE: Yes. We will come back to – to how you came to pay that much money for that feasibility study but that is not where I
20 am right now. I just want to be sure that you are looking at the numbers that were paid that were asked – invoiced and paid. Because this is your money – the Department's money at the end of the day that is paying for this. Is the proposition I will be putting to you. The very next page Mr Thabethe deals with the – with the 3 000.00 US Dollars that makes up the 5 in total 3 plus 2. The very next page you see

Principle Amount USD 3 million.

I am so sorry to have confused you. The 3 million US Dollars you are with me?

MR THABETHE: Yes.

ADV GCABASHE: Principle Amount 3 million?

MR THABETHE: On page – you are on page what?

ADV GCABASHE: 1377.

MR THABETHE: Ja I am there Chair.

ADV GCABASHE: 3 million US Dollars.

10 **MR THABETHE:** Okay.

ADV GCABASHE: In South African Rand value that was 30 900 000.00. You are with me?

MR THABETHE: I am with you Chair.

ADV GCABASHE: Right. So these amounts were transferred to Gateway Limited and if you look at the top of that sheet this is Estina PTY Limited that is paying these monies.

MR THABETHE: Okay.

ADV GCABASHE: You are with me? Good. I then want you to skip a page. I am just putting a number of facts together and then I will ask
20 you the principle question Mr Thabethe.

CHAIRPERSON: Okay.

ADV GCABASHE: If you look at page 1379 it again relates to work done as part of the feasibility study though the date here is 23 March 2013. Feasibility study Gateway Limited is the service provider. You are with me?

MR THABETHE: I am with you Chair.

ADV GCABASHE: Thank you. Over the page are actually consultant fees. They are hourly fees that they charge at page 1379.1.

MR THABETHE: Okay.

ADV GCABASHE: Yes. Then on page 1379.2 we have the names of various consultants who I believe would have been the people – these are all supporting documents to enable that 5 million to be paid for that feasibility study that was completed by Gateway Limited. And here you have got various names from 1 to 10. Dr. Singh, Dr. Ram, Dr. Malik,
10 Dr. Singh, Dr Shrivastava, Dr. Yadav, Mr Jaa, Dr. Das, Dr – Ms Dabas, Mr Tiwari. I want to pause just for a minute before I go to the second element and ask you this question. Do you know any of these consultants who you paid this money to?

MR THABETHE: Chair let me go back and - and say this was Estina who were doing these transactions. The department had paid money to Estina for work to be done. How - how they got the work done we did not go into those details. Our expectation was that the work must be done. So this document could have been their document in getting - to getting our work done.

20 For us was to receive the document to our satisfaction and say this is what we had requested you to pay. Has it been done? If yes it has been done then - then we will sign it off. So we did not go into the details of who was doing what, who was paid how much of that money. So these are the details of their own record keeping in - in case we were to come to them and say give us the details.

They would be able to provide us but the explanation that was given to us and the document that was given to us. We were very comfortable to be able to say the work that we have requested has been done. So therefore Chair I would not be able to explain the details of - of what is in this document.

That will be my difficulty Chair.

ADV GCABASHE: Chairman this is precisely the point we make. You put Government funds at risk. You did not monitor how those funds were being deployed. You did not try to understand why you were
10 being charged US\$5 million for what turned out to be a feasibility study that even DAFF - Ms Mtshiza was here giving evidence - found to be inadequate.

So this is why I tie that fact in with your monitoring of your 30 million that is reflected on the monthly report.

MR THABETHE: Ja. Chair - Chair I - I do not agree. The - the department received a document and accepted the document to be what we had requested for. For what we have requested for because we had agreed those things were put in writing that we had agreed that Estina was supposed to do with the money that was allocated and those things
20 that we had agreed on were delivered to us.

CHAIRPERSON: Let me take you back. Why - why did the - why did the department not commission somebody to do the feasibility study itself rather than get Estina to do that?

MR THABETHE: Chair we did not see anything wrong in asking them to do the feasibility study because it was our understanding that for

implementation they need to understand the environment because if you give somebody else to do the feasibility study they may not understand the environment under which the work needs to be done.

So our understanding then we had agreed that they must then do the feasibility study so that if the feasibility - if they have a concern with the feasibility study that they will not be able to proceed with the project. Then they will be able to tell us.

CHAIRPERSON: But should not actually - should you not as the department have first commissioned a feasibility study even before you
10 brought in Estina?

MR THABETHE: Chair we have looked at that and the - the understanding that we had was that the model that we wanted to implement was not the model under which we put terms of reference.

CHAIRPERSON: Under which?

MR THABETHE: The model that they were to implement - remember if you do a feasibility study you must have your background information of what you want to do. You do not do a feasibility study in general because if you do a general one it may not suit the specifics that you are looking for. Therefore they had to do that because they were the
20 ones to be able to say the terms of reference of this feasibility study are one, two, three, four. This is what we want to achieve.

Therefore they will then be the correct person to do that. Otherwise we would have done a general feasibility study and only to find that it is not suitable for the intention they want. We may need to repeat the feasibility study because it does not cover the areas of

which the - they are looking for.

Hence we then said they must do the feasibility study to see if it meets their requirements.

CHAIRPERSON: But is the position not that you had to understand yourselves as the department the features - the essential features of what - of the project that you wanted to - to be engaged in and once you understood those features why could you not say let us look for somebody to do a feasibility study and because we understand the features of the project that we want to start we will tell those people
10 who are going to do the feasibility study that we - you must inquire into the feasibility of a project that will have the following features and they bring you the study.

You satisfy yourself that the feasibility study says it can be pursued. There are proper grounds that it will be a success and then you bring in somebody who looks at the feasibility study and then says no this - I can do this. We can do this. We - we can move with it. Would that not have been a better way because then as the department you remain in the driving seat - in the driver's seat.

You understand the essential features of the project and the
20 model that you want to do. You instruct people to do a feasibility study with the understanding that this - these are the essential features. They come back. You are able to say it is fine and then you get somebody who looks at this and is able to commit to achieving it against the background of the study. Would that not be a better way of doing it?

MR THABETHE: Chair it would not be ...

CHAIRPERSON: Yes.

MR THABETHE: Because if you engage in a project of this nature ...

CHAIRPERSON: Hm.

MR THABETHE: You - you need the - the implementer to - to understand the environment under which to implement rather than just reading a document. Hence in - in most instances of this nature you do what - what they call a 10-T project.

CHAIRPERSON: Hm.

10 **MR THABETHE:** So that you have an understanding of the ground rules before you do the implementation of the project. So that - that was very critical because if - if you have not done the feasibility study yourself you would not be even privy to the rules and regulation of that particular country in terms of specific areas. It allows you to be able also to say in terms of the daily industry what are the rules.

It - it opens you up so that you - you even read more about those issues. Rather than when you have the document readily prepared and - and you even do not have an understanding of what - what are the laws saying about that particular area. You may then tend
20 to plan differently from what is expected of you. Hence then when you do a 10-T it also allows you to be able to - to read more and understand and then it gives you a better direction for you to do your implementation.

CHAIRPERSON: I will let Ms Gcabashe continue but the impression I got from an earlier answer you gave to one of her questions suggests

to me that you were deferring to Estina. Whereas I expected you as the Department of Agriculture - this is an - an agricultural project. So it is not something that you are supposed to know nothing about.

This falls within your field - you know. I - I expected you to be - to have full understanding of everything that needs to be done. So that Estina are not treated like they are experts in anything that you do not know - you know. That - that is my impression. I got the impression that you were deferring to them.

Whereas for me this is an agricultural project and the first
10 thing must be that you as the department must have a full understanding of the project, the model and so on. Of course the implementing agent must also have but it must start with you. That is the impression I have. Am I being unfair to you?

MR THABETHE: Chair, yes. I am saying it is not right Chair ...

CHAIRPERSON: Yes.

MR THABETHE: Because Chair you will remember that previously I have also indicated this. The - the department has two roles to play. The monitoring role in terms of the Act. At the same time the monitoring role of the implementation of the project. You also do not
20 want an environment where you stick to only what you know. You open up for new innovations.

Now if - if it is only the department that does it who - who may not necessarily open up to new innovation because we stick to what we know. If you allow it to other people to do it and bring it to you and you do an evaluation. It opens up and it brings in other

technologies that you may not have been aware of. Hence in a number of instances you will - you will see Government giving - giving work on - on what we call a 10-T to say go and make recommendation of what I want.

I will look at it and say yes this is how I want it or no, this is not how I want it. So it opens up and assists you to do that. We are not taking your responsibility away but we are - we are saying go do it. I will look at it. If I am not happy I will say so. If I am happy going to say so.

10 **CHAIRPERSON:** Ms Gcabashe.

ADV GCABASHE: Thank you Chairman. Mr Thabethe I just want you to understand the context of the questions I am asking revolve around did you monitor and interrogate these items in that monthly financial report? I just keep coming back to where I am because the questions are broad and I do not want you to lose focus in respect of why I am asking you my questions. Are you happy with my contextualisation of my questions?

MR THABETHE: Ja. I am - I am happy Chair provided the question is not saying Mr Thabethe you are personally responsible for - for
20 monitoring. I was personally responsible as a department to do the monitoring. So this work has been done. There were officials on the ground - on the district and so on - on the project and they have been going there checking if the work has been done.

Every time when requests for payment comes in they will then certify and say we agree with you. This work has been done. It has

been delivered. Therefore we advise that the HOD can proceed with the payment. That - that is my understanding Chair in trying to clarify the question. That I am not saying I - I am - I am not taking accountability but it - it was not expected of me to individually go and tick every block of work that was done because there were people that were reporting to me to say yes this has happened this has happened. We can therefore proceed.

ADV GCABASHE: You are not taking accountability?

MR THABETHE: No. I am not say - I am - Chair I am saying I am not
10 saying I am not taking accountability. I am saying there were other people that were ...

CHAIRPERSON: You have got two negatives there. You - you want to say you take ...

MR THABETHE: I take ...

CHAIRPERSON: Responsibility.

MR THABETHE: I take responsibility ...

CHAIRPERSON: Yes.

MR THABETHE: But I may not have been able individually to go and tick each and every box.

20 **CHAIRPERSON:** Hm.

ADV GCABASHE: Mr Thabethe when Ms Mtshiza was here - I have her transcript in front of me.

MR THABETHE: Yes Chair.

ADV GCABASHE: I am not interrogating the quality of that feasibility study. She told the Chairman that they recommended and I quote:

“Because the basis through which we made the approval was false. The Province must now conduct a proper feasibility study for the project ...”

MR THABETHE: Hm.

ADV GCABASHE: “...and also that feasibility study will then inform a proper business plan that they must conclude on the applications for water rights and because there was some indication of livestock that might and we would not know whether in the business execution there would be some change in the breed etcetera.”

10

So when they had visited the farm in her back to office report these are the conclusions they drew and the one I am bringing your attention to is the substandard quality of the feasibility study that led to her writing in her report that you needed to conduct a proper feasibility study. I have told you what is written here in the transcript. This was her evidence.

You have understood what I have read here? I am not asking if you agree. I am asking if you have understood what I have read here.

20

MR THABETHE: Chair, I - I hear - I may - because I am not following it completely. If - if this question is relating to the feasibility study that is attached here - is that referring to that statement or is it referring to what they had accounted when they visited the project because those would be two different things.

ADV GCABASHE: Mr Thabethe there was one feasibility study. We agreed this long ago. It is dated October 2012. Am I correct?

MR THABETHE: *Ja.* Chair there were two feasibility studies. We have discussed it. There was a prefeasibility study and there was then the finalised feasibility study.

ADV GCABASHE: Mr Thabethe your evidence is that that free - prefeasibility study - your evidence ...

MR THABETHE: Yes.

ADV GCABASHE: That prefeasibility study was in fact the - the
10 business plan. It is on record. I have got the transcript here if you want me to read it back to you and that business plan was dated October 2012.

MR THABETHE: Chair let me go back and explain it again.

CHAIRPERSON: *Ja.*

MR THABETHE: There - there were initial documents that were produced. When we agreed in July when we transferred the 30 million we had then said they must go and do a detailed feasibility study. Now when you do a detailed feasibility study you then go and do a detailed business plan with - with designs of the projects. With maps of the
20 projects and all those things need to be put in there.

Now those were the things that - that were done. Now what - what I had agreed is that when we - we - we went to discuss and agree. They gave us an initial document because that was a - a document in progress. So each time they completed that document they would bring it to us. We look at it. We will make our comments and our inputs.

They go back and rework. So it was forward and backward in terms of dealing with that. We did not expect them to submit documents when they were done. Only then we start making our input. So it was - it was work in progress all the time. So they have been producing these reports and then they will go back and - and give us and those parts that were being completed.

We will then proceed with the implementation of those. So there had been a number of documents that we had agreed but the overall document is the one that was then put on the table eventually at
10 the end to say here is the feasibility study in terms of the overall implementation of the project.

ADV GCABASHE: I will simply refer you Chairman because there is no point in rehashing something that is

CHAIRPERSON: Yes.

ADV GCABASHE: Is transcribed very clearly in the transcript.

CHAIRPERSON: Hm.

ADV GCABASHE: I will refer you Chairman to the transcript of 4 October ...

CHAIRPERSON: Huh-uh.

20 **ADV GCABASHE:** 2019. Day 1-7-7. Page 2-0-1 of 2-0-3 and it will be line nine through to line 19 where this issue is dealt with by Mr Thabethe.

CHAIRPERSON: Okay.

ADV GCABASHE: I would like to move on from here because there is much we need to complete.

CHAIRPERSON: Yes, but I thought that from what you read there what was said was there was no proper feasibility study.

ADV GCABASHE: This is correct. By the DAFF people.

CHAIRPERSON: Yes.

ADV GCABASHE: Department - National Department.

CHAIRPERSON: Yes. Do you have the date more or less when - when that would have been when that report was made to say a proper feasibility study must be done?

ADV GCABASHE: Chairman, can I again just refer you to - I will look
10 at the statement ...

CHAIRPERSON: Yes.

ADV GCABASHE: Of Ms Mtshiza and come back to you ...

CHAIRPERSON: Yes, yes.

ADV GCABASHE: With that specific reference.

CHAIRPERSON: Yes.

ADV GCABASHE: It was - it would have been when they had gone to the farm I think in July 2013.

CHAIRPERSON: Yes, yes.

ADV GCABASHE: July/August 2013 ...

20 **CHAIRPERSON:** Yes.

ADV GCABASHE: But the reference in the transcript Chairman ...

CHAIRPERSON: Hm.

ADV GCABASHE: Is 8 October ...

CHAIRPERSON: Huh-uh.

ADV GCABASHE: 2019.

CHAIRPERSON: Huh-uh. Maybe while you are looking I could put this to you Mr Thabethe. What do you say to the assertion that probably around July 2012 - I may be mistaken about the - the time - that as at that time there was no proper feasibility study. Do you accept that?

MR THABETHE: Chair if - if the reference is made to that I agree Chair.

CHAIRPERSON: You agree.

MR THABETHE: Yes and that has been my understanding of national.

CHAIRPERSON: Yes.

10 **MR THABETHE:** To say there was no proper feasibility study and at that time we had not concluded the feasibility study.

CHAIRPERSON: Yes and the - and what you regarded as a proper feasibility study on occurred when? In October?

MR THABETHE: Chair the - the ...

CHAIRPERSON: Was only submitted when?

MR THABETHE: I - I may not remember exactly Chair but I think the (intervenes).

CHAIRPERSON: Yes, but much later than July 2012?

MR THABETHE: Yes.

20 **CHAIRPERSON:** Yes.

MR THABETHE: Yes Chair.

CHAIRPERSON: Okay. Alright.

ADV GCABASHE: Mr Thabethe we agreed it was October 2012 because that is what is reflected on the document right at the bottom. I can take you to that particular page reference if you would like us to do

so. We have all agreed - all along agreed that the feasibility study is dated October 2012. Are you changing your mind about that?

MR THABETHE: Chair this is exactly - the - the document she is - maybe we should go back to the feasibility study itself because it is a document that has been attached.

CHAIRPERSON: Yes. Is it ...

MR THABETHE: So that ...

CHAIRPERSON: It is easy to get it ...?

ADV GCABASHE: Yes it is Chairman. *Ja*.

10 **CHAIRPERSON**: *Ja*. Let us - let us do that. Just so that ...

ADV GCABASHE: If you pick up your Reference File B for Bernard or B for bread and go to page 3-2-1. You ...

MR THABETHE: Reference File B.

ADV GCABASHE: B - on the Reports Bundle. I beg your pardon. Not the reference but the Reports Bundle B. At page 3-2-1 you get the preliminary report which you called the business plan. This is what I understood of your evidence last time. At 3-2-1 Reports Bundle B for Bernard. Advocate Mokoena is coming up to assist you.

MR THABETHE: I am trying to check Chair. Chair page?

20 **ADV GCABASHE**: Page 3-2-1 and the other page is 3-3-1. So there are two reports here. The two we are discussing. The first one is the preliminary one that you refer to which was the short one and then at - so that will be at 3-2-1. I am just checking to see where you stop. I think you have it.

MR THABETHE: *Ja*. I am at page 3-2-1 Chair.

ADV GCABASHE: Excellent; and then if you go to page 3-3-1 you find that feasibility study. 3-3-1 same - it follows on the preliminary one. Excellent.

MR THABETHE: That is correct.

ADV GCABASHE: Right. So if you look at - we are now discussing the date of the feasibility study.

MR THABETHE: That is correct.

ADV GCABASHE: Am I correct? If you go to page 3-3-2 - page - the very next page. Right at the top left hand corner you see the date of
10 October 2012. Across from where the Estina log is but on the left hand side ...

MR THABETHE: Yes.

ADV GCABASHE: And we have all along worked on that basis. That that is the date of the feasibility study. Are you changing your mind about that?

MR THABETHE: Okay. Chair what - what I want to check is - is this the document that the National Department is referring to?

ADV GCABASHE: This is the document that you furnished to the National Department.

20 **MR THABETHE:** Okay.

CHAIRPERSON: You like you have some concern.

MR THABETHE: I am - I am surprised actually Chair.

CHAIRPERSON: Ja.

MR THABETHE: If - if this is the document they are referring to ...

CHAIRPERSON: Yes.

MR THABETHE: That it - it - they are not happy with it.

CHAIRPERSON: Hm. Well if the - if the report they made where they said there must be a proper feasibility study was done in July. It could not be this document ...

ADV GCABASHE: Chairman ...

CHAIRPERSON: Because the document would not exist at that time but the date of July is something that might not be accurate.

ADV GCABASHE: Chairman it is the - I had indicated July 2013.

CHAIRPERSON: Oh July 20 ...

10 **ADV GCABASHE:** They only came on-board in 2013 Chairman.

CHAIRPERSON: Yes. Okay. So ...

ADV GCABASHE: Not in 2012 ...

CHAIRPERSON: Yes.

ADV GCABASHE: But I have ...

CHAIRPERSON: So I - I misunderstood, *ja*.

ADV GCABASHE: Her statement Chairman.

CHAIRPERSON: Yes. Okay.

ADV GCABASHE: August 2013.

CHAIRPERSON: Yes. Okay.

20 **ADV GCABASHE:** The facts are that ...

CHAIRPERSON: *Ja*.

ADV GCABASHE: DAFF was only brought on-board fully.

CHAIRPERSON: In 2013?

ADV GCABASHE: In 2013 somewhere.

CHAIRPERSON: Okay. Does that help clarify?

MR THABETHE: Ja. I - I hear Chair because normally Chair the process would be. We - we submit the - the business plan to the National Department of Agriculture and - and then they would then write to us and raise issues which in this instance - that is why I look very surprised that if they had not raised issues with us in terms of that particular business plan and it - it means they - they were not concerned.

CHAIRPERSON: Well the - the witness from the National Department who gave evidence here - if I recall correctly - said that at the meeting
10 where the Provincial Department of Agriculture made a presentation to a certain committee of the National Department ...

MR THABETHE: That is correct.

CHAIRPERSON: Which deals with these matters.

MR THABETHE: That is correct.

CHAIRPERSON: The delegation from the Provincial Department of Agriculture did not bring certain documents which - as I understood it - they should have brought but they mentioned that the - those documents existed - as I understand it - and I have the impression that one of those documents that they said should have been brought but
20 was not brought was a business plan and/or the feasibility study but they - but she said that they were told that those did exist.

MR THABETHE: Ja. Chair ...

CHAIRPERSON: I do not - Ms Gcabashe might indicate if I am miss - my recollection is inaccurate in some respects.

ADV GCABASHE: No. It is - it is accurate Chairman and I will simply

in the interest of progress ...

CHAIRPERSON: *Ja, ja.*

ADV GCABASHE: Point you to her statement which you do have ...

CHAIRPERSON: Yes.

ADV GCABASHE: And it is paragraphs 8 and nine.

CHAIRPERSON: Yes.

ADV GCABASHE: Where that explanation is given in her statement.

CHAIRPERSON: Yes.

ADV GCABASHE: That is over and above the transcript reference.

10 **CHAIRPERSON:** Yes.

ADV GCABASHE: Where she really deals with the concerns ...

CHAIRPERSON: Yes.

ADV GCABASHE: That were raised by them ...

CHAIRPERSON: Yes.

ADV GCABASHE: After the initial visit in January 2013.

CHAIRPERSON: Yes, yes.

ADV GCABASHE: So the first visit from the Provincial Department ...

CHAIRPERSON: Hm.

ADV GCABASHE: Was in January 2013.

20 **CHAIRPERSON:** Yes.

ADV GCABASHE: Their visit to the farm ...

CHAIRPERSON: Was in July ...

ADV GCABASHE: Was in ...

CHAIRPERSON: 2013.

ADV GCABASHE: It is August now that I

CHAIRPERSON: August, yes.

ADV GCABASHE: Have ascertained the date Chairman. August ...

CHAIRPERSON: Ja.

ADV GCABASHE: 2013.

CHAIRPERSON: 2013.

ADV GCABASHE: But Chairman frankly ...

CHAIRPERSON: Hm.

ADV GCABASHE: The issue I am raising ...

CHAIRPERSON: Hm.

10 **ADV GCABASHE:** Is not really about what they did or did not have before them.

CHAIRPERSON: Hm.

ADV GCABASHE: I am interrogating paying US\$5 million ...

CHAIRPERSON: Yes.

ADV GCABASHE: For the only document that has been placed before this Commission ...

CHAIRPERSON: Hm.

ADV GCABASHE: Which is called a feasibility study ...

CHAIRPERSON: Hm.

20 **ADV GCABASHE:** And that is the document that Mr Thabethe has before him dated October 2012 - Mr Thabethe.

CHAIRPERSON: Yes. I think what I particularly wanted to hear what Mr Thabethe had to say - and I think it is linked to what you are looking into - was here is the National Department saying you do not have a proper feasibility study. If they are referring to the feasibility study

that the only feasibility study that we know of ...

MR THABETHE: Hm.

CHAIRPERSON: Then it raises the question of what do you say about that. Did you work on the basis of what is really not a proper feasibility study as far as the National Department is concerned, did you take – did you accept it as a proper feasibility study and it might go back to the question Ms Gcabashe raised about terms of your monitoring? Did you go far enough to check that if taxpayer's money was to be used there was a proper basis for it?

- 10 **MR THABETHE:** Ja Chair, thank you very much, Chair if the National Department of Agriculture is referring to this document, not to be the proper feasibility study then I don't understand Chair, because that's not the impression I had from them. It might have come across so of late because even starting from our presentation and everything they agreed with us and accepted.

- After our presentation, after our – we had a business plan that we presented to them originally which is not this business plan but it's a comprehensive business plan of the province which includes other project that is what is originally been presented to the National
20 Assessment Panel.

Now if the individual projects in that business plan are agreed upon, it is only then that National says, then submit to us the individual business plan of each of the projects that we have approved. Now that is my understanding, that we are not expected to bring those individual business plans when we are going to present the projects for

acceptance.

Then later once they agree with it, in the Assessment Panel of National then they say province these were the issues that were raised, they write to us and say deal with these issues on this projects that we have approved, those that they have not approved fall out and then we go then and deal with the issues they've raised and we then over and above that prepare the documents which then they require per individual business plan. That is my understanding Chair.

CHAIRPERSON: Per individual project?

10 **MR THABETHE:** The individual projects, yes Chair.

CHAIRPERSON: Mmm okay, continue Ms Gcabashe.

ADV GCABASHE: Thank you Chairman. I just want to remind you, Mr Thabethe that the Estina obligations for the first phase that you signed off on included the preparation of a feasibility study. You will find that – it's a document we've interrogated, the Chairman has interrogated with you, it's on page 1378 of reference Bundle D, that's the one where you signed off that land acquisition and Environmental Affect Assessment, feasibility study, water reticulation, electricity connections etcetera, etcetera had been completed.

20 **MR THABETHE:** That's correct Chair.

ADV GCABASHE: And the date of that is the 18th of January.

MR THABETHE: That's correct Chair.

ADV GCABASHE: So as of the 18th of January you had received – this is what's written here, the feasibility study?

MR THABETHE: That's correct.

ADV GCABASHE: And this is why we put it to you that, that feasibility study is the October 2012 feasibility study that you had signed off on.

MR THABETHE: Chair I agree with the statement, my only disagreement it's when the National Department of Agriculture was referring to this feasibility study. I'm not disputing what she is saying but that – I'm saying to her, if the National Department has been referring to this document, then I have a problem because they will not be sitting with a document, for almost the entire year and when they come to visit the project, when there's a problem it's only then that they
10 raise issues to us.

They should have raised those issues to say, no, no Agriculture Free State we have a problem with your feasibility study because that had been submitted to them.

So they shouldn't have waited until October 2013 to come back to us to say, we don't agree and during that time when they visited it is when an issue was raised with them by National Treasury, that's where I'm saying I have a problem because you agree with us and when there's a problem towards the end you say, no I don't agree with you.

ADV GCABASHE: Mr Thabethe can I continue?

20 **MR THABETHE:** Yes Chair.

ADV GCABASHE: I'm interrogating the Five Million US Dollars you paid for a feasibility study that same feasibility study that you have just confirmed is the October 2012 feasibility study, are you with me?

MR THABETHE: Chair I'm with you Chair and I understand that you are interrogating this feasibility study but...[intervenes].

ADV GCABASHE: No, no I'm interrogating the payment...[intervenes].

MR THABETHE: Oh the payment of this feasibility study on the basis that National is saying they don't agree with the feasibility study...[intervenes].

ADV GCABASHE: No, let me correct that.

CHAIRPERSON: I think let Ms Gcabashe put her question on the payment.

ADV GCABASHE: Forget about the National Department for your purposes.

10 **MR THABETHE:** Okay thank you Chair.

ADV GCABASHE: I'm simply saying – and this is why I went back to contextualising my questions, did you interrogate what you were spending Government money on – tax payer's money on?

MR THABETHE: Yes.

ADV GCABASHE: We agreed that, that's really what I'm dealing with.

MR THABETHE: Yes Chair.

ADV GCABASHE: So I'm asking what this Five Million US Dollars bought for you, the Department. I have shown you the documents that are in the file and we started to have this discussion when I wanted to
20 know if you knew any of these people on page 1379.2 who had been paid some of these monies.

MR THABETHE: That's correct Chair.

ADV GCABASHE: Yes, the reason I'm asking I'm asking these questions is because at our last hearing we agreed that in terms of that agreement with Estina [indistinct] Estina, you had to monitor, you had

to know who sub-contractors were, you recall that?

MR THABETHE: That's correct Chair.

ADV GCABASHE: Good, let's move on...[intervenes].

CHAIRPERSON: What was the answer to your question – what was your answer to Ms Gcabashe's question on whether you interrogated what you were paying that Five Million rand for?

MR THABETHE: Chair we had because the – I'm trying to confuse the Five Million and the 30 Million now Chair because...[intervenes].

CHAIRPERSON: Well she's on the Five Million.

10 **MR THABETHE**: Is it the Five Million US Dollars?

ADV GCABASHE: Five Million US Dollars, I'll come back to the R30million...[intervenes].

MR THABETHE: That's the R30million Chair.

CHAIRPERSON: Yes, okay it's the US dollars and the rands, okay R30million, Five Million US Dollars.

MR THABETHE: Yes, that's why Chair I preferred that I stayed on the R30million because...[intervenes].

CHAIRPERSON: On the rands ja?

MR THABETHE: On the rands yes, rather than the US Dollars.

20 **CHAIRPERSON**: Okay yes.

MR THABETHE: But Chair there's a document that was agreed upon, what will this R30million be used for and it was signed off, so that was paid on those basis.

CHAIRPERSON: Do you recall what that document said this was for?

MR THABETHE: Yes Chair we have the document if she can refer me

back to this document because we had interrogated that document before.

CHAIRPERSON: Mmm.

MR THABETHE: It was the feasibility study, EIA...[intervenes].

CHAIRPERSON: There was R17million that was part – was it part of the R30million, if I recall correctly?

ADV GCABASHE: No Chairman, if I might assist, please go to page 1378 number one, 1378 that's where that 18th of January lets...[intervenes].

10 **MR THABETHE:** On the reports?

ADV GCABASHE: It's reference Bundle B, reference – sorry reference Bundle D for Donald it's the one that you had all along I think it's in front of you right now.

MR THABETHE: Okay, thanks Chair.

ADV GCABASHE: Yes, 1378 as you pause there please let me just make one other correction, the total amount, that Five Million US Dollars came to was R19million plus R30million so that's R49million, not R30million, they charged you R49million, it was two payments, one for R19million South African Rands, that the Two Million Dollars
20 translated into rand, R19million then the three million translated into rands was R30million, I'll go back to those numbers if you want. I just don't want you to get confused about what I'm asking you. So for this feasibility study that we are querying you paid somewhere in the region of R49million and this is why I'm interrogating this issue.

MR THABETHE: Ja Chair, hence I do not want to sit in the US Dollars.

My understanding of what we paid and we've signed off in this document was the amount of R30million that we had agreed on.

ADV GCABASHE: Can I interrogate that Chairman please?

CHAIRPERSON: Yes.

ADV GCABASHE: I want to be where you are right now. You have also told this Commission that, that 30million Dollars – I beg your pardon that R30million that was paid by the Department in June/July 2012 you thought was going to be for the feasibility study. In fact, the monthly reports tell you that, that money was taken out of the country
10 in two tranches. First R29millinon then another R1million and it was said to be reserved for pasteurising equipment.

So let's not get confused about what in fact the R30million South African Rands that you are speaking to right now, that issue, the money that you advanced in July 2012, you know Mr Thabethe that, that money was taken out of the country because it was said to be reserving orders – purchase orders for pasteurising equipment.

MR THABETHE: Ja Chair, I don't know – I do not agree with the statement because this document that I've...[intervenes].

CHAIRPERSON: Which statement just make that clear so that we
20 can...[intervenes].

MR THABETHE: The statement that says, I know.

CHAIRPERSON: Mmm.

MR THABETHE: The statement that says I know that money was taken out. What I know Chair, is that on this document in January 2018 the work that was expected was delivered and I signed off and this is what

this money paid for. Now what happened to the money after the work that we had expected to be delivered to us was delivered, I don't know because the work was delivered to us and we signed it off on the 18th of January 2018 and that was for the money that was paid. How the money was managed after we had received the work done, is what I don't know.

That is my problem Chair, because I wouldn't know what have they used the money for because the work that we have requested from them had been delivered.

- 10 **ADV GCABASHE:** Chairman, I simply point Mr Thabethe back to – and we'll just going to have to play around with these pages Mr Thabethe, back to that monthly report that's on page 1403 of the same Bundle you've got in your hand right now.

MR THABETHE: Yes Chair.

ADV GCABASHE: Don't lose your page because I know you want to speak to that if you are – where you are now, go to 1403 please Mr Thabethe, 1403 I believe you are going the wrong way. Page 1403 we're at reference Bundle D Chairman, back to the monthly reports.

CHAIRPERSON: I'm still at B.

- 20 **ADV GCABASHE:** No back to the monthly Chairman.

CHAIRPERSON: Page 1403?

ADV GCABASHE: 1403 Chairman.

CHAIRPERSON: 1403, yes.

ADV GCABASHE: And it's clearly written there Mr Thabethe, reserved for parlour equipment, R29million, that's in July 2012, we've

interrogated the issue.

MR THABETHE: That's correct Chair.

ADV GCABASHE: If you go across to October 2012 and another R1million, fifty thousand, same line item, reserved for parlour equipment.

MR THABETHE: That's correct Chair.

ADV GCABASHE: Yes, so that money was not used for the feasibility study, according to what's written here.

MR THABETHE: Chair last time when we spoke about this, I had
10 indicated to the evidence leader that we had picked that in the report
and we had engaged them to say we see that you had reserved the
money for parlour equipment which we expect to be given to do the
work that we had agreed on.

Then the agreement – the discussion was why I said we were
then comfortable, because we were promised that the work of the
feasibility study will never be delayed, it will proceed as agreed and it
would be completed on the time because they are using expertise that
will not require money to be paid to them at that particular moment,
they would be paid later.

20 Hence we then agreed with them, as long as the work that we
had put the money for has not been delayed and a proof is there for us
that, yes indeed the work that we had put the money for was not
delayed, it was presented to us on time and the work was done. Hence
I'm saying Chair – that's why we had raised it because if they had put
this money aside and the other work that was supposed to have been

done, was not done then we would have a problem.

ADV GCABASHE: In fact they told you, if you just go to the page before that, they told you that they were busy putting money in. They were putting in their own money so that the work you are talking about could be done.

MR THABETHE: That's correct.

ADV GCABASHE: Hence the R250 000 that they refer to and it is a line item in any event on page 1403, you will see it in September and then in October you see the line item, Estina Investment R3.7million –
10 R3 750 000.00. They were putting in their own money, they were telling you in September and October so that they could do the work that you say they were supposed to do with the R30million you advanced them in July 2012, something very wrong there, doesn't add up, what you're saying doesn't add up Mr Thabethe.

MR THABETHE: No Chair, it adds up because the fact that they've been putting their money, means the work was done that we had requested them to do.

CHAIRPERSON: Why must they put in their money when you have put money for that work? Then that should be a question that comes
20 naturally, we've given you money for this work, why are you putting in your own money and taking the money that we have given you somewhere else?

MR THABETHE: That's correct Chair, that's what we asked, you remember I said we raised this issue and we said...[intervenes].

CHAIRPERSON: Yes and what was the answer?

MR THABETHE: We said to them, this money we have put it aside for this particular purpose and this is what we want to do because we had not made the money available for the activities, I think, if you later look Chair, on the December report, you realise that a lot of the work that we should have paid for, they had actually paid for because they had planted, they had done everything on the ground and money had been spent and then in January the work of the money...[intervenes].

CHAIRPERSON: No Mr Thabethe let's stay just with the question.

MR THABETHE: Chair.

10 **CHAIRPERSON:** You have given them money to do a certain job.

MR THABETHE: Yes Chair

CHAIRPERSON: They are taking that money elsewhere.

MR THABETHE: Yes.

CHAIRPERSON: And then they are saying to you, when you raised the question, they are putting in their own money. The most obvious question, why is that necessary, from your side?

MR THABETHE: I hear you Chair, this is what we also asked in terms...[intervenes].

CHAIRPERSON: What was the answer to the question?

20 **MR THABETHE:** In terms of the report that were given to us, that we are putting aside this money for equipment but the work that...[intervenes].

CHAIRPERSON: Why are you putting aside money given to you for A, putting it aside for B? We have given you this money for A, why didn't you say to them, you may not do that, this money has been given to you

for A, you must use that money for A, you can't decide that you are going to use it for something else. It's our money, it's paid to you to do A?

MR THABETHE: I hear you Chair, it's the matter of shifting the two to say the money that you have paid, we use it for the purpose of what you want and the money that we have we'll use it for the other purpose.

CHAIRPERSON: Ms Gcabashe you might be wanting to – you might or might not be wanting to ask more questions on this?

ADV GCABASHE: I do Chairman, but maybe we should take the tea
10 break because it is an important point it runs through all the ...[intervenes].

CHAIRPERSON: Yes it is important, ja.

ADV GCABASHE: Yes, once we've dealt with this then we can deal with all the other issues.

CHAIRPERSON: Okay, it's about twenty past, we will take tea adjournment and resume at twenty five to twelve. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us proceed.

20 **ADV GCABASHE:** Thank you Chairman. Mr Thabethe back with you.

MR THABETHE: Thank you Chair.

ADV GCABASHE: We were trying to understand what monies were paid for I keep saying this. You are with me? And the proposition I put to you as we – just before we arose for tea was that if we look at those monthly reports and if we accept that what is written on page 1403 that

million just over 30 million was reserved. We can agree on that? That that was reserved and if we are not agreeing let us just clear that first one. Was it reserved or was it not reserved when you interrogated this? What was your final take?

MR THABETHE: Chair in terms of the report that we received. They made an indication that they were reserving the money.

ADV GCABASHE: You accepted that?

MR THABETHE: After interrogating we agreed.

ADV GCABASHE: So we can tick. You accepted that this 30 million
10 was reserved?

MR THABETHE: For equipment yes Chair.

ADV GCABASHE: For parlour equipment.

MR THABETHE: Yes.

ADV GCABASHE: Good. Our next point is, you then had to pay for the feasibility study and I am going to take you back to where you wanted to be earlier on. You know that Phase 1 those obligations.

MR THABETHE: Yes.

ADV GCABASHE: That is where I am going.

MR THABETHE: Yes Chair.

20 **ADV GCABASHE**: You will find them on page 1378.

MR THABETHE: Yes correct Chair.

ADV GCABASHE: So you had to pay for these obligations that had now been completed as at the 18 January 2013?

MR THABETHE: Yes Chair we paid – we had already transferred the money for them to be done.

ADV GCABASHE: No this is what I want us – just to take it slowly Mr Thabethe. We have just agreed that the money you transferred in July 2012 is the same money that is on the monthly report that was reserved for parlour equipment.

MR THABETHE: Chair when we signed off this report in January it was signing off the money that was put for this particular purpose as paid. That is why I am confused Chair with the question because we had then signed off this money because the work that it was meant for it was done.

10 **ADV GCABASHE:** I think we should move on Mr Thabethe and I – at this rate I am forced to just draw conclusions from the record as it stands because we cannot stay on one point all morning. Can I ask you this question? If you go to page 1375 are you able to tell us whether you knew about any of these items that Gateway say they had done work on. Do you know anything at all about this?

MR THABETHE: No Chair I do not know anything about this report.

ADV GCABASHE: Yes. I think this is the better way to proceed. And then on the very next page there is a payment of in South African Rands R19 780 000.00. You do not know what this money was for that
20 was paid?

MR THABETHE: No I do not know Chair.

ADV GCABASHE: I think this is the easier way to proceed Mr Thabethe. Then the very next page we have 30 million South African Rand. R30 900 000.00 South African Rand that were paid again by Estina to Gateway. You do not know what this was for?

MR THABETHE: No I do not know Chair.

ADV GCABASHE: Is that the best way to – okay good. The very next page then is your Phase 1 – the Phase 1 obligations. We have dealt with those.

MR THABETHE: That is correct Chair.

ADV GCABASHE: We go over the page and we get to a document on page 1379 which is dated the 22 March 2013 which talks about the 22 March summary of completed works feasibility study Gateway Limited. Do you know what this feasibility study they are referring to is a –
10 refers to is what it is about?

MR THABETHE: No Chair I do not know because I had not been provided with such a document before.

ADV GCABASHE: The only feasibility study you know is the October 2012 feasibility study?

MR THABETHE: Yes Chair. But the – in terms of the feasibility study the document I know is the one that we have referred to.

ADV GCABASHE: Correct.

MR THABETHE: Yes

ADV GCABASHE: I am comfortable with what – with that knowledge of
20 yours. So on the 22 March there is this invoice for feasibility study followed by hourly rates followed by again dated April 2013 a list of consultants who appear to have done work on the feasibility study?

MR THABETHE: I see it Chair.

ADV GCABASHE: The only thing I can surmise and these are not facts – the only thing I can surmise from this is that these are the people

who did work on the feasibility study and when money became available in the new financial year they were able to present their invoice. That is the best I can do. I do not know if you want to apply your mind to what these documents might represent in the context of the feasibility study you know you had in October 2012?

MR THABETHE: Ja I do not know Chair. If that is the case or not. Because these were their documents.

ADV GCABASHE: That is fine. I just want to understand what you thought your money was being used for. What you interrogated. You
10 have no clue as to what these people could have been charging you for in March and April 2013?

MR THABETHE: Chair we had agreed with them on what work to be done with the money and that is what we had signed off and we had agreed after delivery. How they have been charged between them and whoever they have been using that is their story because it is up to them to pay or how to pay the people that they have been using.

ADV GCABASHE: Back to page 1403 Mr Thabethe.

CHAIRPERSON: Back to page?

ADV GCABASHE: 1403 of the same bundle Chairman.

20 **CHAIRPERSON:** Okay.

ADV GCABASHE: You are there Mr Thabethe?

MR THABETHE: Yes I am there Chair.

ADV GCABASHE: Good. So if you look at application of funds payments to creditors R492 000.00. You have seen that amount? On the far right hand – in October on the far right hand side. Payments to

creditors – you go across R492 525.33. You see that number?

MR THABETHE: Ja I see it Chair.

ADV GCABASHE: Okay. You do not know what that – who those creditors could have been?

MR THABETHE: No I do not have the details Chair.

ADV GCABASHE: The very next item is again reserved for parlour equipment just over 1 million. You can see that?

MR THABETHE: Yes Chair.

ADV GCABASHE: Then we look at some small numbers. Can we look
10 at director's salaries? R48 351.38 who were these directors? Was there an agreement between the Department and Estina that there is a director who would be drawing a salary?

MR THABETHE: Chair my understanding of the director that was doing the implementation which was indicated to us was Mr Prasad.

ADV GCABASHE: No Mr Prasad is – I will show you when we look at the cancellation agreement and the documentation attached there. He was earning R65 000.00 a month. We can go to that in due course. We – it is where we have to go to but R65 000.00 a month is what Prasad was earning. He was not a director he was a project manager.

20 **MR THABETHE**: Yes Chair.

ADV GCABASHE: Yes. Now this says directors' salaries. Who was getting this R48 000.00?

MR THABETHE: Chair – it – my understanding was that the director of the project who was being paid was Mr Prasad.

ADV GCABASHE: Okay. I can safely tell you that the conclusion you

are coming to today is incorrect. Did you interrogate this when you saw these numbers?

MR THABETHE: The – Chair like I have indicated you see I – as – the Vrede Dairy was not my only work to interrogate each and every line item. There were officials in the Department that were looking at these and engaging on a daily basis. So it would not be me sitting every day checking who is this one who is getting paid here because they would have been comfortable with all these things. They have been receiving these reports. So I – I hear Chair that I am being asked this question

10 but I am not in a position to respond.

CHAIRPERSON: But you were the Accounting Officer Mr Thabethe and if you have got people working for you and they do not do their job properly you take responsibility as the Head of Department and Accounting Officer, is that not so?

MR THABETHE: I agree Chair.

CHAIRPERSON: So...

MR THABETHE: As...

CHAIRPERSON: So what is this story about other people who were doing – were checking if they were comfortable that is it. If you trusted
20 them enough that if they said everything was fine you were prepared not to check and it turns out that things were not fine. You take responsibility for that, is it not?

MR THABETHE: Yes Chair I agree.

CHAIRPERSON: So you cannot hide behind them. If you trust them that they are qualified to check certain things for you and they are

credible, they are trustworthy. If they say this is okay you are prepared to take their word without checking and it turns out there is a problem they did not do their job you are accountable.

MR THABETHE: That is what I am agreeing with Chair.

CHAIRPERSON: Yes okay.

MR THABETHE: Maybe it is not coming across.

CHAIRPERSON: Well it is coming across as if you are running away from accountability on the basis that you had people under you doing certain things. But they were doing those things because the
10 Department appointed them and if ultimately you have got to sign off and you take their word and they said certain things have happened.

MR THABETHE: Yes Chair.

CHAIRPERSON: You take responsibility if they have misled you. You take the responsibility if they did things wrong – they did wrong things.

MR THABETHE: I agree Chair.

CHAIRPERSON: You agree okay.

ADV GCABASHE: Thank you Chairman. I – I then am going to make the assumption Mr Thabethe that with all the other payments that were made in October 2012 you are not able to assist this commission and
20 explain what those payments might have been about?

MR THABETHE: Yes Chair it will be very difficult for me to go line by line explaining what does each one mean.

ADV GCABASHE: Let us move to the next monthly report Mr Thabethe on page 1405. And on page 1405 the third line from the bottom essentially says pay us the R84 million that is outstanding. We have

put money in our own money in.

CHAIRPERSON: I am sorry – I am sorry Ms Gcabashe.

ADV GCABASHE: Yes Chairman.

CHAIRPERSON: Did you say 1405?

ADV GCABASHE: 1405 Chairman. So this is the executive summary and the notes to the financial report.

CHAIRPERSON: Oh okay.

ADV GCABASHE: Yes.

CHAIRPERSON: That is where it says Mohuma Mobung.

10 **ADV GCABASHE:** And I am just summarising.

CHAIRPERSON: Vrede Dairy Project.

ADV GCABASHE: Correct Sir.

CHAIRPERSON: Ja okay.

ADV GCABASHE: I am simply summarising the notes to the financial report in the interest of progress Chairman and saying that again what is reflected here is in September R250 000.00 was paid in. Then the second last paragraph they tell us that they made a further capital contribution of R3.75 million in October and another R850 000.00 in November all involved to enable the procurement of urgently needed
20 farm equipment and accessories.

Then in the last paragraph they say we have now made a contribution of R4.85 million please find that outstanding R84 million that you – you are supposed to be giving us. Are you comfortable with my summary of what is written here Mr Thabethe?

MR THABETHE: That is correct Chair.

ADV GCABASHE: Let us go over the page. Now that will – those were notes to what is written here on page 1406. So we will now just go to November because we have dealt with October. We have dealt with August, September, October, we now at November.

MR THABETHE: That is correct Chair.

ADV GCABASHE: And this is before you secure the land at Vrede for this dairy, is that not correct Mr Thabethe?

MR THABETHE: That is correct Chair.

ADV GCABASHE: Good. So you there see the R850 000.00 that they
10 say Estina says that it put into the project. You can see that number?

MR THABETHE: Yes Chair.

ADV GCABASHE: Then the other largish amount would be professional fees R130 000.00 I assume that you do not know what that was about?

MR THABETHE: Ja I would not be able to break down what it did include Chair.

ADV GCABASHE: But – and just above that you have got R96 702.76 for again directors' salaries. It is double the original amount. The original amount in October was R48 – over R48 000.00 now we have doubled it to R96 000.00. You do not know what this could represent?

20 **MR THABETHE:** I am trying to get to the directors' salaries.

ADV GCABASHE: It was just above Mr Thabethe the professional fees that I pointed out to you. Directors' salaries R48 351.00 in October and 38 cents.

MR THABETHE: I have – I see it.

ADV GCABASHE: In November R96 702.76 it doubled.

MR THABETHE: Yes.

ADV GCABASHE: Essentially.

MR THABETHE: That is correct Chair.

ADV GCABASHE: And you are telling us you do not know what that might have been about?

MR THABETHE: Chair for me to be able to go back we may need to go back to the details of what this includes because I – I do not want to say I know or I do not know. Because if we then break it down it could give what is it referring to Chair.

10 **ADV GCABASHE:** I just want to assure you that this amount did not represent what was paid to Mr Prasad. So if you look at – just leave that document as it is for a minute and go to Reference Bundle B for Bernard. No, no. No, no not there please Mr.

MR THABETHE: Reference Bundle.

ADV GCABASHE: B – Reference Bundle B. And we are really just dealing with Mr Prasad because you thought this money was being paid to Mr Prasad. I want to satisfy you that his salary of R65 000.00 you will find at page 576. 576 of Reference Bundle B and the very first name under the list of employees at Estina Vrede as at August 12 2014

20 is that of Mr Prasad who is called the CEO.

He is not a director he is a CEO and his salary was R65 000.00 as I indicated earlier. You will note that this document is part of the Memorandum of Agreement between the Department and Estina when the Estina contract was cancelled.

MR THABETHE: I hear you Chair.

ADV GCABASHE: I – and you are in agreement that that is what this represents here? This bundle of documents. If you want to you can go through it.

CHAIRPERSON: Yes.

ADV GCABASHE: And you will get to page 576 with Mr Prasad's name and all the other people who were employed. Mr Prasad was a CEO according to this document and he was earning R65 000.00.

ADV GCABASHE: That is correct Chair. If I may talk Chair. I am not sure if this two refers to the same person or differently because if I
10 look at the monthly report I do not see a CEO's salary.

So it – that is why it is very difficult for me to break it down. There could have been accrued payment. There could be other things. So it is a very difficult – for me to explain. Unless if they were a CEO in the report and here because this was a detailed report that we had requested from Estina in terms of accounting for the funds. Hence this one document then was – was then developed.

ADV GCABASHE: Chair. – Mr Thabethe the simple point I am making is you did not monitor the accounting of funds by this organisation by Estina. This is why you do not know what directors' salaries represents.
20 That is the essential proposition I am putting to you.

MR THABETHE: Ja Chair until we have the details of what the directors' salary involves and what payment was being made it will be very difficult for me to – to explain. That is the difficulty that I have.

ADV GCABASHE: You should have done that exercise way back Mr Thabethe. You would be speaking to the issue now because you had

interrogated the issues. That is the simple point that I am making.

Can you go to page 1408 please?

CHAIRPERSON: Which bundle now?

ADV GCABASHE: Same oh.

CHAIRPERSON: B?

ADV GCABASHE: Thank you. It is a good question Chairman we are back to the monthly reports. The monthly reports it is D Chairman.

CHAIRPERSON: And are we going back to 1406?

ADV GCABASHE: No we are now at the next month Chairman. 1408.

10 **CHAIRPERSON:** Okay.

ADV GCABASHE: Which includes December and January if we look at 1409. But I just want to pause on 1408. And again the very last paragraph really represents what Estina say these in their notes the money that they have put into the project – they had. They tell us here that they have made a capital contribution in cash of R5.75 million that is the last paragraph and they have entered into firm financial commitments to the value of R46 901 800.00 into the project.

20 So these are firm financial commitments they have made they say. They call this bridging finance until you find the R84 million that was committed to the project for the first financial year. So they tell us they have taken a total financial exposure of R52 651 000.00. Chairman those numbers can be found on the very next page. Mr Thabethe those were just notes to the numbers that are then on the next page.

MR THABETHE: Hm.

ADV GCABASHE: What is interesting about this Mr Thabethe and I would like to know if you picked this up as well when you looked at these monthly reports is the following: You have got December, January with the amounts that Estina says it had an opening balance. It puts certain cash in in both months and then it also sets out the purchase orders for December and January. You see that?

MR THABETHE: I see Chair.

ADV GCABASHE: Yes. Then they talk about the application of funds and they tell us how they applied those funds over that quarter. You
10 are happy with that? Just that they have written the numbers down?

MR THABETHE: Okay Chair.

ADV GCABASHE: What concerns me here Mr Thabethe is if you look at application of funds and I do not know if you are able to explain it at all. You have the R30 million grant that they received from you in July 2012 and then under application of funds you have R30 050 000.00 under reserved for parlour equipment.

MR THABETHE: That is correct Chair.

ADV GCABASHE: Yes. You then have purchase orders that were confirmed R46 901 000.00. You see that number?

20 **MR THABETHE:** Yes I see it Chair.

ADV GCABASHE: Are you able Mr Thabethe to explain where that R30 million that is the grant received from DARD might have been applied under application of funds? Is there somewhere here where you think that first R30 million was applied under the heading application of funds? Is my question clear? I am just asking for your assistance

here. We know you gave them R30 million. They have applied funds to this project. Can you see anywhere here where those funds were applied?

MR THABETHE: Chair I am trying to find the application of fund.

ADV GCABASHE: So at the top you have Cash Flow Position of Estina PTY Limited. Vrede Dairy Project. You have seen that heading?

MR THABETHE: Yes I see yes.

ADV GCABASHE: Below that you have Source of Funds.

MR THABETHE: Yes.

10 **ADV GCABASHE**: Below that you have Application of Funds.

CHAIRPERSON: It is written in blue on the left hand side.

MR THABETHE: Oh okay I see Chair. Which refers to that entire column I see it now Chair.

ADV GCABASHE: And you have it per month. There each month this is how they applied money.

MR THABETHE: Yes.

ADV GCABASHE: This is how they applied funds.

MR THABETHE: That is correct Chair.

ADV GCABASHE: This is how they applied funds.

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

ADV GCABASHE: And you have accumulative total at the end.

MR THABETHE: That is correct Chair.

ADV GCABASHE: All I am asking is are you able under the Application of Funds columns to find the use of the R30 million you advanced? That is all I want to know.

MR THABETHE: Chair the – the Application of Fund you would be able to see under Reserved for Parlour I still it under Cumulative still being R30 million. And then confirmed which says purchase of orders I see an allocation of – in December in an allocation in January.

ADV GCABASHE: I am only asking you to identify where you think the R30 million you advanced was used. I am seeking your assistance in looking at these numbers and identifying where the R30 million you advanced could possibly have been used looking at this cumulative set of numbers?

10 **CHAIRPERSON:** Is your question aimed establishing whether he realises that as at the time of this report that R30 million does not appear to have actually been used yet?

ADV GCABASHE: Indeed so Chairman.

CHAIRPERSON: Yes.

ADV GCABASHE: I – because it is a lot of money and I just want to understand if...

CHAIRPERSON: Yes.

ADV GCABASHE: If he can find it anywhere here.

CHAIRPERSON: Yes. You said Mr Thabethe that when you look at the
20 – at the – at page 1409 you see that the R30 million is put there as reserved for parlour equipment.

MR THABETHE: Yes.

CHAIRPERSON: You said that hey?

MR THABETHE: Yes Chair.

CHAIRPERSON: Yes. Do you accept that as at the time of this

document it had not been used as yet?

MR THABETHE: Because I can still see it Chair on the right hand side under cumulative.

CHAIRPERSON: Yes. Does that mean the answer is yes?

MR THABETHE: Yes according to this report Chair I do not see the application but I see still the accumulation.

CHAIRPERSON: Yes okay. Does that help Ms Gcabashe?

ADV GCABASHE: No it – not really Chairman.

CHAIRPERSON: Hm.

10 **ADV GCABASHE**: I simply – maybe I should rephrase the question. We can all see that R30 million right at the top.

MR THABETHE: Yes.

ADV GCABASHE: Under the cumulative amount against grant received from DARD.

MR THABETHE: That is correct.

ADV GCABASHE: That was received.

MR THABETHE: That is correct.

ADV GCABASHE: Then they tell us how they applied the funds. If you remember the very first month we looked at we had R29 million that
20 was reserved. Then we had another R1 050 000.00 that was reserved. That takes us to that R30 050 000.00.

MR THABETHE: That is correct.

ADV GCABASHE: Yes. I am trying to understand but I need your help to understand this. I am trying to understand whether that R30 050 000.00 one should set off against the R30 million you paid in

July of 2012. I am just trying to make sense of the figures and I was hoping you could help. Is that the same money or is it a totally different amount? This R30 050 000.00?

MR THABETHE: I am not following Chair.

CHAIRPERSON: You remember the R30 million that you had paid in July?

MR THABETHE: Yes.

CHAIRPERSON: July 2012.

MR THABETHE: Yes Chair.

10 **CHAIRPERSON**: You see at page 1409.

MR THABETHE: Yes Chair.

CHAIRPERSON: There is an amount of R30 050 000.00.

MR THABETHE: Yes Chair.

CHAIRPERSON: Reserved for parlour equipment.

MR THABETHE: Yes Chair.

CHAIRPERSON: The question is whether your understanding is that this amount relates to or is the same amount or is connected with the amount of R30 million that you paid in July or whether it is just a separate amount all together. What is your understanding now? What
20 was your understanding when you looked at these reports?

MR THABETHE: Chair, it - it would - because I see it still in the same column but another one million has been added back to 30 because it was 29 all along. Indicating that it was a reserved amount. So my - my understanding is that you are still referring to the same amount.

ADV GCABASHE: Please go back to page 1-4-0-3 Mr Thabethe.

MR THABETHE: Yes Chair.

ADV GCABASHE: You see your 29 million that you - you have just referred to?

MR THABETHE: Yes.

ADV GCABASHE: If you go across - and so that was in July. If you go across the same line item you find the 1 050 000. No, no. Oh. Are you checking something else?

MR THABETHE: 1-4-0-3?

ADV GCABASHE: 1-4-0-3 sir.

10 **MR THABETHE:** Yes Chair.

ADV GCABASHE: So there is the 29 million that you have just been talking about.

MR THABETHE: Yes.

ADV GCABASHE: If you take your finger across to October you find the 1 050 000

MR THABETHE: That is correct. That is correct Chair.

ADV GCABASHE: That gives us 30 050 000.

MR THABETHE: That is correct.

ADV GCABASHE: Keep your finger there please Mr Thabethe and go
20 back to 1-4-0-9.

MR THABETHE: Yes Chair.

ADV GCABASHE: Where you find that 30 050 000.

MR THABETHE: That is correct Chair.

ADV GCABASHE: So I am trying to put these two sets of figures together and I am trying to understand whether the total of the 29

million plus the 1 050 000 that was reserved takes us across to that 30 million on the other side.

MR THABETHE: *Ja.*

ADV GCABASHE: I do not know. I am just asking for your help in understanding this. It is - it is money you were in control of.

MR THABETHE: *Ja.*

CHAIRPERSON: Just hang on. So is the question still whether it is the same amount. It is the same money?

ADV GCABASHE: Yes sir.

10 **CHAIRPERSON:** Yes. Mr Thabethe.

MR THABETHE: Yes. I - I think it is the same money Chair.

CHAIRPERSON: Hm.

MR THABETHE: The way I look at it.

CHAIRPERSON: Hm.

ADV GCABASHE: So you believe that that 30 050 000 is that grant money that you had paid in July 2012?

MR THABETHE: That is correct Chair.

ADV GCABASHE: That has now being put here reserved for parlour equipment?

20 **MR THABETHE:** Yes.

ADV GCABASHE: But now my difficulty with that - this is why I needed your help in understanding these numbers.

MR THABETHE: Hm.

ADV GCABASHE: As if that is the case it should be reflecting as a credit. Not as a debit item. It is money you had already advanced. So

here it cannot be that it is an amount that is being debited to you. Are you with me?

MR THABETHE: Ja. Chair if - if you would remember - if I am correct. January has been the month where we had signed off.

ADV GCABASHE: Correct.

MR THABETHE: That we are happy now with the work done.

ADV GCABASHE: Correct.

MR THABETHE: Which means we could then agree that that money has been spent.

10 **ADV GCABASHE**: The difficulty with what you are saying is here the line item says reserved for parlour equipment and that is why I said to you earlier these things do not add up, but I was hoping you would assist us in unscrambling this. It cannot be that money that was reserved for parlour equipment is the same amount that then paid for all those items on that Annexure A that you signed off. You need to help us here Mr Thabethe.

MR THABETHE: What could be the problem Chair for - for this money to pay for?

ADV GCABASHE: This money here was reserved for parlour
20 equipment. That is what is written here. I am just reading what is written here. You agree that is what is written here?

MR THABETHE: Yes. I - I agree Chair.

ADV GCABASHE: So the same money could not have paid off the items on the page that has your obligations. I am taking you back there. Page 1-3-7-8. Page 1-3-7-8.

MR THABETHE: I - I hear you Chair.

ADV GCABASHE: You have got it? I - so it means essentially you had to find more money to pay for the obligations that are set out on page 1-3-7-8 because the 30 million on page 1-4-1-2 was reserved for parlour equipment.

MR THABETHE: Yes Chair. That - that is what we - remember my - my argument was that when the time comes for us to be able to have that money available. It must be available. Indeed here when we said the work was done. Then the money was made available for us to be able
10 to pay. Now what - what I understand is that they then issued purchase orders to be able to counter that money because we had already then - we - we needed it back to pay for what it was meant for.

So then they had to issue their own purchase orders for those - for those reserved equipment for us to be able to say this money - the time has come for it to be spent where it was supposed to be spent. Then the money was released for that purpose.

ADV GCABASHE: You see if you look at the very next line item - confirmed purchase orders issued.

MR THABETHE: Yes.

20 **ADV GCABASHE:** R46 901 000.

MR THABETHE: That is correct.

ADV GCABASHE: It is a different sum.

MR THABETHE: Hm.

ADV GCABASHE: It is not related at all to the 30 million.

MR THABETHE: Chair what I can explain is that the 30 million was

released in January for us to be able to pay for what it was intended for. Hence we released it.

ADV GCABASHE: No. Mr Thabethe you did not release any money in January 2013. The next payment you made to Estina to cover the 84 million that was outstanding could only be paid in the new financial year. Remember we had that discussion.

MR THABETHE: Ja. Chair releasing it means when I signed off that letter that says the following work which we had intended for the 30 million that - that was our release from our side to say that money can
10 then be used to pay for the work done. I am not saying we made another money paid. We had said this money was for this purpose. We are now signing off that the work has been done in January.

ADV GCABASHE: So if you go to page 1-4-5-2.

MR THABETHE: 1-4-5-2.

ADV GCABASHE: 1-4-5-2. You find the payments that were made to Estina.

MR THABETHE: Yes Chair.

ADV GCABASHE: The first one of course was that July 2012 payment that we have all agreed on.

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

ADV GCABASHE: And it is still hanging in limbo because I still am not sure whether that money paid for Annexure A - those obligations or whether that money was reserved for parlour equipment. There is still no clarity in my head, but be that as it may. The next item - you then in April 2013 pay R34 950 000. You can see that number.

MR THABETHE: That is correct Chair.

ADV GCABASHE: Now my understanding of what you have just said now in your evidence is that you were now paying for the Annexure A obligations. Is that what you were saying?

MR THABETHE: No, no. I am not saying the sort Chair.

ADV GCABASHE: Please - then explain what the 34 950 was about - 34 million.

MR THABETHE: No, no. I am on the 30 Chair. The (intervenes).

ADV GCABASHE: On the July 2012 30?

10 **MR THABETHE:** Yes.

ADV GCABASHE: Yes.

MR THABETHE: Which was signed off in January to say the work for the 30 million has been done. That - that is what I was saying Chair.

CHAIRPERSON: There was a question about the 34 million.

ADV GCABASHE: So when the 34 950 000 was being paid by the department ...

MR THABETHE: Yes.

ADV GCABASHE: What did you understand that to be for?

20 **MR THABETHE:** The - the 34 million Chair - the 34 plus the 30 plus the 19 if referring to the 84 million.

ADV GCABASHE: What was that money supposed to be used for Mr Thabethe?

MR THABETHE: This was the money was supposed to be used for the implementation which was then inclusive of the parlour equipment, the tractors and all those things that have been done. So it was - which

was range of activities for this amount. So it is the money that they have been referring to - to say you have not paid the 84 million. So if you add the 34 the 30 plus the 19 refers to the 84 million.

ADV GCABASHE: Yes, but my question is what was the 84 million paying for when you look at your monthly - your monthly statements because they are telling you here. We are doing this work. We are reserving these orders. What was your 84 million paying for?

MR THABETHE: Chair to get to that then it means we need to go through all the monthly statements from - and - and be able to say in
10 this month this was used for that. This month was used for that. So I will not be able to say what because there are monthly statement each month that should be able to account for the total amount.

ADV GCABASHE: Mr Thabethe the ones you have before you go all the way through to February 2013. They tell you exactly what they were applying their funds ...

MR THABETHE: Yes.

ADV GCABASHE: The funds they were now putting in.

MR THABETHE: Yes Chair.

ADV GCABASHE: What that money was being used for.

20 **MR THABETHE:** Chair we are not together because the ...

CHAIRPERSON: Yes.

MR THABETHE: The 84 she is referring to was paid in April.

CHAIRPERSON: Huh-uh.

MR THABETHE: It means the money that has been paid in April should cover work until April or end of March to say these are the amounts that

this money was meant for ...

CHAIRPERSON: Hm.

MR THABETHE: And - and you should be - also be able to say this work that Estina has been doing was the part that the department has been responsible for. It is not yet the - the processing plant. It means partly some of this money we had to say you had already done one, two, three, four, five on the development of the dairy. We - it - it is our responsibility to have done that work.

10 So those - those issues that they have been doing the planting that was done in December/January which they had accounted for is the work that should have been done by the department.

ADV GCABASHE: Let us just sum on this aspect. I want to move onto a new aspect Mr Thabethe. If we go back to page 1-3-7-2 of the same bundle of documents. 1-3-7-2 and we ...

MR THABETHE: Yes Chair.

ADV GCABASHE: The US\$5 million that we had said earlier came to about R49 million. You know nothing about.

MR THABETHE: Yes Chair.

20 **ADV GCABASHE:** The 30 million that was advanced in July 2012 you believe was paid - was used to pay for Phase 1 obligations?

MR THABETHE: That is correct Chair.

ADV GCABASHE: You have - next question. You have no idea as to what the reservation for parlour equipment an amount of 30 million might be in relation to the 30 million that you advanced in July - there is no relationship between the two. In other words between the 20 - the

30 million you advanced in July 2012 and this amount of 30 050 000 that is recorded under the accumulative amounts of the monthly statements as reserved for parlour equipment.

MR THABETHE: Chair that money was put under an item called reserve for parlour equipment. By end of January ...

ADV GCABASHE: Which money?

MR THABETHE: The 30 million.

ADV GCABASHE: Which 30 million?

MR THABETHE: That is - that is the 30 million we had released as an
10 advance payment Chair.

ADV GCABASHE: Okay.

MR THABETHE: Which was then in January indicated as spent because we had already signed off that the - that money can now - because remember I had said we had said to them when that work is done that money must be made available and indeed when you said the work was done that money was released.

ADV GCABASHE: If you go to page 1-3-6-8 same - same document.

MR THABETHE: 1-3-6-8.

ADV GCABASHE: Are you there?

20 **MR THABETHE:** Yes. I am - I am there Chair.

ADV GCABASHE: Now this letter is a letter from Gateway dated 9 July 2013 directed to Estina and in this letter essentially they are setting out what they have ordered for the milk pasteurising plant for Vrede Dairy Farm ...

MR THABETHE: Hm.

ADV GCABASHE: And they tell Estina that they are now placing final orders with their vendors for the past - pasteurising equipment incorporating the data management system. Yes.

MR THABETHE: Yes Chair.

ADV GCABASHE: They continue to give a bank account - they say they need a deposit of 20 percent as an advance payment to secure the order in the third paragraph. Then they give their bank details and the last paragraph reads:

10 “Upon your transfer of the requested amount we will
initiate action to place orders and will send you a
detailed project plan for delivery and installation.”

You see that?

MR THABETHE: I - I see Chair.

ADV GCABASHE: Do you know anything at all about this negotiation?

MR THABETHE: No Chair. I - I do not - remember ours was to say to them we need parlour equipment and this is the parlour equipment. How they have been doing - as long as they bring the item that we want. How they have been managing and handling that it was Estina that was doing it?

20 **ADV GCABASHE:** You see I ask ...

MR THABETHE: Our comfort Chair was when the item comes and we go and check and we say yes this is the item. It has been delivered.

ADV GCABASHE: You see I ask you because this is the area where Estina now had to put money into the project. If you look at the very next page you see a breakdown of the pasteurising plant. Go to the

next page - 1-3-6-9.

MR THABETHE: Yes Chair. If I - if I may say Chair when I look at the date of this letter. It is dated July, the 9th 2013. By this time we had already paid the 84 million. I think there were - they had money in their possession from the department to be able to do this work. You will remember you had taken me now through the - the three payments that we had done and by this time - that is why I do not want to refer to the letter. My expectation was that the work must be delivered.

ADV GCABASHE: This is where my difficulty sits Mr Thabethe ...

10 **MR THABETHE**: Yes Chair.

ADV GCABASHE: And which is why I said to you the work that is referred to in this letter from Gateway at page 1-3-6-8 ...

MR THABETHE: Yes Chair.

ADV GCABASHE: Ought to be work that was paid for by Estina from their contribution to the project.

MR THABETHE: No Chair. The contribution of Estina had not started. We were still building the dairy. We were not yet in the processing plant.

ADV GCABASHE: MrThabethe this is why I was asking you to look at
20 the next page because it explains what is going on. On page 1-3-6-8. Here you have dairy pasteurising equipment with DMB.

MR THABETHE: Okay. Okay.

ADV GCABASHE: Milk reception tanks, milk processing and packing. Over the page. Butter and ghee section, utilities. All of these are items that refer to the processing ...

MR THABETHE: Oh.

ADV GCABASHE: Of milk that has been pasteurised.

MR THABETHE: My - my apologies Chair.

CHAIRPERSON: Yes. You understand now?

MR THABETHE: Then I have answered the wrong question Chair.

CHAIRPERSON: Okay.

MR THABETHE: Now I realise that this letter refers to ...

CHAIRPERSON: Hm.

MR THABETHE: Processing equipment. My apology Chair.

10 **CHAIRPERSON**: Okay.

ADV GCABASHE: Mr Thabethe so my basic question is this you say you knew nothing at all about this letter and what they were preparing to do in relation to this letter.

MR THABETHE: I - I would not Chair. All I know is that Estina was supposed to start their contribution into the project in the second phase.

ADV GCABASHE: Now Mr Thabethe it is important for the department to know when and how Estina is putting its own money into the processing plant. Is it not? It would have been important.

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

ADV GCABASHE: And these documents speak to the processing plant?

MR THABETHE: That is correct Chair and (intervenes).

ADV GCABASHE: My ...

MR THABETHE: And Chair this is not the report to the department.

Itis - it is a letter Estina writes to ...

ADV GCABASHE: No, no. Gateway writes to Estina. I did say that.

MR THABETHE: Okay. That is correct.

ADV GCABASHE: Yes. It is clearly titled. It is written to Estina.

MR THABETHE: That is correct.

ADV GCABASHE: And a 20 percent deposit is sought.

MR THABETHE: That is correct.

ADV GCABASHE: Are you sure that the department did not pay this 20 percent deposit? That is my question to you.

10 **MR THABETHE:** Chair that - that - it is a very difficult question to ...

CHAIRPERSON: Well you - you either know that to be the case ...

MR THABETHE: I ...

ADV GCABASHE: Or you do not know it to be the case.

MR THABETHE: I - I do not know it to be the case Chair.

CHAIRPERSON: Yes.

MR THABETHE: I think that - that is the ...

CHAIRPERSON: Hm.

MR THABETHE: The correct thing to do.

20 **ADV GCABASHE:** Are you sure that that reserved for parlour equipment line item is not money that was going to be spent on this account that seeks a 20 percent deposit?

MR THABETHE: Chair we had already spent the 20 - the 30 million. That is why I can say I am safely sure that this - that is not the money spent. It might have been used to reserve but as a department we had spent it by this time. So it would not be the money.

ADV GCABASHE: Chairman if I might move onto the next point.

CHAIRPERSON: Yes. *Ja*, do.

ADV GCABASHE: Thank you.

CHAIRPERSON: That is fine.

ADV GCABASHE: I now just want us to very briefly look at the cancellation of the contract Mr Thabethe. We have looked at these monthly statements. You have said you really know very little them. That is the essence of your ...

MR THABETHE: That is correct Chair.

- 10 **ADV GCABASHE:** Your evidence with one or two qualifications. Can I ask you to please look at two documents? The first one is - we are going back to Reference File B where Mr Prasad's salary was. That is the document. It is a Memorandum of Agreement really. We are just looking at that very briefly and you have got that Memorandum of Agreement between the department - it is at page 563 - 5-6-3 - Reference Bundle B.

CHAIRPERSON: What page again?

MR THABETHE: Yes.

ADV GCABASHE: 5-6-3 Chairman.

- 20 **CHAIRPERSON:** We are going back to ...

ADV GCABASHE: To Reference Bundle B Chairman.

CHAIRPERSON: Okay.

ADV GCABASHE: We are dealing with a totally different topic now.

CHAIRPERSON: Okay. I see ...

ADV GCABASHE: 5-6-3.

CHAIRPERSON: I see some unauthorised cameras that are standing - that have been put in there. Yes. Thank you. Yes. Continue.

ADV GCABASHE: So we are now looking at this particular agreement.

MR THABETHE: Yes Chair.

ADV GCABASHE: The cancellation agreement and if you go to page 5-6-4 we are looking at obligations of the department.

MR THABETHE: Thank you.

ADV GCABASHE: And I simply want to understand Mr Thabethe how Estina arrived at the amount of R106 252 652. That quantum - that
10 total quantum do you know how they arrived at that amount that they said was outstanding?

MR THABETHE: Yes I do Chair.

ADV GCABASHE: Please explain it to the Chairman.

MR THABETHE: Chair the - the 106 in - included two items. The one part of the item was for the - for the processing plant which they had put up which we - we were now terminating the agreement and saying we were taking over the processing plant and a certain portion of this money was still money that we were - we were owing to them in respect of what they had done in the dairy. So the two together made 106.

20 **ADV GCABASHE:** Now I would like to ask you to go back to 5D which we were using for the monthly reports. Do not close this one please? Are you there?

MR THABETHE: Yes.

ADV GCABASHE: 5D. Page 1-1-7-1 where you will find and it is 1-1-7-1 Chairman.

CHAIRPERSON: Just hang on one second. Did you say D?

ADV GCABASHE: D.

CHAIRPERSON: Okay.

ADV GCABASHE: Where the monthly reports were Chairman. 1-1-7-1.

CHAIRPERSON: Yes.

ADV GCABASHE: There you will find a report by a company called Diomart and this is a report that was prepared on 12 May 2017 ...

MR THABETHE: Yes.

ADV GCABASHE: And it is an assessment of the processing plant you
10 have just told us about.

MR THABETHE: That is correct Chair.

ADV GCABASHE: Now they say:

“This - this assessment report is based on a six day
visitation to the farm by their team.”

You see that? It is written there.

MR THABETHE: That is correct Chair.

ADV GCABASHE: “The report highlights the current scenario
of the plant and thus points to a need for an
intervention or change in strategy. Number one -
20 building: the building needs to be rehabilitated to
satisfy HACCAP and Food and Safety Compliance.”

You see that?

MR THABETHE: Yes. I see it Chair.

ADV GCABASHE: “Below is some of the reasons.”

Is what is written here.

“One, the ammonia cooling system is in the same building and not sealed off 100 percent. Two, it is not bird, dust or rodent proof. Three, there is no ceiling in the building. Four, there drains is not installed correctly. Hygiene and safety problems may occur. Five, drain pipes is made of PVC and will perish when subjected to hot water over time. Six, there is no extraction fans in the building. Seven, building needs 10 percent natural light (windows). Eight, the milk reception area must be outside the factory. Nine, the cooling room is too small. 10, the fresh milk silos must be outside with their own CIP System. 11, the process flow needs to be reconfigured. This is the key factor in ensuring that the processing plant is considered for compliance.”

Over the page. They elaborate on all the inadequacies of that processing plant. I will not go through them in detail but there are very, very important points that they set out. As they say for instance right at the top:

“All pipes need to be replaced as a result of quality, size and workmanship.”

Chairman I don't in the interest of time want to go through every flaw but this report is an assessment report, Mr Thabethe that sets out all the things that are wrong with that processing plant. Hence my

question, what were you paying R106million for when you took over that processing plant?

MR THABETHE: Ja Chair, this report – the intention of this report was to assess and configure the project because you'll remember that the project, in terms of the design and the specification was done on the basis of what Paras would want. Since we have terminated the contract, we now, in 2007 require that a re-assessment of...[intervenes].

CHAIRPERSON: 2017 you mean?

- 10 **MR THABETHE:** 2017 my apologies Chair, we require then a re-assessment to re-configure the – remember it's a incomplete project that was hold, it was not completed that time because the cost, if I remember very well Chair it was – a completed project it was going to cost R228million, that was the injection that Estina was to do.

- Now the processing plant sitting at 206, it means it was incomplete when we terminated then this company will then go in and say, let's re-assess and say for us to re-configure this project what is it that we need to do and that is what the report is for because the processing plant was done and when we're halfway with it we put it on
20 hold, hence it is sitting in the terminating agreement.

CHAIRPERSON: Well I think what Ms Gcabashe is saying to you is, this report or let me rephrase that. Do you accept that this report is a correct – provides a correct position of what the writers of the report found on the farm?

MR THABETHE: That's correct Chair.

CHAIRPERSON: You accept that?

MR THABETHE: That's correct.

CHAIRPERSON: Now if one looks at the report, I think Ms Gcabashe is saying a number of things there seem not have been right for which you may have paid and she asked the question, how could you have paid what you paid if this was the position. Now Ms Gcabashe you must please intervene if I'm misrepresenting what I think...[intervenes].

ADV GCABASHE: Chairman you've summarised it correctly. If I might just add Chairman that on page 1180 you get an amount that they
10 believe would have to be paid to fix most of those things but the summary is correct Chair.

CHAIRPERSON: Yes.

MR THABETHE: Ja Chair, that is correct, hence I have put the wording, re-configure because if you do an assessment on the basis of putting up a new product, remember Paras was going to put a product on the table, now this assessment was not on the basis of the product that was initially envisaged. It means for the new product then there should be a re-configuration, hence I'm saying it does not reflect to be saying this has not been correct.

20 **CHAIRPERSON:** Well you seem to be answering the question with regard to the future as at the time of the report.

MR THABETHE: That's correct Chair.

CHAIRPERSON: But as I understand Ms Gcabashe's question, it's with regard to the history, the time before that to say, how could you have paid what you paid if this is what the position was as described in

the report?

MR THABETHE: That's correct Chair, but the intention is exactly in terms of this report, looking into the future.

CHAIRPERSON: Yes, no, no you don't – I don't know whether to say you don't understand but she is saying you were not justified, you were wrong to have paid what you have paid if this is what you were paying for, what do you say?

MR THABETHE: No it's not Chair, it's...[intervenes]

CHAIRPERSON: You say you were right to pay what you paid for this?

10 **MR THABETHE:** Yes, in terms of the plans and the designs it was right.

CHAIRPERSON: Ms Gcabashe I know that your junior – your learned juniors are assisting you but I am keen that you follow the exchange because I don't want to misrepresent what I think you were pursuing.

ADV GCABASHE: Indeed so Chair.

CHAIRPERSON: Yes, so I think you must just give your answer again Mr Thabethe as to whether you say you were justified to pay what you paid for what is described in the report.

20 **MR THABETHE:** Yes, Chair, in terms of the designs under which the processing plant was being done, it was correct but in terms of the re-configuration certain things had to be changed because if you re-configure it means you are making changes from what you had originally wanted to do.

CHAIRPERSON: Yes, I'm allowing Ms Gcabashe to deal with your answer.

ADV GCABASHE: Only because the report clearly tells us that – and I'm going back to what I read into the record, the ammonia cooling system, what was installed was inadequate and I set out all the factors that [indistinct] found, the flaws in what had been installed, that's what you were paying for. We're not talking about the re-configuration Mr Thabethe, we're talking about what you found and that's what you were paying for.

CHAIRPERSON: And you say it was correct to make those payments for things that these people found to have been, among other things,
10 inadequate.

MR THABETHE: Ja Chair, I'm trying to think because to explain this thing I must use an illustration and I must be very careful in using the illustration.

CHAIRPERSON: Yes.

MR THABETHE: Because if you put a processing plant to achieve a specific outcome you have a particular configuration, you have a particular configuration that somebody else might come and do an assessment and say no, when I produce this product, this becomes my configuration.

20 Now that is my understanding that it will not be the same for you to achieve a particular configuration, you have your own specification and somebody else to be able to produce is just that I want to use an illustration Chair that may not be – I may not be allowed to use.

CHAIRPERSON: Well let me put this, as I understand what Ms

Gcabashe's concern on this is.

MR THABETHE: Yes.

CHAIRPERSON: Let's use an example. You say somebody must get you – must go and look around and get you a car, you want to buy a car.

MR THABETHE: That's correct Chair.

CHAIRPERSON: And then the person says I found a car for you, it costs R20.00 okay for argument sake, you pay R20.00. Somebody comes later on, let's say a motor mechanic looks at the car and says
10 it's inadequate for the purpose for which you wanted a car but you have paid so much. So the question is, how can you say it's correct to pay what you have paid when what you wanted is inadequate or is not exactly what it should have been. Ms Gcabashe?

ADV GCABASHE: Chairman can I actually just go back to the specific report?

CHAIRPERSON: Yes okay.

ADV GCABASHE: And the bits that I did not read because I thought there was no contest about what was written here.

CHAIRPERSON: Yes okay give him context.

20 **ADV GCABASHE:** Under item two, pipelines, tanks and equipment I'm on page 1172,

“All pipes need to be replaced as a result of quality, size and workmanship.

B) The boiler must be replaced with a 3-ton diesel boiler, the installed boiler is a safety hazard. It is worth noting that this

model is no longer in making for years.

C) The tanks need replacement as it is as result of suitability, poor quality and food unsafety.

D) Valves, taps and pumps are outdated and may face a challenge getting spares.

E) Joint welding needs to be done correctly, in some instances a normal steel pipe is welded to a stainless steel instead of using a suitable joint.

10 Pasteuriser - the machine is not suitable for pasteurising will not pass the pressure test and is bent. It appears to have been re-built and poorly installed.

4) Separator – the equipment needs replacement the installed machinery is an old manual model that is not suitable for latest operations.

20 5) Cleaning in place system – the tanks is pitted and rusted on the inside, it is a down to drain system that is not suitable for a fresh milk factory. It still needs three complete dosing systems and three conductivity controls. There is no circulation on the tanks to control the strength of the chemicals, the dosing pipe is too big for the system.

6) Sachet filler – the market does not respond very well to the sachet milk units, a bottling machine would be a better option.

7) Ammonia cooling – system needs replacement, condenser on the outside is old technology.

8) Air compressor – no air lines in the factory, the system still needs air dryer and air receiving tanks fitted.

9) Laboratory - there is an allocated space for laboratory but no set-up yet.

10) Homogeniser – must still be bought.

11) Flow metres – must still be bought.

12) Steam and cold water lines must be insulated.

13) Heat exchangers – this needs pressure testing.

10 14) Manufacturing dates, it is a very – I beg your pardon it is very difficult to determine the age of the equipment. All of the manufacturing dates and names and information was removed from the equipment.

Recommendations – recommendations will be in line with addressing the above concerns or problem areas, additional questions arising,

1) How much milk is the factory going to process per day.

2) Product line.

3) How is the milk going to be transported from the milking parlour to the factory?

20 4) Is there sufficient water for the factory, for each one litre of milk 3.5litres of water is needed for cleaning.

5) If milk is bought from smaller or other suppliers how will it be collected and transported?

6) Is there a comprehensive marketing strategy in place?

I would like you to accept Mr Thabethe that the issues flagged

certainly on page one and two, that's 1171 and 1172 speak to the quality of what you were sold. I – my conclusion is, you were taken for a ride, that you knew that you were taken for a ride is a completely different issue, but from what I'm reading here, what they installed is not what you expected them to install.

MR THABETHE: Ja Chair, I would not dispute what she is saying, what we had to pay was the work done on the ground up to that stage. We later when – I'm trying to get the correct name here, the Free State Development Corporation then did this assessment through the agent
10 that they had appointed to be able to get an understanding.

The question that I still wanted to know, the details of the question was, what is the value of what was standing on the ground versus what was paid because the report talks to this still needs to be corrected, it did not come to a stage where it says but what is currently standing here is of this value.

CHAIRPERSON: Well Mr Thabethe the report seems to me to show that what was provided to the farm on the basis of the arrangement that you had with Estina was inadequate in certain respects, was of low quality in certain respects and was not acceptable and should not have
20 been provided according to the authors of this report. They even refer to an equipment where they say it was rusted, now I don't know if it was equipment or pipes or whatever but they refer to that and I recall quite correctly – I recall quite clearly that some time back that there was a witness who gave evidence here, I can't remember who it was...[intervenes].

ADV GCABASHE: Mr Basson.

CHAIRPERSON: Mr Basson who said, he looked at the equipment that had been brought on – to the farm, I think from India and he realised that it was rusted, it was not new equipment that was being brought, he gave that evidence and this report seems to be consistent or seems to corroborate, at least in part, that version. So do you accept, and I think you did accept that what the report says, the people who prepared the report found, is what was there. In other words, it's not like they just made things up, is that right, do you accept that?

10 **MR THABETHE:** Chair I accept that.

CHAIRPERSON: Yes.

MR THABETHE: The only difficulty I have is to put monetary value into it.

CHAIRPERSON: Well we might deal with that later. The question is, how did it come about that you allowed Estina to do this and you did not pick it up yourself, when I say yourself, I mean you as the Department and of course you were the Head of Department, how did it come about that you did not ensure that if they provided you with wrong things, wrong equipment, low quality equipment, how did it come about
20 that you as the Department did not pick it up?

MR THABETHE: Chair when work is done and we had all agreed that the processing plant initially was the responsibility of Estina to set up. It only came when we were terminating the agreement that we then also taking over the processing plant and during that time, we were then looking at, to what extent and how much has been paid so that we are

able then to take it over ourselves. That's what we were looking at, at that particular time. I'm not disputing the report Chair, because the report is actually saying, for us to be able to move forward this is what we need to fix but at that particular time, that is what we had agreed and paid for.

CHAIRPERSON: But the report is also in effect saying, this is what has been wrong in the past, you want me to clarify that? I'm simply saying in order for it to tell you what you need to attend to, going forward, it tells you what the position is and what the position must
10 have been for some time, you understand that?

MR THABETHE: Ja Chair, the difficulty is, if the processing plant was being built for the Department I would agree but this processing plant they were building – it was their obligation to build it. Now there wouldn't be any reason for them to short change themselves, that would be my thinking as I am sitting Chair that you build a house for yourself and you are short changing yourself in the building instead of doing it properly you don't do it the correct way and later then it will catch up with you.

CHAIRPERSON: Ms Gcabashe I leave you to follow-up on that if you
20 want to.

ADV GCABASHE: I simply want to make the point, Chairman that, as the Chairman has consistently pointed out this was the Department's project, it's your project it's not Estina's project so they're short changing the Department at the end of the day it's your facility, these are your beneficiaries who are going to be 51% owners of this facility.

So the Department is being short changed by this sub-standard work, sub-standard material that's been brought into the project by Estina, would you agree with me?

MR THABETHE: Ja Chair I agree that – because we were party shareholding into the project that they were putting up and if it would not have been done properly it means the beneficiation also would have been compromised.

ADV GCABASHE: But Chairman if I might close, I know it's lunchtime but just with a letter Mr Thabethe I want to refer you to in reference
10 Bundle E, we have not used it today, so it's a new one, E for eggs, page 1643. This is a letter written to the Managing Director at Estina by yourself Mr Thabethe, it's dated the 12th of August 2014. Now the 12th of August was the termination date if I recall correctly.

MR THABETHE: That's correct Chair.

ADV GCABASHE: This is what you write,

“Dear Sir, hand-over of assets and billing methods subsequent to the cancellation of agreement between Department of Agriculture and Rural Development and yourselves.

- 20
- 1) Kindly refer to the cancellation agreement signed between the Department and yourselves dated August 12, 2014.
 - 2) Further, please refer to the physical hand-over of assets to the Free State Development Corporation through the Department on August 12, 2014.

- 3) Please be informed that the Department is still in the process of processing your payments as per the payment schedule indicated in the agreement.
- 4) We are also in the process of finalising the entity that will ultimately be responsible for running the project.
- 5) As such we would request you not to raise the tax invoice in part or full for the hand-over of the assets until the complete payments, as per the agreement is transferred to your account. As soon as the payment is done, you may raise a tax invoice for the full value of the project to the entity that will be intimated to you at the time.
- 6) In the interim the hand-over of assets may be effected by a hand-over document.

This is your letter.

MR THABETHE: That's correct Chair.

ADV GCABASHE: Please explain paragraph five to the Chairman, I couldn't understand it?

MR THABETHE: Ja Chair, paragraph five is actually saying, you can't claim tax from us until you have made all the requirements you can only –because you see if they give us a tax invoice, it will mean that we must also pay the tax into them and when then I drafted this letter we had agreed with the State Law Advisors that we must just make sure for now that they do not raise tax through us in this regard. That was the intention that they shouldn't, in the invoice tax us.

ADV GCABASHE: Chairman whenever Mr Thabethe brings the State

Advisors in I get very worried. On that note, might we take the lunch adjournment and we will pursue this matter after lunch?

CHAIRPERSON: Yes, it's one o'clock, we'll take the lunch adjournment and we'll resume at two. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV GCABASHE: Thank you Chairman. Mr Thabethe we ended up with page 1643 of Reference Bundle E which is the letter that you had
10 written to Estina on the 12 August 2014 and you were telling us what paragraph 5 meant.

MR THABETHE: Yes, yes Chair.

ADV GCABASHE: And I indicated that I would want to take issue with you on your interpretation of paragraph 5.

MR THABETHE: Okay Chair.

ADV GCABASHE: And I want to put to you that my interpretation of what you are saying in paragraph 5 is the following:

“Do not raise the tax invoice in full or in part.”

Is what you say. Now a tax invoice really is simply an invoice – a
20 formal invoice to put it correctly.

CHAIRPERSON: Okay

ADV GCABASHE: It has your address and the other parties address. It has got a VAT number both supplier and the person who is preparing it and you have itemised billing on a VAT invoice.

MR THABETHE: Okay.

ADV GCABASHE: On a tax invoice and then of course you have included your VAT.

MR THABETHE: That is correct.

ADV GCABASHE: That is all. And the only reason it is called a tax invoice – you see we advocates have to prepare these all the time.

MR THABETHE: Yes.

ADV GCABASHE: When we bill. We have to bill using this form because we are – we pay tax on the basis.

MR THABETHE: Hm.

10 **ADV GCABASHE:** Of these documents that we submit. So all it is really is that you are formally stating unequivocally that these are the charges or these are the costs that you are claiming. So you would agree with that broad interpretation of what a tax invoice is?

MR THABETHE: Ja – Chair the – I want to put it the correct way. The letter that I had signed after the cancellation we had to do a very careful wording of this letter and I was assisted by the state law advisors in the drafting of this letter. My understanding might not be entirely be the correct one in each and every paragraph but this was the understanding that we will then issue them with this letter and –

20 and this is the letter that they will then use as a basis of concluding.

CHAIRPERSON: Well you must tell me whether you agree with interpretation of paragraph 5 that Ms Gcabashe has put to you and if you do not why you are not able to agree?

ADV GCABASHE: So with your leave Chairman may I start again?

CHAIRPERSON: Ja.

MR THABETHE: Yes Chair.

ADV GCABASHE: Mr Thabethe shall I just start again?

MR THABETHE: Yes Chair.

ADV GCABASHE: Because I am actually breaking down.

MR THABETHE: Okay.

ADV GCABASHE: The different elements of paragraph 5.

MR THABETHE: Okay that is correct.

ADV GCABASHE: So as I was saying I was giving you my understanding of a tax invoice. You may or may not agree with that. It

10 is a formal invoice.

MR THABETHE: Ja.

ADV GCABASHE: That has certain details on it.

MR THABETHE: That is correct.

ADV GCABASHE: So you are saying do not present – to raise a tax invoice means to present it.

MR THABETHE: Okay.

ADV GCABASHE: Are you – do you agree with me?

MR THABETHE: Yes I agree.

ADV GCABASHE: So do not present your tax invoice in full or in part
20 for the handover of the assets. So I am pausing here. My understanding is in respect of the handover of the assets.

MR THABETHE: Hm.

ADV GCABASHE: Do not present your tax invoice in full or in part.

MR THABETHE: Okay.

ADV GCABASHE: Am I right about that?

MR THABETHE: Okay I hear you yes.

ADV GCABASHE: Would you agree with that?

MR THABETHE: Yes.

ADV GCABASHE: And the reason I say that is because if you go to paragraph 3 I just want to give context. The same letter paragraph 3 you say:

“Please be informed that the Department is still in the process of processing your payments as per the payment schedule indicated in the agreement.”

10 Yes?

MR THABETHE: That is correct.

ADV GCABASHE: Ja. Now we know that the payment schedule in the agreement is the one that sets out that the R106 million is due for services rendered. Can I just take you back to that agreement? Cancellation Agreement. The Cancellation Agreement is in Bundle b, B for Bernard or Bread at page 563 – B little b ne? 563 and then we find the obligations of the Department on 564. B for Bernard.

CHAIRPERSON: I have got too many of these files that are open.

ADV GCABASHE: Files open Chairman.

20 **CHAIRPERSON**: Here now in front of me Ms Gcabashe so I am closing them. If and when we need to go back to them we will have to...

ADV GCABASHE: Indeed so but we are almost done Chairman.

CHAIRPERSON: Yes.

ADV GCABASHE: I hope you will not have to open some of them.

CHAIRPERSON: Okay.

ADV GCABASHE: B for Bernard.

CHAIRPERSON: Yes and what page?

ADV GCABASHE: Page 563 to 564 Chair.

CHAIRPERSON: 56

ADV GCABASHE: 3 is the front cover of the agreement, the Cancellation Agreement.

CHAIRPERSON: Oh

ADV GCABASHE: B for Bernard. 563.

CHAIRPERSON: Oh this is the Reference Bundle.

10 **ADV GCABASHE:** 563.

CHAIRPERSON: It is the Reference Bundle?

ADV GCABASHE: Reference Bundle Sir.

CHAIRPERSON: Oh I was looking at the Reports one.

ADV GCABASHE: 563 is the cover page.

CHAIRPERSON: So take this one back.

ADV GCABASHE: Yes I think you can take the Reports Bundle away completely.

CHAIRPERSON: Yes.

20 **ADV GCABASHE:** And so the page that we were – that deals with the obligations of the Department is 564 Chairman. And we are at paragraph 1.2 thereof Mr Thabethe which speaks of value for money. This is where we started this discussion earlier on. Why did you pay them this R106 million? Well value for money.

And we dealt with Diomart now we are here – good. So here you are saying you are undertaking to pay them R106 252 000.00

somewhere in that region in the following amounts. R30 million on or before the 30 September 2014. R76 252 000.00 plus by the 30 June 2015. And then you say of course this payment is subject to the availability of funds. And then should funds not be sufficient you will reschedule.

And over the page you then put out the schedule. June 30th 2015, 30 September 2015, 30 June 2016 is what you propose. So this is I understand the payment schedule?

MR THABETHE: That is correct Chair.

- 10 **ADV GCABASHE**: Okay do not lose that page. We are now going back to your letter because remember I am trying to work through my understanding of your letter that is in Bundle e at page 1643. That is where we were, back to your letter to Estina.

MR THABETHE: That is correct.

ADV GCABASHE: So you say we are processing your payments, is what you say in paragraph 3.

MR THABETHE: Yes.

ADV GCABASHE: And then in 5 you say hold on with your tax invoice in respect of the handover of assets.

- 20 **MR THABETHE**: Okay.

ADV GCABASHE: Until the complete payments as per the agreement is transferred into your account.

MR THABETHE: Okay.

ADV GCABASHE: What I understand you to say is, allow us to pay you the R106 million. After we have paid you that R106 million once that

full payment has been transferred to your account then the next sentence reads?

“As soon as the payment is done you may raise a tax invoice for the full value of the project.”

MR THABETHE: Okay.

ADV GCABASHE:

“To the entity that is going to be taking over. We will tell you who those people are.”

MR THABETHE: Okay.

10 **ADV GCABASHE:** Am I correct? Right.

CHAIRPERSON: You are nodding Mr Thabethe.

MR THABETHE: I am...

CHAIRPERSON: The – the record will not capture the nodding. You agree with the suggestions Ms Gcabashe has just made?

MR THABETHE: Yes Chair. I am nodding because I am not sure whether I – I understood it very well.

CHAIRPERSON: Well do not nod if you are not sure if you understood. Tell her you do not understand.

ADV GCABASHE: So let us go back to – wait Mr Thabethe. I am just –
20 I have just broken it up but I do want you to tell me where I am misunderstanding your sentence.

MR THABETHE: Hm.

ADV GCABASHE: So I would rather you said yes or no than nod. And if you do not understand please just indicate as much.

MR THABETHE: Okay that is correct.

ADV GCABASHE: I think we are agreed that first we said the tax invoice do not present it. Raising it means do not present it? We agreed on that ne?

MR THABETHE: Okay that is correct Chair.

ADV GCABASHE: In full or in part okay. But that tax invoice is in respect of the handover of assets. You may want to think about that before you give me your full answer. Is that what you mean here? For the full handover of assets.

MR THABETHE: Chair I may – I may – it is a very difficult question. I
10 may – for me to be able to answer might need me to go back in consultation with the state law advisors.

CHAIRPERSON: Well – but this is a letter that you wrote. This is paragraph 5 that you wrote.

MR THABETHE: Yes Chair.

CHAIRPERSON: Ms Gcabashe is putting to you her understanding of what you wrote.

MR THABETHE: That is correct Chair.

CHAIRPERSON: You must be able to say, no that is not what it means or I see what – what you – what you say it means but this is what I
20 intended to convey. You should not need – you should not need the state law advisor for that.

MR THABETHE: Ja Chair I – my original explanation was saying was that they should not give us the tax invoice with regard to the – to the asset raised in this regard until everything is done. That was my understanding that they should not do that. Because if they raise a tax

invoice my understanding was that they may be subject to claim the tax in this regard. So hence we then needed to do a lot of things before then we are able to say, yes you can raise a tax invoice or no you cannot raise a tax invoice.

ADV GCABASHE: Mr Thabethe that is exactly where you lost me earlier on which is why I wanted us to go back and break it down in little pieces. Because you had agreed in the Cancellation Agreement to the quantum to the sum that you are going to pay.

MR THABETHE: Yes.

- 10 **ADV GCABASHE:** Correct? And I thought you and I had an agreement that what a tax invoice is is just a formal invoice that you present.

MR THABETHE: Yes that is correct.

ADV GCABASHE: Now where you and I seem to be missing each other is in respect of what it is you were telling them to hold onto.

MR THABETHE: Yes.

ADV GCABASHE: Until you had transferred all of the R106 million into their account.

MR THABETHE: That is correct Chair.

ADV GCABASHE: Are you okay with that?

- 20 **MR THABETHE:** That is correct yes.

ADV GCABASHE: Right. What were you asking them to hold back until such time as you had paid them the R106 million that this agreement refers to as the payment that is due? Maybe that will help us.

MR THABETHE: Ja. Chair if you raise a tax invoice it means on the

amount that you are saying is due then you say plus tax. Then it will increase the amount. Then my understanding was that in terms of the value of the asset you may not then come and say this is the value of what is due to us plus 14% at that time tax. That is what we were saying do not do that.

ADV GCABASHE: Not but Mr Thabethe in the agreement you had stipulated an amount that they should claim from you – in the agreement.

MR THABETHE: That is correct Chair.

10 **ADV GCABASHE:** You have stipulated the amount?

MR THABETHE: Yes.

ADV GCABASHE: When we look at how you arrive at that 106 you go to page 568 of the same agreement, same bundle you are still looking at. Please go to page 568. No same bundle. It is where the letter – it is part of the agreement I beg your pardon of cancellations.

MR THABETHE: It is on the other file Chair.

ADV GCABASHE: Oh Agreement of Cancellation. It is you are correct in File B. So I want you to go to page 568.

MR THABETHE: Yes Chair.

20 **ADV GCABASHE:** Aha. There you see the balance due is R106 000.00 and some – R106 million I beg your pardon.

MR THABETHE: That is correct Chair.

ADV GCABASHE: R106 252 6 152.00.

MR THABETHE: That is correct Chair.

ADV GCABASHE: Rands. But of course when you look at that

particular schedule there is provision that has been made for VAT.

MR THABETHE: Okay.

ADV GCABASHE: So what is the tax that you are concerned with? Because here is VAT and provision has been made for that and your total comes to just over R106 million? Which tax were you worrying about?

MR THABETHE: Ja Chair. Let me go back again. For only service providers which issues you with a VAT or a tax invoice they are subject to go back and claim that invoice back from SARS. Hence we are
10 saying to them do not raise because we are well aware that in a number of instances you pay them the VAT for the assets and then when they make their filing of VAT to – for tax compliance they claim that VAT back. If – if it is indicated in the invoice but if it is not indicated in the invoice they cannot claim it back.

ADV GCABASHE: But Mr Thabethe you had already undertaken in the agreement to pay them R106 252 652.00.

MR THABETHE: Exactly Chair because we had – we know that it has been paid they cannot – you see if they do that it becomes a double payment for them. They benefit. Because they would claim it back.

20 **ADV GCABASHE**: Mr Thabethe if they do what? You say if they do that – if they do what?

MR THABETHE: Should they...

CHAIRPERSON: I am trying to follow also Mr Thabethe. I am not following what you are saying.

MR THABETHE: Chair if – if you are VAT registered you are working

with the Department. We file our submissions to SARS as a department to say it is so much VAT that this company has paid. So that when they file their submission they are able to claim the VAT back if they are VAT registered. But if our submission to SARS says we did not charge them VAT it means they will not be able to claim back. Hence we were saying they must not file it.

ADV GCABASHE: Mr Thabethe.

MR THABETHE: It means...

CHAIRPERSON: I think ...

10 **ADV GCABASHE:** I beg your pardon.

CHAIRPERSON: I think let us go back to Ms Gcabashe's question. Paragraph 5. What is it that Estina was entitled to do which you were saying they must not do? Just tell us that again in paragraph 5? Is there something they were entitled to do which you were saying they must not do and if so what was it?

MR THABETHE: What we were saying they should not do Chair is that they must not file for VAT. Claiming that in buying these assets they have paid VAT.

ADV GCABASHE: But Mr Thabethe the amount that is in the
20 agreement if an amount you agree to number 1. It includes provision for VAT number 2.

MR THABETHE: Yes Chair.

ADV GCABASHE: Third and most important what you are saying in paragraph 5 is do not issue that tax invoice until we have paid that money into your account.

MR THABETHE: That is correct.

ADV GCABASHE: Allow us to pay the R106 million into your account.

MR THABETHE: That is correct Chair.

ADV GCABASHE: So the whole amount with the VAT consideration is what you are saying let us pay you that money.

MR THABETHE: That is correct.

ADV GCABASHE: Once we have transferred it we can talk about assets and whatever else 5 might be referring to. Paragraph 5 might be referring to.

- 10 **MR THABETHE**: Ja let me go back to it again Chair? All we are saying is that in – in all these items you have paid VAT and we have calculated the VAT in paying it back to you. But we – do not – because what is very key when you go to SARS is your – is your tax invoice.

If you say the Department I have – I have given the Department assets in which I have paid VAT therefore this VAT must be paid back to me and we are saying if that happens it will mean we have paid you the money over and above that. You can claim your VAT back. It means they are going to get more money. That is my understanding Chair.

- 20 **CHAIRPERSON**: Well what was your concern? What was going to be wrong if you did not write that – that paragraph 5?

MR THABETHE: It would mean ...

CHAIRPERSON: And they just...

MR THABETHE: It would mean Chair that when we do our submission to SARS we would also confirm that they are liable to get VAT back.

CHAIRPERSON: And then?

MR THABETHE: It means then they will – they are going to – they would receive more than what we would have paid them.

CHAIRPERSON: Is that what you do all the time with all the service providers? Is that kind of – is that what you write to service providers who present tax invoices?

MR THABETHE: This was a different one because we were terminating here Chair. But this is what we...

CHAIRPERSON: Why should it make a difference?

10 **MR THABETHE:** No we...

CHAIRPERSON: In terms of SARS?

MR THABETHE: Let me say we do it Chair. We do submissions to everybody.

CHAIRPERSON: No, no I mean this kind of letter, this kind of paragraph. Do you write it to service providers – to all of them?

MR THABETHE: No, no.

CHAIRPERSON: When they – when they present you with tax invoices?

MR THABETHE: No we do not Chair.

20 **CHAIRPERSON:** Why not? I – would you not have the same concern with regard to all of them?

MR THABETHE: Ja.

CHAIRPERSON: If they were just presenting you with invoices including VAT would you not have – would the same concerns not arise?

MR THABETHE: It is possible Chair but in this instance we – we had then to deal with it differently.

CHAIRPERSON: But why do you not – if it is a – if it is a legitimate concern – it must be a legitimate concern with all the service providers that send you tax invoices, is it not?

MR THABETHE: I hear you Chair.

CHAIRPERSON: So why – why do you not do the same with regard to all the others?

MR THABETHE: I hear you Chair but like I explained we had sat and
10 we had discussed this with the state law advisors. We had agreed we should include this statement. And my explanation is my understanding. It is difficult for me to explain it beyond my understanding.

CHAIRPERSON: Hm. Yes Ms Gcabashe.

MR THABETHE: Because what I had explained is what I understood it to mean.

ADV GCABASHE: You see the reason that this still does not make sense certainly not to me Mr Thabethe is VAT is an output cost. When you bill for VAT it is not your money you pass it on. It is not – it is not
20 that you would have paid them more than was due to them were they to take VAT into account. VAT is not mine to keep. VAT I must pass back to the taxman. Is that not correct? VAT is never the money that accrues to the person who is presenting the account.

MR THABETHE: Chair...

ADV GCABASHE: It is a tax that goes away. It is not yours to keep.

CHAIRPERSON: Of course you accept that do you not?

MR THABETHE: No Chair I would not agree not to...

CHAIRPERSON: You say VAT does not go to the – to SARS? You say VAT is not SARS money?

MR THABETHE: It is SARS money Chair.

ADV GCABASHE: Yes.

CHAIRPERSON: So why do you say you do not agree?

MR THABETHE: No what I do not agree Chair is that SARS should pay back.

10 **CHAIRPERSON**: So were you concerned whether SARS – SARS was going to pay back some money that it should not pay – was going to pay to Estina money that it should not pay to Estina?

MR THABETHE: That is correct Chair.

CHAIRPERSON: You think SARS would do that?

MR THABETHE: I do not know Chair but from our side that is what we were saying Chair.

ADV GCABASHE: This is the...

CHAIRPERSON: Mr Gcabashe conclude.

ADV GCABASHE: Thank you Chairman. This is the first time that you
20 have not looked out to Estina's interests. This time you looking out to SARS interests. Because you are worried about what SARS may have to pay back.

All along you have been telling us all about how Estina needs to be protected in one way or the other. Very strange. You notice huh? That all along you have been telling us why you cannot do certain

things Estina would not – would be able to do whatever. You are protecting Estina's interests. The Chairman has pointed it out a number of times.

This time you are saying now SARS is the interest that you are protecting.

MR THABETHE: Not really Chair.

CHAIRPERSON: Aha. Not – what – you saying not really what is it that is not – that you are saying not really?

MR THABETHE: The statement that now I seem to be moving from
10 protecting Estina to protecting SARS.

CHAIRPERSON: You mean you do not like the idea that Ms Gcabashe is saying you are moving away from protecting Estina? You would like her to say you are continuing to protect Estina?

MR THABETHE: Not – not that I do not like to protect but the way it has been put it says that – my interest has not been in the project. That is what I am reading into it but that is where I say I do not agree.

CHAIRPERSON: Yes okay make – continue Ms Gcabashe.

ADV GCABASHE: But we can ...

CHAIRPERSON: Ja.

20 **ADV GCABASHE**: I think Chairman the rest we will just make submissions.

CHAIRPERSON: Ja okay.

ADV GCABASHE: On our understanding and from the record transcripts. We will make the submissions on this point.

CHAIRPERSON: Maybe let us put this. Was Estina not entitled to

include VAT when you said they must not raise tax invoice?

MR THABETHE: Hence we were saying Chair later.

CHAIRPERSON: Or even obliged?

MR THABETHE: Later we can look at that.

CHAIRPERSON: No but as at the time were they not entitled if not obliged to include VAT?

MR THABETHE: Chair...

CHAIRPERSON: Your understanding? That is what I am talking about.

MR THABETHE: My understanding was that VAT had been included.

10 **CHAIRPERSON**: Already?

MR THABETHE: Already.

CHAIRPERSON: Oh you thought they were going to...

MR THABETHE: Double yes – because if...

CHAIRPERSON: To you?

MR THABETHE: If you pay the VAT and you have reflected it in the invoice then they – they can go and claim it back. That is what I am trying to say Chair.

CHAIRPERSON: Okay Ms Gcabashe you wanted to move on?

20 **ADV GCABASHE**: Yes I will simply conclude by saying the impression I am left with and it is a submission that I will be making Mr Thabethe is you appeared to be saying to Estina wait for us to pay you the full amount we have agreed in terms of the agreement?

MR THABETHE: Yes.

ADV GCABASHE: The fact that on the handover of assets what you hand over does not meet that quantum that we have paid you is

something we will sort out after. This is my impression – we will sort that out afterwards. I am looking after you. I am making sure you get your R106 million.

MR THABETHE: Okay.

ADV GCABASHE: If the assets do not add up to R106 million we will see that later on. I do not want to be able to compare what I am paying you and the assets that you are handing over.

MR THABETHE: That is correct.

ADV GCABASHE: So that is why I am saying hold back the assets.

10 That is my impression of what paragraph 5 reads. So it is not favourable to you. In fact it is saying you were again protecting Estina.

MR THABETHE: No, no Chair. Because we had gone in the asset register – asset by asset so that we had looked at. We had gone through asset by asset in the asset register to say this asset this value, this asset this value. So that we had done.

ADV GCABASHE: Thank you.

CHAIRPERSON: Now – yes now this tax invoice you talk about at paragraph 5. Would it have been – would the VAT that you are talking about have been VAT that Estina would have bought – would have paid

20 in purchasing those assets?

MR THABETHE: That is correct Chair.

CHAIRPERSON: That is what you were talking about?

MR THABETHE: That is correct Chair.

CHAIRPERSON: The assets themselves were they not included in the R106 million they are – they are – what you were going to pay for

them? In other words the assets.

MR THABETHE: Yes, they ...

CHAIRPERSON: Were they included?

MR THABETHE: Yes they were included Chair.

CHAIRPERSON: And the VAT was included?

MR THABETHE: Yes Chair. On the – on the amount.

CHAIRPERSON: Yes.

MR THABETHE: Eventually agreed on.

CHAIRPERSON: Yes. But you just did not want you to give you the bill

10 that – the tax invoice that reflected what already was the position?

MR THABETHE: That is correct Chair.

CHAIRPERSON: Yes.

ADV GCABASHE: I was tempted to ask why Chairman but I think you have asked that. It is on record.

CHAIRPERSON: Yes

ADV GCABASHE: Mr Thabethe I really want to move onto the next point if that is alright with you?

MR THABETHE: That is correct Chair.

20 **ADV GCABASHE**: And it is really to just understand the – the FDC appointment and more importantly I would like to understand what you understood of the appointment of Etchu Civils as the managing agent of the Vrede Dairy farm? Do you know E'tsho Civils?

MR THABETHE: That is correct Chair I do.

ADV GCABASHE: Do you know that they assisted the FDC in managing the farm?

MR THABETHE: That is correct Chair.

ADV GCABASHE: I am here looking at an addendum to a service level agreement that was signed between the FDC and E'tsho Civils. Unfortunately it is not a complete copy. You know I think the back page was not copied. So you have got the front and not the next page. What I am interested in though is the contract price that was recorded in that agreement? If you go to page 1129 of File – Reference File D.

MR THABETHE: Got it.

ADV GCABASHE: On 1-1-2-9 you have Addendum to Vrede Integrated
10 Dairy Project Management Service Level Agreement. 1-1-2-9 - are you there? 11-2-9.

MR THABETHE: That is correct Chair.

ADV GCABASHE: And there you see:

“Free State Development Corporation wishes to clarify that the payment plan envisaged in Annexure C of the VIDP Management Agreement is as follows: invoices will be paid monthly over the duration of the contract. That is over three years.”

Now this is signed in 2016.

20 “Contract price: R32 500 000 excluding VAT.”

What was that about? Do you know Mr Thabethe? 32 million was going to be paid to E'tsho Civils as a Managing Agent.

MR THABETHE: Ja. Chair we had signed an agreement to FDC to do management of the project. In terms of the agreement there was a couple of issues that had raised with them to assist us in doing. What I

know is that FDC advertised a tender. They went through their own process until that - then they appointed the - the service provider to be able to look after the project.

The - the details because we had requested them to say what we had said as a department. We said we will make money available. We said to them we are going to make 20 million available for them to be able to assist over this period to make sure until a final decision has been taken. That has been agreed. So they - they went and advertised a tender and they appointed the managing agent to look after the
10 project.

So that whilst we - we are busy finalising we should then be in a position to have the projects collapsing. So this is what FDC have entered into with - with E'tsho.

ADV GCABASHE: So really you had agreed on 20 million as a contract price or 20 million per annum with FDC. Just explain that.

MR THABETHE: Yes. We had agreed that we will make available - we said we have - we will make available 20 million. We did not dictate how much is it going to be because they are still going to come back and tell us how much is it going to cost. Hence they went on tender.
20 All we told them is that this is how much we will have for you to take care of the project and - and after a period of three years you should have concluded.

ADV GCABASHE: No. The 20 million was for that financial year - this is all I am trying to understand - per month for the whole financial year what you undertook to pay to FDC?

MR THABETHE: No we said per annum. What we have - we did not say spend 20 million.

ADV GCABASHE: Hm.

MR THABETHE: We said what is available from us keep in mind you have got this much money.

ADV GCABASHE: So you had 20 million per annum?

MR THABETHE: Per annum.

ADV GCABASHE: For a three year period?

MR THABETHE: That is correct Chair.

10 **ADV GCABASHE**: Is that correct?

MR THABETHE: That is correct.

ADV GCABASHE: So 2014/2015?

MR THABETHE: Yes.

ADV GCABASHE: 2015/2016?

MR THABETHE: Yes.

ADV GCABASHE: 2016/2017 - for those three financial years?

MR THABETHE: That is correct Chair.

ADV GCABASHE: And - and that is all you made available to the FDC?

MR THABETHE: That is correct Chair.

20 **ADV GCABASHE**: What it agreed with its service provider had nothing to do with you?

MR THABETHE: Then - they will then agree how to manage and make sure what - what gets done because in the agreement we had also made clear what kind of activities should be covered.

ADV GCABASHE: Were - were there - and this is FDC. Was FDC

entitled to bill you for the additional amount they had to pay to their service provider?

MR THABETHE: FDC's responsibility was also to write to us on a monthly basis to explain for what did they use the costs for.

ADV GCABASHE: Were they entitled to bill you for any additional amount that they were having to pay a service provider?

MR THABETHE: Not - not to bill Chair because the - the money that we - we - because FDC is a state entity. They have got their processes that they can use which means you can transfer money to them and
10 they spend it within - because there are - there are prescribed how to spend. All that we needed to them use your processes but we expect you to tell us what the activities are that you have spent the money for.

ADV GCABASHE: So ...

MR THABETHE: That is what we expected them to do.

ADV GCABASHE: So in respect of the contract price of R32 500 000 were FDC expected to raise the shortfall between the 20 million that you are making available per annum and the R32 500 000 that they agreed they would be paying E'tsho - the service provider?

MR THABETHE: Chair my - my understanding was that this chart was
20 for three years. So it was far less than what we would pay them.

ADV GCABASHE: I see. So that 32 500 000 actually covered a three year period?

MR THABETHE: That is correct Chair.

ADV GCABASHE: Not a one year period?

MR THABETHE: Not the one year period.

ADV GCABASHE: Oh. You should have said so in the beginning Mr Thabethe. You know. Good. That is helpful. It is. The next question then the monthly payments would be payments that would be made to the same service provider only because it is in the agreement. You - what were the monthly payments for?

MR THABETHE: Chair, I - I understand that the tender document gives details how they arrived to this because a lot of other service providers will also outline until eventually they decide which one. So the tender document would be able to say what informs that amount.

10 **ADV GCABASHE:** Now just correct me if I am wrong. We have discussed previously the core competencies of the FDC and the core competencies of E'tsho Civils. Have we not?

MR THABETHE: That is correct Chair.

ADV GCABASHE: And we have agreed that FDC did not have a competency to run a dairy farm. We agreed that.

MR THABETHE: We - we were - we were aware of that Chair.

ADV GCABASHE: Ja and E'tsho Civils actually is a project company. They largely build houses and things like that. They do not have a core competency in the dairy farming industry. We agreed that. I think as
20 well.

MR THABETHE: No. We did not agree Chair.

ADV GCABASHE: Okay. Can - then I am mixing you up with one of my other witnesses.

MR THABETHE: Oh.

ADV GCABASHE: Please help me. What is your view?

MR THABETHE: I would - would prefer FDC to answer that question
Chair because they went into the details of the CV ...

ADV GCABASHE: You see ...

MR THABETHE: Of - of E'tsho.

ADV GCABASHE: You see Mr Thabethe this is your money at the end
of the day. You have to supervise and monitor. So you cannot let a
service provider now - that is at first level - the FDC. Do as they
please with your money. You have got to be able to reign them in and
say that is our money that you are using and we have asked you to use
10 it in this particular manner.

You cannot bring in somebody who has no core competency
in dairy farming and then be surprised when things go terribly wrong. It
is your job to do that.

MR THABETHE: Chair in - in a tender process it is a very difficult
thing to do because you would want to go and say I want to see your
documents before you conclude because if - if you are not in the
committee or the - because there - there are proper structures that they
are gazetted for you to be able to deal with that. So you cannot
interfere and come in and say no I do not want you to do it this way.

20 They had to follow the processes as they are. So you - you
cannot come in and say I want - FDC I want to see all your tender
documents because I have interest. You see that is the difficulty. You
have to follow the process as stipulated. So they have to do it the way
they have - - they - they are doing it.

ADV GCABASHE: Can I move to the next topic? We are finishing ...

MR THABETHE: Thank - thank you Chair.

ADV GCABASHE: Mr Thabethe. I am just doing the last few things now. Can I just take you to the lease agreements and this is just the principle of it all. Do not worry because you were involved in ensuring that the lease for the farm was signed on 14 December 2012. Is that correct?

MR THABETHE: That is correct Chair.

ADV GCABASHE: Excellent. You then entered into an agreement with Estina in respect of that land. You actually entered into a 99 year
10 lease agreement with Estina ...

MR THABETHE: That is correct Chair.

ADV GCABASHE: And it was renewable.

MR THABETHE: That is correct Chair.

ADV GCABASHE: Why would you enter into a lease agreement with Estina (Pty) Ltd for 99 years? So you are giving them Vrede - land in Vrede for 99 years and then you are saying to them it is renewable for another 99 years. Help me understand the justification for that?

MR THABETHE: Ja. Chair we - I - I think we are going to it - we did discuss it and my - my explanation at that time was that that transfer
20 was - you remember I was advised by the State Law Advisors not at that particular time transfer the land and the projects to the - to the beneficiaries. We had then put it on hold.

The understanding was that once the entity has been put in place then we transfer the land together with the projects to the beneficiaries. Now it will become - it - my understanding was that we

will then transfer that land as part of the land reform program - project to the beneficiaries.

ADV GCABASHE: You know Mr Thabethe Mr Venter made it plain that he knew nothing about this 99 year lease arrangement that you had entered into with Estina. Mind you it was rent free.

MR THABETHE: Chair, I - I can go back to that. They had through the required legislation provided that instrument to me to be able to do so. So it becomes very difficult to me if you are - you give me an instrument to be able to do exactly that and - and you do not know.

10 **ADV GCABASHE:** What was the instrument Mr Thabethe?

MR THABETHE: Chair the delegation was the instrument that the - the land - the power to do so was then eventually delegated to the head of department ...

ADV GCABASHE: No.

MR THABETHE: And ...

ADV GCABASHE: Beg your pardon. I beg your pardon.

MR THABETHE: Yes. My apology Chair and also the - the drafting of that particular delegation for us to be able to do so.

ADV GCABASHE: The delegation document started with the Premier?

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

ADV GCABASHE: It came to the MEC?

MR THABETHE: That is correct.

ADV GCABASHE: Then from the MEC the MEC delegated to you ...

MR THABETHE: That is correct.

ADV GCABASHE: The entering into of an arrangement between the

department and Phumelele Local Municipality?

MR THABETHE: That is correct Chair.

ADV GCABASHE: That is it. The delegation document did not authorise you to enter into a Lease Agreement of any length of time between the department and a third party. My colleague is finding it. I know because we have looked at it many times.

MR THABETHE: Ja. Chair then there was no need for the delegation if it - it was not for a particular purpose.

ADV GCABASHE: The particular purpose Mr Thabethe is written here.

10 Can I read you the Delegation of Authority document? The purpose is set out here.

MR THABETHE: Yes.

ADV GCABASHE: “Delegation of Authority Free State Land Administration Act Phumelele Land Rental Agreements. One, kindly be advised that you are hereby - oh, dear Mr Thabethe.”

It is directed to you.

MR THABETHE: Hm.

ADV GCABASHE:

20 “Kindly be advised that you are hereby assigned the authority in terms of Section 5 of the Free State Land Administration Act 1998 to consider and sign the proposed agreement between the Department of Agriculture and the Phumelele Municipality relating to the assignment of the municipality’s rights and

obligations in terms of various rental agreements relating to communal land to the Department of Agriculture. Number two, this decision should be taken in consultation with the MEC for Public Works duly delegated by the Executive Council. Three, I trust you will find it in order.”

I - if you want to read it slowly. I can take you to the reference page but you have understood the purpose here. You as the department and the Phumelele Municipality. That is it.

- 10 **MR THABETHE**: Ja. Chair, I - I want to go back to the - to the actual meaning of the letter she is referring to. The - the land was being moved from the municipality into the coffers of the province which means it will become public works land. That - that is my understanding because that - that is the delegation that they - they were - we were referring to.

So the land ceased to become a municipal land. It became provincial land. It became state land.

ADV GCABASHE: I am listening Mr Thabethe because I am trying to understand the next leg.

- 20 **MR THABETHE**: Yes.

ADV GCABASHE: How are you going to tie up the 99 year rent free lease ...

MR THABETHE: Yes.

ADV GCABASHE: Renewable ...

MR THABETHE: Yes Chair.

ADV GCABASHE: To Estina with what you are saying.

MR THABETHE: Yes. Now with - with my understanding that once the project has been completed the project is going to be transferred into the entity of the beneficiaries. Now that is - was the ultimate goal that we will have this land as state land and then going to be able to take this land because you cannot have a project on a land that - that you are not able to - to put control over.

Hence that land will then become the land of the beneficiaries together with the project. That - that was my understanding Chair.

10 **ADV GCABASHE:** Mr Thabethe this is the agreement you entered into with Estina.

MR THABETHE: Ja. Chair if - if I may come in. I - I agree the agreement is there.

CHAIRPERSON: Yes.

MR THABETHE: That we had signed to say it is a 99 year lease but the intention which we had all agreed also with the State Law Advisors because I could have done this from the beginning that we do this with the - with the beneficiaries but we have been advised that we should not do it at that time and we had agreed with the evidence leader at
20 that time that this is what we are advised to do.

Hence we then said let us do it with Estina for now. So that we proceed with the project. Once it is completed we transfer the land and the project to the beneficiaries.

ADV GCABASHE: That is fine Mr Thabethe. Your evidence is very different to that of Mr Venter who is very clear that he only got to know

about the 99 year lease after the fact. They had nothing to do with that. I am not dealing with the first part of the delegation. I am dealing with what you then decided to do as Mr Thabethe HOD Department of Agriculture in that capacity please.

MR THABETHE: That is correct.

ADV GCABASHE: Do not misunderstand me with Estina

MR THABETHE: That is correct Chair.

ADV GCABASHE: In that capacity you signed this agreement that you say you are not disputing.

10 **MR THABETHE:** I agree with that Chair.

ADV GCABASHE: Last one we come to your supplementary affidavit. Chairman the supplementary affidavit I want to deal with the 2018 affidavit because - so Mr Thabethe have they given you a loose leaf supplementary - excellent. I also then want you to pick up your original bundles that have your affidavit. So it is EXHIBITS HH10A and HH10B and because I am summarising I am hoping we can go quite quickly.

MR THABETHE: I have - I have got them Chair.

ADV GCABASHE: Excellent. Maybe we should actually start right at the end because that may explain everything - the supplementary
20 affidavit that you have handed up. The supplementary affidavit Mr Thabethe is just slightly defective because the Commissioner of Oaths did not initial every page but as you heard this morning your testimony will convert this into your evidence under oath. You are happy with that?

MR THABETHE: I am fine Chair.

ADV GCABASHE: So let us deal with this particular document. That is your name obviously. It is your document.

CHAIRPERSON: Well Ms Gcabashe ...

ADV GCABASHE: Yes sir.

CHAIRPERSON: What - what does not change is that on the face of page 3 Mr Thabethe did take an oath before the Commissioner of Oaths and said this is true.

ADV GCABASHE: That is so.

CHAIRPERSON: *Ja.*

10 **ADV GCABASHE:** That is so.

CHAIRPERSON: So it is true. It is - it is not initial - not every page is initialled but he certainly took an oath it seems and said the contents are true.

ADV GCABASHE: Thank you sir.

CHAIRPERSON: Hm.

ADV GCABASHE: So we will accept that it is an affidavit for all intents and purposes.

MR THABETHE: That is correct Chair.

ADV GCABASHE: And that it is your affidavit that you signed on
20 24 October 2019?

MR THABETHE: That is correct Chair.

ADV GCABASHE: Thank you. Now in this affidavit I am going straight to paragraph 3 because you say at paragraph 3:

“You depose to this affidavit to rectify statements
made in your previous affidavits which upon

subsequent reflection by yourself could come
across as misleading.”

MR THABETHE: That is correct.

ADV GCABASHE: You are fixing things here.

MR THABETHE: That is correct.

ADV GCABASHE: Now I am at paragraph 4. Please read paragraph 4
into the record. It is your document.

MR THABETHE: Chair paragraph 4 says:

“What I seek to rectify from my previous statement
10 is that I had previously denied any direct with
members of the Gupta family.”

ADV GCABASHE: Good. Let us pause there. The rest you are going
to speak to. I just wanted that on record, but that is the subject matter
really ...

MR THABETHE: That is correct.

ADV GCABASHE: Of this document. Tell us about your interactions
with the Gupta family.

MR THABETHE: Chair this - this statement comes on to say - you see
the difficulty I have not read the rest Chair.

20 **CHAIRPERSON**: Well, but you read it before you took the oath before
the Commissioner of Oaths?

MR THABETHE: Yes. I am saying so because she says post there
explain to us.

CHAIRPERSON: Yes.

MR THABETHE: Because I want to explain it in - in context with the

following paragraph.

CHAIRPERSON: Well you - you - I do not think she means that she is restricting you if what follows.

MR THABETHE: Okay.

CHAIRPERSON: Will deal with her question.

MR THABETHE: Will deal with that. Okay.

CHAIRPERSON: She wants you to tell the Commission about your interactions with the Gupta family.

MR THABETHE: That is correct Chair.

10 **ADV GCABASHE**: Only because it is your affidavit.

CHAIRPERSON: *Ja*.

ADV GCABASHE: It is your experience that you are relating.

MR THABETHE: That is correct.

ADV GCABASHE: Whether you have written every detail here or not.

CHAIRPERSON: *Ja*.

ADV GCABASHE: Your experience is what you are relating to the Chairman. That is all I am asking you to do.

MR THABETHE: Yes.

ADV GCABASHE: Start where you believe you should start.

20 **MR THABETHE**: *Ja*. Chair my - my interaction was in - in the organisation of the meeting referred to in this regard.

ADV GCABASHE: No. Sir you have to be clear which meeting referred to.

MR THABETHE: *Ja*. Hence Chair then - let me then ...

CHAIRPERSON: You - you can refer to what comes after paragraph 4.

MR THABETHE: That is correct.

CHAIRPERSON: If that helps you answer the question she has put to you.

MR THABETHE: Put to you. Okay. That is correct ...

CHAIRPERSON: Yes.

MR THABETHE: Chair.

CHAIRPERSON: Okay.

MR THABETHE: Chair there - there were a - a number of instances where I - I received calls.

10 **ADV GCABASHE**: From who Mr Thabethe?

MR THABETHE: Chair that is where my difficulty is, because it becomes very difficult for me to be able to say who - who is this person who called me.

CHAIRPERSON: Okay. Let us just hear. Just tell - tell - tell us and then we can ask questions. You received calls ...

MR THABETHE: Yes. I received ...

CHAIRPERSON: And ...

MR THABETHE: A call Chair that a meeting has been organised for me to be able to meet with people from India regarding ...

20 **CHAIRPERSON**: Yes.

MR THABETHE: Regarding the project.

CHAIRPERSON: What - roundabout what time are we talking about when you received this call that you are talking about?

MR THABETHE: Hm.

CHAIRPERSON: 2012/2013/2014/2016?

MR THABETHE: Yoh. I am try - I am trying to think Chair, because I - I had the difficult now to be able to get access to my - my previous statements.

CHAIRPERSON: Yes.

MR THABETHE: So for me to be able to exactly say when was it ...

CHAIRPERSON: You - you cannot remember?

MR THABETHE: Ja. I am just narrating the story of ...

CHAIRPERSON: Yes.

MR THABETHE: Of what happened.

10 **CHAIRPERSON**: Okay. You received a call from somebody.

MR THABETHE: From somebody indicating to me - a - an address was given to me after we have - I have agreed that there were people from India who would want to talk to me.

CHAIRPERSON: So somebody called you and said there were people from India who wanted to meet with you?

MR THABETHE: Who are in the country who want to meet you regarding the project.

CHAIRPERSON: And you did not ask this person who he was or she was?

20 **MR THABETHE**: I might have asked that time Chair but I - I cannot recall and remember exactly who that person was ...

CHAIRPERSON: Oh, okay.

MR THABETHE: Because at that particular time I would have asked who are you? What do you want?

CHAIRPERSON: Yes.

MR THABETHE: Yes, but the person explained to me that he - he wants me to come and meet a group of people who are coming from Paras in India ...

CHAIRPERSON: Yes.

MR THABETHE: And - and then that ring the bell to me that I then should meet these people. Then I agreed on the meeting and then I was given the - the address of the meeting.

CHAIRPERSON: By the same person?

MR THABETHE: By the same person.

10 **CHAIRPERSON:** In the same telephone conversation?

MR THABETHE: Yes. It - it was not telephone call - conversation because they had followed up and say are you - are you coming because I heard - I was around Johannesburg at that particular time.

CHAIRPERSON: Hm.

MR THABETHE: Then I then accepted to come and - and meet them.

CHAIRPERSON: Hm.

MR THABETHE: Then I went to the address. You - you will remember Chair I had reflected that I had not met before but upon reflection Chair I remember that I had - I had met people from Paras in - in an address
20 that was given to me which comes to be the residence of - of the Guptas. Hence this affidavit says I need to correct that because I had been there and I had met the Paras people in that residence.

CHAIRPERSON: So somebody called you and said there were people from Paras who - from India who wanted to meet with you?

MR THABETHE: That is correct Chair.

CHAIRPERSON: You do not know who that person was a - as you speak now?

MR THABETHE: I - yes. I was told but I cannot remember now Chair who was the - the person.

CHAIRPERSON: You - you had - you did ask at the time?

MR THABETHE: That is correct Chair.

CHAIRPERSON: Was it a - a member of the Gupta family?

MR THABETHE: Chair, I - I presume because the residence was - hence I - I will have to admit that I have interacted with them. My - my
10 supposition is that it should have been a member of the Gupta family.

CHAIRPERSON: Ms Gcabashe I do not know if you want to take it from there. I am trying to - to follow because I think what you had asked is that Mr Thabethe must just tell me the full story of his interaction with the Gupta family. So or maybe he has not yet. Maybe - may - just tell me the full story. I met them on this occasion. I met them on that occasion. I met them on that occasion. I met them only once and this was the context. This is how the meeting came about.

MR THABETHE: Ja. Chair that is the difficulty I have because the - the direct - I - I - the direct interaction was for them to be able to say -
20 to take me to the residence and meet with the people from - from India which was Paras.

CHAIRPERSON: Okay.

MR THABETHE: So ...

CHAIRPERSON: Did you meet only once with somebody or people from the Gupta family?

MR THABETHE: Hm.

CHAIRPERSON: Is it only once that you met with one or more members of the Gupta family?

MR THABETHE: I - I think this - this - this was the only meeting where I had a direct interaction when - when I was coming to meet the people from - from Paras.

CHAIRPERSON: Let us talk about the meetings. Let us leave out interactions that might not have taken the form of a meeting.

MR THABETHE: Meet ...

10 **CHAIRPERSON**: In terms of meetings.

MR THABETHE: Meetings Chair in - in a - in a number of instances in - what - what did we call these SABC ...?

CHAIRPERSON: The breakfast.

MR THABETHE: The breakfast shows.

CHAIRPERSON: Ja.

MR THABETHE: I do not know if I should say I have met them there because ...

CHAIRPERSON: Oh. You - you were present at some of the breakfast shows ...

20 **MR THABETHE**: I was - I was present in some ...

CHAIRPERSON: Where they were present too?

MR THABETHE: That is - that is correct Chair.

CHAIRPERSON: But in terms of an actual meeting where it was yourself and one or more members of the Gupta family with or without other people but the idea being you are in a meeting where they are

participating and you are participating. Other than breakfast - those breakfast shows.

MR THABETHE: This - this was the only meeting Chair.

CHAIRPERSON: This was the only meeting?

MR THABETHE: That - that is correct Chair.

CHAIRPERSON: Do you remember which member of the Gupta family was present at this particular meeting or which members?

MR THABETHE: You see Chair I do not want to make a mistake of saying which - which one because it is - they - they are very difficult to

10 ...

CHAIRPERSON: Yes, but ...

MR THABETHE: To ...

CHAIRPERSON: Was it one or was it more than one member of the Gupta family?

MR THABETHE: It was one person Chair.

CHAIRPERSON: It was one person?

MR THABETHE: This is the person that introduced me ...

CHAIRPERSON: Yes.

MR THABETHE: To the person that I was supposed to meet.

20 **CHAIRPERSON**: Yes.

MR THABETHE: That is correct.

CHAIRPERSON: And this meeting took place at the Gupta residence in Saxonwold?

MR THABETHE: That is correct Chair.

CHAIRPERSON: And you cannot remember which year it was or can

you?

MR THABETHE: It - it was - it was not very long Chair because they - they - what they wanted me to do was to assist them with work permits. That - that was the whole idea of - of the meeting why they wanted me because they wanted to bring in people and then my responsibility was to assist them to get the work permits which ...

CHAIRPERSON: Yes but my question is, are you saying you can't remember which year it was when you had this -only one meeting...[intervenes].

10 **MR THABETHE**: I think the year Chair, was 2013.

CHAIRPERSON: 2013?

MR THABETHE: Ja if I remember very well.

CHAIRPERSON: Yes and the person who had called you to tell you about this meeting, did that person attend the meeting as well?

MR THABETHE: I – you see that's what I did not check because when I arrived I did not check if you were the person who was calling me but when I arrived there, I was welcomed by somebody who took me to the meeting and introduced me to the people who were in the meeting.

CHAIRPERSON: Yes you said you can't remember the name of the
20 person who called you but you think it was a member of the Gupta family...[intervenes].

MR THABETHE: I think it was – yes Chair.

CHAIRPERSON: Yes, Ms Gcabashe?

ADV GCABASHE: Thank you Chair she reminded me that I'd switched the mic off to allow you to be very audible as you were asking Mr

Thabethe questions.

CHAIRPERSON: Yes.

ADV GCABASHE: Mr Thabethe, maybe I should turn this around and go back – I'll come back to the issues you've just raised, I'm just trying to jog your memory as well. If we go back to your affidavit you made in respect of the asset forfeiture matter there you said that – at first you said in 2018 that you had been negotiating with Mr Varun Gupta, maybe I should take you to that paragraph so that we are clear about what you said. It should be on page 11, there are two pages that I want you to
10 hold on to page 11 of Exhibit HH10A Chairman.

CHAIRPERSON: Thank you.

ADV GCABASHE: That's the 2018 affidavit and then if you hold on to page 11 I also then want you to go to page 111.

CHAIRPERSON: Oh hand on I thought I didn't have it – okay what's the page 111?

ADV GCABASHE: The first one is 11 Chairman, the second one is 111.

CHAIRPERSON: Thank you.

ADV GCABASHE: And Chairman I would you refer to the copy right at the back because it's the clear one, you know there's the one that's a
20 bit fuzzy but the same numbering is used on the one that the attorneys provided us just so we could have a clear copy, page...[intervenes].

CHAIRPERSON: Okay so for now I must just look at 111?

ADV GCABASHE: 111, as long as you are looking at the clear one Chairman, because it's easy to read.

CHAIRPERSON: Ja it is clear.

ADV GCABASHE: And then of course 11.

CHAIRPERSON: Yes.

ADV GCABASHE: Good so the first thing I want to explore with you is, in 2018 you spoke about – just give me one minute Mr Thabethe – and that will be at page 111 you spoke about – at paragraph 47, the negotiations and the implementation of the Vrede project and you say here that Estina was represented by Varun Gupta and Sanjeev Gautam and Para was represented by Gajendra Kumar, that's what you write in 2018.

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

ADV GCABASHE: Then in 2019 you give the Commission an affidavit, that's the page 11, I have referred you to.

MR THABETHE: That's correct Chair.

ADV GCABASHE: And at paragraph 32, you say,

“Before I continue, I need to refer the Commission to paragraph 47 of my answering affidavit in which I erroneously stated that”,

And then you refer to that paragraph that you had met Varun.

MR THABETHE: Yes.

20 **ADV GCABASHE:** You say here,

“The reference to Estina being represented by Mr Varun Gupta is not correct”,

MR THABETHE: That's correct.

ADV GCABASHE: Paragraph 34,

“Mr Varun Gupta never represented Estina in any of the

negotiations or discussions which I had with Estina's representatives or during any of the presentations which Estina made to the Department. in all the contact that I had with Estina regarding the Vrede Dairy Project, Estina was mainly represented by Mr Sanjeev Gautam and Mr Kamal Vasram".

MR THABETHE: That's correct Chair.

ADV GCABASHE: Etcetera, etcetera, on page – I beg your pardon, paragraph 35 you say,

10 "You only met Mr Varun Gupta when you were arrested on the 14th of February 2018".

MR THABETHE: That's correct Chair.

ADV GCABASHE: I just want to summarise what we're talking about. So first of all you tell – you depose to an affidavit that says this man I have met during negotiations, 2018.

MR THABETHE: That's correct.

ADV GCABASHE: 2019 you change your mind, you've made an error you've never met this particular person. Today we have an affidavit that we received from you on Friday that admits to knowing the Guptas.

20 **MR THABETHE:** Chair let me talk to that, it's a very difficult thing when I made the first affidavit...[intervenes].

CHAIRPERSON: Maybe before you continue Mr Thabethe, Ms Gcabashe I must just make sure I understand your question. The reference to the Gupta family certainly that I made when I put some questions to him raised the Gupta family which has – a lot of reference

has been made here, which would not necessarily include anybody by the surname Gupta who may not be part of that family, we are not at cross-purposes?

ADV GCABASHE: No sir because Mr Varun Gupta is nephew to the seniors who – where reference is made to.

CHAIRPERSON: Yes.

ADV GCABASHE: Every now and again, Ajay, Atul, Tony...[intervenes].

CHAIRPERSON: Oh okay I just wanted to say, whenever I refer to the
10 Gupta family I was referring to the three brothers, I wasn't referring to anybody else in the questions I put to you.

ADV GCABASHE: So he's from the same household sir.

CHAIRPERSON: Yes.

ADV GCABASHE: And he was one of the persons charged when Mr Thabethe was charged.

CHAIRPERSON: Yes, okay not that's fine, you may continue to give your answer Mr Thabethe.

MR THABETHE: Thank you very much Chair. Chair, I think in my affidavit that I deposed to, to NPA it was a mere mistake of swapping
20 names because the only two people that I had dealt with was Gajendra and Kumar, those were the key people that we've been negotiating with in terms of the Vrede Dairy.

So the – Varun Gupta I was seeing him for the first time when we were arrested, I had never seen him, he had never known me at that time, hence in the affidavit to the Commission I was just correcting that

to say, this is not the person because I had raised the issue also with my lawyers at that time, that we were to correct that before going to Court, unfortunately then the case was withdrawn because we were going to correct this because we had also picked it up all of us, that we had made a mistake and I had already communicated to the lawyers, that needs to be corrected.

So hence then I had to correct this in the affidavit to the Commission to say I had not met with him, I saw him for the first time when we got arrested.

10 **ADV GCABASHE:** How do you make a mistake with a surname such as Gupta only because they're a family who have become well known in South Africa. We are not talking about way, way, way back, we're talking about 2018 and 2019, we're in 2019 now, just last year. How does anybody make that kind of error?

MR THABETHE: Chair I did the mistake, I read the affidavit, I went through it and it was quite a lengthy affidavit and later when I was at home then I picked it up after we had submitted it that I had made a mistake and I then wanted it to be corrected. Unfortunately, it came across before I had an opportunity that – I checked with my lawyers at
20 that time that even if the case has been – can I correct that, they said no it's gone, you can't correct it anymore. I wished that it would have been corrected Chair.

ADV GCABASHE: Now the impression you've always given us is that you really didn't know the Gupta family at all, am I not correct, before you filed this affidavit – supplementary affidavit.

MR THABETHE: Ja Chair, knowing them and doing business with them is two different things I had been in activities where they were but we've never interacted in business in terms of the project that we're talking to.

ADV GCABASHE: But you are prepared to go to a meeting, you say this meeting was with Indian person – persons of Indian decent who wanted to meet you in Johannesburg and then you then find yourself at Saxonwold at the Gupta residence?

MR THABETHE: Ja Chair, if it were now, it will be a different story. At
10 that particular time you would organise meetings, you'd find some of the meetings in offices, you find some of the meetings – I've had meetings in hotels, I've had meetings in guest houses, some of the meetings in houses so it did not ring any bell to me to say, why are you, why are you having a meeting in this particular residence?

CHAIRPERSON: But I can't understand that Mr Thabethe, you are the head of a department in a provincial government.

MR THABETHE: Yes Chair.

CHAIRPERSON: You are – you have a project, a big project Vrede Farm Project. Somebody calls you and says Paras people want to meet
20 you, why don't you say, they must come and meet me in my office, why must you meet them in Joburg?

MR THABETHE: Chair that is possible, what I understood is that they wanted to check something with me if I ...[intervenes].

CHAIRPERSON: They must come to your office why don't they come to your office and why don't you tell them they must make an

appointment and come like everybody and come and see me – and see you at work? They want you to come and see them in another province.

MR THABETHE: Chair we come to Joburg, we come to Pretoria in a number of instances to have meetings.

CHAIRPERSON: Yes but they want to meet you, why don't they come to Bloemfontein, why don't they make arrangements to come and see you properly? Why must you meet them just in case you are in Johannesburg? Is there something I don't understand, please help me?

MR THABETHE: I don't see anything wrong in meeting people other
10 than your office.

CHAIRPERSON: But isn't the – no, no I'm not saying that you can't meet people other than in your office but this is about work and these people – I mean Paras people, you had only met them in India isn't it, before this, when you went to India or had you met them subsequently?

MR THABETHE: Chair by this time there had already been people from India who were working at the project if I can – if I remember very well but it's a long time ago.

CHAIRPERSON: Mmm.

MR THABETHE: But I don't know Chair, if I wasn't allowed to meet
20 people other than my office.

CHAIRPERSON: No, no, I'm not saying you're not allowed it just seems strange to me that they want to meet and you agreed to meet in another province.

MR THABETHE: Yes Chair we do meetings in any other province.

CHAIRPERSON: So you leave the Free State to meet – I don't know

whether you would call your clients to meet them in Gauteng about work that is or a project that is really in the Free State. Well I'm trying to understand the idea of why don't they come to you, you are the head of the department the project is taking place in the Free State, your office is in the Free State, why can't they – why are they not making an appointment to meet you in the Free State?

MR THABETHE: Chair I was in Joburg.

CHAIRPERSON: It was coincidental?

MR THABETHE: I was in Joburg and I had accepted because I knew I
10 was going to be in Joburg, then they said it's fine on that particular day I will be able to attend the meeting.

CHAIRPERSON: Okay fine alright.

ADV GCABASHE: Now I'd like to assist you in trying to get the timeline for this meeting right that the Chairman has been exploring with you.

MR THABETHE: Okay Chair.

ADV GCABASHE: It's useful to think back to when you signed the agreement with Estina in 2012 okay, that's a fixed point in time, 25th of May 2012 was the MOU between Estina and Paras, the 5th/7th of July
20 was your agreement with Estina and you know December you then got the land issue sorted out, did this meeting take place anywhere before December 2012. Now your point of reference there is that's when you got the Vrede land documentation sorted out. I'm just trying to help you remember so that's 2012?

MR THABETHE: Chair it's – I don't want to commit only to find that it

is not correct.

ADV GCABASHE: Can I take you into 2013 because in 2013 there are media reports that suggest that you had a meeting scheduled at Saxonwold and you may want to look at the media bundle but I'll simply in the interest of time read to you what is written here. So it's timeline Gupta meetings with a number of public functionaries, including yourself, 31st of January,

“Tony Gupta scheduled to meet Peter HOD at Saxonwold “,

And the person who seems to have set this meeting up is Mr
10 Ashu Chawla from Sahara Computers, does this ring a bell at all?

MR THABETHE: Chair the best thing for me would be – would have been my own diary because to agree on somebody else's diary then becomes a problem for me.

CHAIRPERSON: But you did say, you thought the meeting have taken place in 2013...[intervenes].

MR THABETHE: It should have been 2013 Chair.

CHAIRPERSON: So that might help.

ADV GCABASHE: But the issue is, it's not the only meeting Mr Thabethe, so the first one was on the 31st of January 2013 the next one
20 was the very next day, 1st of February but this time you were scheduled to meet Tony Gupta along with Mr Zwane at Saxonwold, does this ring a bell at all?

MR THABETHE: No Chair, I've seen this before, the media reports they are very strange to me because at a particular stage I had also tried, myself to track what – where had I been on those particular days

and they did not coincide. So it's very difficult for me to talk to them.

ADV GCABASHE: The next meeting Mr Thabethe was on the 18th of July 2013, again you accept a meeting with Mr Tony and you were supposed to meet him with Mr Zwane. Do you know anything at all, do you recall this one at all?

MR THABETHE: No I don't remember Chair.

ADV GCABASHE: It was going to be a meeting at Saxonwold again. So this means you would have been to Saxonwold three times.

MR THABETHE: No I don't recall Chair because that is why I had to
10 go back Chair and think properly because even this one I am saying I remember I had gone there, what came very difficult for me is exactly what I'm being asked now, who did you meet with which I'm not able to say, this is the Gupta person that I had met with. So it is a very difficult one but all I remember is that there has been a question raised to me that if you have been into the residence, in admitting to that I say yes, I believe I have been into this residence at this meeting I had been. That is what I wanted to correct Chair.

ADV GCABASHE: You see Ms Rockman was quite frank with the Commission, she told the Commission that she did go to Saxonwold and
20 she had a meeting at Saxonwold and she told us what she discussed at that meeting. So we have evidence of other people who have been there and who are quite frank with the Commission and tell the Chairman that they have been to Saxonwold. She went there in April 2013, that might assist you, would that have been about the time that you would have been there?

MR THABETHE: Chair, in the media report, there's also reports that says I have been there with her, I've never been there with her.

ADV GCABASHE: No she did not say she was there with you, she went there, she was simply admitting to the fact that she had been there and she told the Chairman why, what it is that was being discussed.

MR THABETHE: No Chai I'm referring to media reports, it's media reports that says so.

ADV GCABASHE: Can I then say this to you, we have of course, you
10 might have known or heard that we've got a unit here that has the hard disk drive that has collected quite a few of these Gupta emails and one of the things that they have prepared, and there's an affidavit that confirms the steps that were taken in preparing these schedules. One of the things we have from our unit, is a meeting schedule that they picked up off the Gupta emails, our HDD drive and these put you at Saxonwold Mr Thabethe on the 15th of June 2012, you were meeting with Mr Tony, you accepted another meeting...[intervenes].

CHAIRPERSON: Mr Tony Gupta.

ADV GCABASHE: Tony Gupta sir, it is from Tony Gupta so the details
20 are here, I can give you the reference, the page reference numbers Chair, it's reference bundle...[intervenes]

CHAIRPERSON: No you...[intervenes].

ADV GCABASHE: Can I just read through them?

CHAIRPERSON: Ja just read through them.

ADV GCABASHE: Thank you Chair, they are part of the reference

bundle. The next meeting you had again with Mr Tony Gupta would be – was on the 2nd of November 2012, the next meeting you had with Mr Gupta the 31st of January 2013, yet another meeting you had with – oh you cancelled this one actually there was one that was scheduled for the 31st of January 2013 was cancelled, Peter HOD. On the 1st of February 2013 you accepted a meeting with Mr Tony Gupta and then again Ashu Gupta seems to – I beg your pardon Ashu Chawla seems to have been one of the persons organising these meetings.

10 You cancelled a lunch meeting – or somebody cancelled a lunch meeting between yourself and Mr Tony Gupta that had been scheduled for the 7th of February 2013. Accepted, lunch meeting Peter HOD on the 7th of February 2013, accepted meeting with Peter HOD 9th of February 2013, accepted meeting with Peter HOD [indistinct] Tony Gupta on the 15th of March 2013, what I'd like to – oh there's one more on the 6th of April again with Mr Tony Gupta 2013 then yourself and Mr Zwane met him again on the 18th of July 2017 and the 27th of August – I beg your pardon 2013 and then 27th of August 2013, there are a number of meetings as you can see. There's one in 2014, the 17th of March 2014 where Ashok Narayan was present.

20 So you can see from the Gupta emails that you are reputed to have interacted with Mr Tony Gupta in particular on a number of occasions. What is your response to that?

MR THABETHE: Chair is it the computer saying so because I understand that this is what comes from the computer.

CHAIRPERSON: Do you want to ...[intervenes].

ADV GCABASHE: These are meeting schedules that have been extracted off emails. Now Mr Thabethe nobody would agree to a meeting – there's no computer that's going to do that for you, you're either going to go to the meeting or not go to the meeting but somebody's going to talk to you about that meeting. So don't ask about this being a computer talking to another computer, the short answer to that question is no. This is about whether you made arrangements to go and see Mr Tony Gupta.

MR THABETHE: No I didn't Chair.

10 **CHAIRPERSON:** I think what he was asking was the source of the information.

ADV GCABASHE: The source of information, Chairman are the Gupta emails and this is a hard drive if that's what you want to know, a hard drive that is in our possession as the Commission that has all these email trails on it but the issue is, did you speak to people either at Sahara Computers or at Saxonwold to arrange these meetings and did you attend some meetings and not attend other meetings?

MR THABETHE: Ja Chair the meeting that I have put in my affidavit is the meeting that I know, the other meetings, I don't know Chair.

20 **ADV GCABASHE:** What did you discuss at that meeting that you are prepared to admit to Mr Thabethe?

MR THABETHE: Chair in this meeting they wanted me to assist with work permits for the people from India to come here, which then I had assisted them that Estina should assist them, not the Department because they would not be able to work with the Department. So I had

to explain to them what Estina was supposed to do in order for them to get work permits. That was what the meeting was all about.

ADV GCABASHE: Maybe we should – let me tidy this one up, did you discuss payments to Estina when you were at Saxonwold on the day that you say you were there?

MR THABETHE: No Chair, the intention of the meeting was for me to meet the people from Paras that was the intention of the meeting so that I can assist them with work permits.

ADV GCABASHE: You did not discuss the payment of the R84million
10 that was outstanding?

MR THABETHE: Chair issues of payment I would then discuss directly with the people that I was dealing with in terms of the project, those are the ones who would then come to me and discuss issues of payment.

ADV GCABASHE: who are those people Mr Thabethe?

MR THABETHE: Chair I want to use the correct name, you see it's very difficult to remember whose – it was Kamal Vasram those are the people that I would discuss issues of payment with them and Gajendra Kumar, those were the two people that would then come to me and say,
20 this payment or that payment.

ADV GCABASHE: You say they would come to you, did they come to you in your office in Bloemfontein?

MR THABETHE: They would come Chair or they would make telephone calls those are the people that I would interact with.

ADV GCABASHE: Did you at any point meet any of them in

Johannesburg?

MR THABETHE: Yes I did Chair.

ADV GCABASHE: Where would that meeting take place?

MR THABETHE: It was in their office Chair in Sandton.

ADV GCABASHE: That is the office at Catherine Street that you said

...

MR THABETHE: That is correct.

ADV GCABASHE: Was familiar because you had been there?

MR THABETHE: That is correct Chair.

10 **ADV GCABASHE**: And you remember I asked you if you were aware that the other Gupta offices were in the same office block? I asked you this last time.

MR THABETHE: Ja I do not know Chair they might have been there but when I went there I had meetings with them.

ADV GCABASHE: Now you had meetings with Mr Kamal Vasram and Mr Kumar?

MR THABETHE: Kumar yes they also have been to our office in Bloemfontein.

ADV GCABASHE: Did you have meetings at Sahara Computers with Mr
20 Narayan – Ashok Narayan?

MR THABETHE: No Chair.

ADV GCABASHE: Did all your interactions with Mr Narayan take place in Bloemfontein?

MR THABETHE: In Bloemfontein Chair.

ADV GCABASHE: How many meetings did you have with Mr Narayan

after your trip to India?

MR THABETHE: Chair not – not direct meetings but I have been in meetings where he has been.

ADV GCABASHE: Then there is Mr Chawla have you ever heard of Mr Chawla? Ashok Chawla? Ashu I beg your pardon. Can I – A-s-h-u and then the surname is Chawla C-h-a-w-l-a?

MR THABETHE: Ja Chair I am trying to think there was a – there was a Chawla that were arrested with?

CHAIRPERSON: Yes. But you do not know whether his name was

10 Ashu?

MR THABETHE: I do not know whether is the – is the same one or not.

ADV GCABASHE: But you actually – it is not somebody who you are familiar with at all?

MR THABETHE: It is not people that I have been interacting with.

ADV GCABASHE: That is very interesting because if you go to Reference Bundle d at page 1486.

MR THABETHE: Reference d?

ADV GCABASHE: D 1486 is the page number. D 1486.

MR THABETHE: 1?

20 **ADV GCABASHE**: 1486 Mr Thabethe.

MR THABETHE: That is correct.

ADV GCABASHE: You are there?

MR THABETHE: Yes I am there Chair.

ADV GCABASHE: That is a letter as you can see that is written on the 24 February 2012 and it is written by Ashu Chawla and it is written to

the Visa Counsellor High Commissioner of India Johannesburg South Africa re Invitation Letter for Peter Thabethe.

“Dear Sir/Madam. Please could you assist with issuing three month business visa for the abovementioned guests they would like to visit India for business opportunities? They are due to arrive between 29 February and 3 March 2012. Below are the passport details. Mr Peter Thabethe passport details, date of issue, date of expiry. SES Technologies Limited will assist with all the requirements whilst stay in India. If require any further details please do not hesitate to contact me. Thanks regards Ashu Chawla.”

10

You know nothing about this?

MR THABETHE: No Chair. What I think is that the letter was written about me.

ADV GCABASHE: That is correct.

MR THABETHE: Yes.

20 **ADV GCABASHE:** But they got that – your passport details from whom?

MR THABETHE: I do not know Chair. What I know that I have been to the Embassy of India in order for me to be able to get a visa.

ADV GCABASHE: Mr Thabethe are you saying that somebody is running around with your passport details and can readily give it to

anybody else. Your passport details?

MR THABETHE: I do not know Chair. But what I know is that when we were arranging to go to India there was an arrangement between me and – and Mr Ashok then we had collected our details, we forwarded them to India. I am not sure how it came about that it landed but I had made that information available because I had to provide it.

ADV GCABASHE: Whom did you provide your details to?

MR THABETHE: I had provided my details to Paras. I had provided my details to the Embassy of India and our own Embassy in – of South
10 Africa in India.

ADV GCABASHE: Now Mr Ashu Chawla has got your passport details and he is the one who is writing to the High Commission to try and arrange for you to visit India. You say you do not know Mr Chawla number 1 ne?

MR THABETHE: No I did not Chair. He just wrote on my – well not even on my behalf. He wrote about me.

ADV GCABASHE: It sounds very improbable Mr Thabethe especially because we are dealing here with your personal detail.

MR THABETHE: Ja. Chair – Chair I had given my passport details to
20 Paras. I had given my passport details to the Embassy of India. I had given my passport details to our own Embassy. Now remember here I was using an official passport which means you – you may not give as you wish your own official passport because all official passport when you come back you have to deposit it you do not keep it with you. And you only use it for official purposes. So these details how they got hold

of them there could be – I do not know.

CHAIRPERSON: Well Mr Thabethe this letter is from SES Technologies Limited and it is written by Ashu Chawla and it says:

Please could you – it is addressed to the High Commission of India to the Vis or Visa Counsellor High Commission of India Johannesburg re Invitation Letter for Peter Thabethe.

“Dear Sir/Madam. Please could you assist with
issuing three month – a three month business visa
for the abovementioned guests”

- 10 It says guest but the only – there is only one guest mentioned or person mentioned above and that is yourself. And then but:

“they would like to visit India for business
opportunities? They are due to arrive on the 29
February to 3 March 2012. Below are the passport
details.”

- The only passport details are given below are your passport details. So this person is writing to somebody in the offices of the High Commission of India in Johannesburg and facilitating your trip to India. You say – and he has got your passport details and knows when you
20 will arrive there and so on and he is asking that a three month business visa be issued. You say you do not know how come he did that?

MR THABETHE: Chair I do not know. What I know when I go to and Embassy to apply for an official visa to visit I bring my own letter from the Province that gives me permission to go there and that is the letter then I go there and fill all the necessary form and do everything that is

required. This will – letter would not serve me any purpose in terms of doing a trip to India.

CHAIRPERSON: You did not need it?

MR THABETHE: I did not need it Chair.

CHAIRPERSON: Hm. Okay.

ADV GCABASHE: Mr Thabethe so you were not meeting – back to Saxonwold to the meeting that you are acknowledging. You did not meet any persons you had previously met either at Paras or in South Africa when you attended this meeting. These were new faces
10 completely?

MR THABETHE: Chair [not speaking into microphone].

ADV GCABASHE: Microphone.

MR THABETHE: My apology Chair. The people that I was meeting is not one of those people that I had met before. What they had explained to me was that they were technical people that they were coming to – to assist with the project.

ADV GCABASHE: Did they explain what form that assistance was going to be taking?

MR THABETHE: We did not go into the details Chair. They just said
20 they have been asked – they have been given permission but when they are here their visa was not a work permit for them. They needed to apply for a work permit because what they were coming to do was work related.

ADV GCABASHE: So the discussion you had with them was that they would have to go back home and apply for a work permit from home. Is

that the discussion you had with them?

MR THABETHE: Ja what I had asked them Chair that Estina is the one who is supposed to release a letter. Because when you do a work permit the entity that you going to be working for must do in confirmation and give the time lines for this person to be issued a work permit. Therefore the Department would not do that. Then Estina was supposed to do that and assist them to get their work permit.

ADV GCABASHE: So you could easily have given them this advice over the telephone had they simply told you why they wanted you to
10 come to – a meeting in Saxonwold.

MR THABETHE: Chair it would have been easy if I had got all the details to say no, no, no Estina must assist you but then I then established the details of the meeting after I had met them. They were of the thinking that we should assist them.

CHAIRPERSON: But when you were told by the person who called you and said they were Paras people who needed who wanted to meet you did you not ask what do they want to discuss?

MR THABETHE: Chair what I was told that there were people from India from Estina who would want to meet with you.

20 **CHAIRPERSON**: Yes did you not ask about what? Why must – what is the meeting going to be about?

MR THABETHE: Ja Chair it was obvious to me that if anybody would want to talk to me from India and from Estina it would be about the project.

CHAIRPERSON: Yes.

MR THABETHE: So I – it would not be strange to me to meet somebody from Estina.

CHAIRPERSON: But I mean the project there are so many things that could be discussed about the project. You did not say exactly what is it do they – that they want to deal with to talk to me about, about the project?

MR THABETHE: No, no.

CHAIRPERSON: The project was going on, is it not?

MR THABETHE: Yes Chair. No I did not ask. Maybe I would have
10 been keen to meet them and understand what they were here to do and so on but I did not ask what was it all about. I only learnt it when I was in the meeting.

CHAIRPERSON: And you realised that it is something that could have been dealt with over the phone?

MR THABETHE: Yes.

CHAIRPERSON: But the meeting did still – still took about an hour you said?

MR THABETHE: The meeting took – no we were chatting, talking Chair relating what I saw when I was in India but the bigger part of the
20 meeting why I had to meet was about that then I had explained to them.

CHAIRPERSON: Oh so the rest of the time it was just chatting.

MR THABETHE: We were talking about – yes Chair.

CHAIRPERSON: Hm.

ADV GCABASHE: Were any of the Gupta brothers or family members' part of that meeting?

MR THABETHE: Chair it is – it is a very difficult...

CHAIRPERSON: Maybe any of the Gupta brothers first and then we can see if there is another Gupta person but was there any of the Gupta brothers – three Gupta brothers who attended that meeting?

MR THABETHE: Chair it is very difficult. I do not want to make a mistake of – of – because you see if these people would walk in now I would not even be able to identify who is who.

CHAIRPERSON: But we are not saying which one. We are simply asking whether there was any one of them who was there irrespective
10 of whether you know the name or you know whether it was Mr Tony Gupta or Mr Ajay Gupta or Mr Atol Gupta. We are just asking whether any one of them attended that meeting.

MR THABETHE: Ja Chair that is what I am saying in the affidavit. I assume that that one of these people was a Gupta person. One of the ones that introduced me.

CHAIRPERSON: You mean – you mean you did not find out who the people – who all the people were who were at that meeting at that time? Were you not told this is so and so, this is so and so, this is so and so?

MR THABETHE: Yes Chair I was told by the person who was
20 introducing them.

CHAIRPERSON: Yes.

MR THABETHE: He introduced the people to me.

CHAIRPERSON: Yes.

MR THABETHE: Were from Paras.

CHAIRPERSON: Yes.

MR THABETHE: And then – then we would....

CHAIRPERSON: And do you know – do you remember whether one of the persons or one or more of the persons who were in the meeting you were told was Mr Ajay Gupta or Mr Atul Gupta or Mr Tony Gupta also called Rajesh Gupta?

MR THABETHE: He might have introduced Chair but I may not have taken it into mind to be able to say who exactly was that.

CHAIRPERSON: So – but you would have known or you would remember I would imagined if in that meeting one of the Gupta brothers
10 was there. As you sit there you will – I would expect you to remember that one of them was there. You might not remember which one. I would expect you to remember. Am I – am I mistaken I should not expect you to remember?

MR THABETHE: It is a very difficult one Chair.

CHAIRPERSON: By this time – this is 2013 ne?

MR THABETHE: Yes Chair.

ADV GCABASHE: That is correct Chair.

CHAIRPERSON: Oh the meeting you are talking about?

MR THABETHE: Yes Chair.

20 **CHAIRPERSON**: You – you think you – you are not sure whether any one of them was present?

MR THABETHE: Later Chair I tried to look at the faces that were put up. It was very difficult for me to be able to say which of those were in that meeting.

CHAIRPERSON: Hm okay.

ADV GCABASHE: But you have – you have – we have established that there was a Gupta family member.

MR THABETHE: That is correct Chair.

ADV GCABASHE: At that meeting?

MR THABETHE: That is correct Chair.

CHAIRPERSON: Oh okay now I must understand that. So that you remember that there was ...

MR THABETHE: There was...

CHAIRPERSON: A Gupta family member.

10 **MR THABETHE:** One of the Gupta. I take it that...

CHAIRPERSON: At the meeting?

MR THABETHE: The person who came to introduce me in that reason was a Gupta.

CHAIRPERSON: No but you must – you must careful. It is one thing to say you take it to be the case. It is another thing to say it is so. So before Ms Gcabashe asked you the last question she asked you I thought you were saying you were not sure – you were not sure that there was a Gupta family member at the meeting. But she put to you a very clear question and I thought your answer was very clear that yes
20 there was. So that is why I then wanted to make sure that I had not misunderstood anything.

MR THABETHE: Ja Chair I – I – my response is that I took it that it was a Gupta person.

CHAIRPERSON: The one who introduced you to everybody

MR THABETHE: The one who introduced me. But I am not able to

confirm that.

CHAIRPERSON: Hm. Okay.

ADV GCABASHE: Chairman I had sorted this out until you asked that question. And I will tell you why I believe I had sorted it out Mr Thabethe with all due respect to your question. I understand the reason for the questions Chairman please – please accept that I do. The reason is that your host would have been trying to connect with these people who were seeking work permits.

MR THABETHE: That is correct Chair.

10 **ADV GCABASHE:** The home you are in belongs to one of the Gupta family members.

MR THABETHE: That is correct.

ADV GCABASHE: So one would assume that because this was such an important matter getting work permits for these technical people who would be working on Estina that your host would be somebody who belonged in that home. This is why I – I expected the answer you gave when you said one of the Gupta's you do not know which one because it is difficult to tell them apart but one of the Gupta's would have been there. But I see you are now retracting that.

20 **MR THABETHE:** No Chair I am not.

CHAIRPERSON: You are not retracting?

MR THABETHE: I am not retracting Chair.

CHAIRPERSON: Well Ms Gcabashe you have got your answer.

ADV GCABASHE: Maybe I should just round this off with the following question. You see when I looked at your paragraph 51 in your 2019

affidavit, the one to the commission you state the following:

“Up until the time of my arrest on 14 February 2018 I was not aware of any involvement of the Gupta family in the Vrede Dairy Project. As stated above I only met Mr Varun Gupta during the time of my arrest on 14 February 2018. Prior to my arrest I have never met any person with the surname of Gupta at any occasion nor did I discuss any aspects regarding the implementation and execution of the Vrede Dairy
10 Project with any person with the surname of Gupta.”

MR THABETHE: That is correct Chair.

ADV GCABASHE: Now this meeting you are talking about of 2013 is a meeting that is discussing technical assistance to Estina. Your host is a Gupta. That means what you wrote in paragraph 51 you ought to have corrected as well in your supplementary affidavit.

MR THABETHE: Chair my understanding this is what I am correcting in my supplementary affidavit.

ADV GCABASHE: No. In the supplementary affidavit you are – you are admitting to a meeting at the Gupta residence but you are not
20 admitting to any connection between the Gupta family and the Vrede Dairy Project. Otherwise correct me please. You have got the affidavit in front of me – of you rather. Show me where you are saying all of those things I am dealing with in this supplementary.

MR THABETHE: Ja.

ADV GCABASHE: Just take me to that paragraph?

MR THABETHE: Chair what you are saying is correct. I am admitting meeting them but I am not admitting discussing the aspects of the projects.

ADV GCABASHE: But talking about Estina technical issues means you are talking about the project. Your host is Gupta – member of the Gupta family. You are discussing the project.

MR THABETHE: Chair I am discussing with the delegation from India. That was the intention. That was my understanding of the meeting Chair.

10 **ADV GCABASHE**: You are introduced to these people by your host.

MR THABETHE: That is correct Chair.

ADV GCABASHE: Your host knows that they are in Estina technocrats.

MR THABETHE: That is correct.

ADV GCABASHE: People who have got technical skills according to you who are coming to Estina and to Vrede.

MR THABETHE: Yes.

ADV GCABASHE: To work on the project. So your paragraph 51 is incorrect.

20 **MR THABETHE**: No Chair I do not see any – anything wrong with the paragraph.

ADV GCABASHE: In any event at your paragraph 9 you say you were introduced to persons who from Paras and the discussions were mainly about the Vrede Dairy Project.

MR THABETHE: That is correct.

ADV GCABASHE: So you were talking about the Vrede Dairy Project.
Mr Thabethe.

MR THABETHE: Chair yes because that is what my statement is saying. I am saying I had – I was introduced to these people where I had come to discuss with them about the issue of Vrede Dairy. That is correct Chair.

ADV GCABASHE: Mr Thabethe the Sun City wedding, the Gupta wedding at Sun City did you attend that wedding?

MR THABETHE: No Chair.

10 **ADV GCABASHE:** Were you invited to that wedding?

MR THABETHE: No I was not invited Chair.

ADV GCABASHE: You did not receive an invitation?

MR THABETHE: No.

ADV GCABASHE: They have had a few Diwali celebrations at the Gupta home. Were you invited to any of those Diwali celebrations?

MR THABETHE: No I was not.

ADV GCABASHE: You have not attended a single one of them?

MR THABETHE: I have not attended Chair.

ADV GCABASHE: So the extent of your interaction with the Gupta's is
20 this meeting you have just told us about?

MR THABETHE: That is correct Chair.

ADV GCABASHE: And the breakfast meetings where you would have met them.

MR THABETHE: That is correct Chair.

ADV GCABASHE: And then just telephone calls but you are not saying

with the Gupta's in particular but with people from Sahara Computers to arrange certain meetings.

MR THABETHE: That is correct.

ADV GCABASHE: But you do not know who from Sahara Computers was phoning you to arrange the meetings that you have referred to?

MR THABETHE: That is correct.

ADV GCABASHE: It could have been Mr Tony Gupta you have no clue?

MR THABETHE: That is correct Chair.

ADV GCABASHE: Chairman I believe that is – those are the questions
10 we have from – for Mr Thabethe.

MR THABETHE: Thank you. Did we – did you finish questions on – on – did you exhaust your questions on the deviation?

ADV GCABASHE: I believe I have Chairman.

MR THABETHE: You have okay no that is fine.

ADV GCABASHE: Yes.

CHAIRPERSON: I think I will – I will – Mr Thabethe let us just go back.

ADV GCABASHE: Sorry I beg your pardon Chairman. If you recall it is the direct questions and then the ones relating to the AG questioning.

CHAIRPERSON: Hm.

20 **ADV GCABASHE**: The manner in which they had approached the deviation. So all of that is one composite piece of evidence.

CHAIRPERSON: Yes.

ADV GCABASHE: Much as the questions were asked at different times.

CHAIRPERSON: Ja it must be because I – I wanted to ask some questions that must have been that I thought you might not have. Mr –

Mr Thabethe let us just go back.

ADV GCABASHE: Chair. I beg your pardon Chairman. May I sit down?

CHAIRPERSON: Yes please.

ADV GCABASHE: Thank you.

CHAIRPERSON: Thank you. Mr Thabethe let us go back to something that we dealt with much earlier because I do not think I was satisfied that I understood everything about it and it is important that I should understand your perspective as well. In regard to the Vrede Dairy Farm
10 Project there was no compliance with any procurement processes. Maybe putting it that way might not be completely accurate but you sought to deviate from it. Is that right?

MR THABETHE: Yes.

CHAIRPERSON: From the procurement procedures?

MR THABETHE: Yes Chair. Deviation is a compliance procedure.

CHAIRPERSON: Ja that is why I am saying maybe it might not be putting accurately to say there was no compliance because deviation is provided for in the legislation.

MR THABETHE: That is correct Chair.

20 **CHAIRPERSON:** Yes. Now as I recall deviation is provided for in the legislation and the policies under very limited circumstances, is that right?

MR THABETHE: That is correct Chair.

CHAIRPERSON: I think one such situation is either emergency or urgency I just cannot remember now whether it is put as emergency or

as urgency, is that right? Is it emergency or urgency?

MR THABETHE: Ja Chair.

CHAIRPERSON: Obviously urgency is part of emergency but emergency is not necessarily the same as urgency.

MR THABETHE: Ja Chair I must just haste to come in.

CHAIRPERSON: Hm.

MR THABETHE: Chair the deviation that you are talking about.

CHAIRPERSON: Hm.

MR THABETHE: It is for money that has been allocated for goods and
10 services.

CHAIRPERSON: Hm.

MR THABETHE: It is very clear that when the – when you budget of goods and services you wish to deviate and this is the process to follow.

CHAIRPERSON: Yes okay maybe I should have put my question this way. What was the justification you gave for saying that deviation was justified in this case?

MR THABETHE: Ja Chair the – I think the number of witnesses has also explained it that this budget was gazetted under transfer.

20 **CHAIRPERSON**: Ja.

MR THABETHE: And once the budget is gazetted under transfer it becomes un-equated funds.

CHAIRPERSON: It becomes?

MR THABETHE: Un-equated funds.

CHAIRPERSON: Un?

MR THABETHE: Equated.

CHAIRPERSON: Equated.

MR THABETHE: It means it is funds that you must – you must transfer. It is not funds that are meant for the Department. It means this money has been put aside for the benefit of somebody.

CHAIRPERSON: Someone else yes.

MR THABETHE: Yes then you transfer that money for.

CHAIRPERSON: Hm.

MR THABETHE: But what we then did as a Department over and above
10 that we then said we are actually saying we are deviating from our
normal procurement processes because of that particular reason.
Hence this money becomes a transfer. So those – those are two
different because the deviations that we are talking about it is a
deviation that refers to money that has been allocated and gazetted for
goods and services which in this instance it does not apply.

CHAIRPERSON: So money gets given to your department for goods
and services?

MR THABETHE: That is correct Chair.

CHAIRPERSON: Okay. If it is for goods and services you must follow
20 ...

MR THABETHE: The - the ...

CHAIRPERSON: Procurement procedures.

MR THABETHE: That is correct Chair.

CHAIRPERSON: And those procurement procedures include in
appropriate cases deviation?

MR THABETHE: That is correct Chair.

CHAIRPERSON: Yes. Okay. Now - but you say that there is money that would get allocated to your department not for goods and services?

MR THABETHE: That is correct Chair.

CHAIRPERSON: And money that gets allocated to your department not under goods and services would be allocated to your department as - as what or ...

MR THABETHE: As - as ...

CHAIRPERSON: What category does it fall ...?

10 **MR THABETHE**: As transfers Chair.

CHAIRPERSON: As transfers?

MR THABETHE: That is correct Chair.

CHAIRPERSON: Now this concept of transfers is that in some legislation? In some policies, in some official document where - where there is provision to say well if it is transfers it does not go to procurement. You do not have to go through procurement procedures?

MR THABETHE: That is correct Chair.

CHAIRPERSON: Okay. What is that - what - what are those instruments? What is that instrument that says that?

20 **MR THABETHE**: Chair the - the very same Act stipulates there - there is a document called - in Government called SCOA. I am not able to - to put it in full ...

CHAIRPERSON: To remember the full name?

MR THABETHE: In full details.

CHAIRPERSON: Yes. *Ja*.

MR THABETHE: But that document then explains - now that - that is the problem Chair. That took two years for National Treasury to be able to clarify because it has been in existence and - and the application has been varying from province to province. Hence ...

CHAIRPERSON: The application of that ...

MR THABETHE: That ...

CHAIRPERSON: Of that document?

MR THABETHE: Of that document Chair, yes.

CHAIRPERSON: You say SCOA?

10 **MR THABETHE**: It is called SCOA Chair.

CHAIRPERSON: How do you spell the acronym?

MR THABETHE: Hm.

CHAIRPERSON: S-C-O-A?

MR THABETHE: S-C-O-A Chair.

CHAIRPERSON: Okay. Okay.

MR THABETHE: If I am not mistaken. I think the evidence leader might have seen the document.

CHAIRPERSON: Oh. Okay.

MR THABETHE: I am referring to.

20 **CHAIRPERSON**: Alright.

MR THABETHE: Ja.

CHAIRPERSON: So there are this document SCOA. Just tell me the gist what does it deal with? Does it deal with transfers or ...?

MR THABETHE: Chair it - it deals with a number of - of processes.

CHAIRPERSON: Ja. Including transfers?

MR THABETHE: *Ja.* I do not want to go there because I am not an expert of it Chair.

CHAIRPERSON: Yes, yes ...

MR THABETHE: Yes.

CHAIRPERSON: But your understanding ...

MR THABETHE: Otherwise I am confuse the whole documents.

CHAIRPERSON: No, no. At least tell - tell me your understanding.

MR THABETHE: My understanding of - of the document it - it classifies how you deal with about the transfer. It - it even presents it to you
10 schematically.

CHAIRPERSON: Yes.

MR THABETHE: How you deal with the transfer. So that you are able to follow it.

CHAIRPERSON: And - and basically when we talk about transfer in this context. It is transfer of money that is ...

MR THABETHE: From - from Government ...

CHAIRPERSON: From Government.

MR THABETHE: To another entity.

CHAIRPERSON: To - to

20 **MR THABETHE:** It could be ...

CHAIRPERSON: An individual or an entity ...

MR THABETHE: That is correct Chair.

CHAIRPERSON: Which is recognised under SCOA ...

MR THABETHE: Yes.

CHAIRPERSON: As being not for goods and services?

MR THABETHE: That is correct Chair.

CHAIRPERSON: Is that right?

MR THABETHE: That is correct Chair.

CHAIRPERSON: Is - is that on your understanding does SCOA say monies that are classified or entered under as transfers do not need to be subjected to or there is no need to go through procurement procedures for the department to dispense them.

MR THABETHE: That is correct Chair.

CHAIRPERSON: That is what it says?

10 **MR THABETHE**: That is correct.

CHAIRPERSON: The document. Now I would like to see that document. So - so I think I would like arrangements to be made for me to see it and maybe if it is possible it would be good if when I see it I would know what provisions inform your understanding.

MR THABETHE: That is correct Chair.

CHAIRPERSON: So if arrangements could be made to make sure these are the provisions that inform your understanding which you told me about today.

MR THABETHE: Ja. Chair ...

20 **CHAIRPERSON**: Yes.

MR THABETHE: That - that document ...

CHAIRPERSON: Hm.

MR THABETHE: As we speak today has a new position ...

CHAIRPERSON: Yes.

MR THABETHE: Because it created a lot of instability ...

CHAIRPERSON: Challenges, yes.

MR THABETHE: Throughout, because ...

CHAIRPERSON: Yes.

MR THABETHE: When the ...

CHAIRPERSON: Because of the two year period you ...

MR THABETHE: The two period.

CHAIRPERSON: Ja.

MR THABETHE: When I was there I had personally written to National Treasury ...

10 **CHAIRPERSON:** Yes.

MR THABETHE: Requesting them a clarification ...

CHAIRPERSON: Yes.

MR THABETHE: Which - which did not come forth and the explanation was that if - if we give you an answer.

CHAIRPERSON: Hm.

MR THABETHE: It means that becomes a rule.

CHAIRPERSON: Hm.

MR THABETHE: And we need to do proper consultation throughout ...

CHAIRPERSON: Hm.

20 **MR THABETHE:** The country ...

CHAIRPERSON: Hm.

MR THABETHE: Before we finalise that decision.

CHAIRPERSON: Hm, hm.

MR THABETHE: So it was very difficult even for National Treasury to say yes Department of Agriculture Free State you are wrong ...

CHAIRPERSON: Hm.

MR THABETHE: Or you are right.

CHAIRPERSON: Hm.

MR THABETHE: It - it - that - that was the difficulty for them to - to come to us to say in our understanding - because that is what we wanted them to tell us - to say you are right or you are wrong.

CHAIRPERSON: Yes. Now the - the document as it read before the amendments that have happened.

MR THABETHE: Yes Chair.

10 **CHAIRPERSON:** So I would like to see the one that was in existence at the time because that is the one ...

MR THABETHE: That is correct.

CHAIRPERSON: On the basis of which you acted.

MR THABETHE: That is correct Chair. I - I am sure Chair Treasury could assist you with that document.

CHAIRPERSON: Yes. I am sure they - they should be able to. Now - but - but why would it become necessary to talk about deviation then if the procurement procedures are not applicable because it is not goods and services when you want to dispense money? That file falls under
20 transfers.

MR THABETHE: Ja. Chair, we - we had agreed in the province that for us to be able to assist the farmers with the money that was allocated under transfer we will then together with the farmer's source an implement agent. It means then the department will go and advertise a tender for us to be able to get implementing agents in order for us to

be able to assist the farmer's to implement the project.

Now this deviation was then deviating from what we had agreed on as a department to say in this particular instance we are not going to follow what we had agreed in terms of assisting the farmers because we have an implementing agent that is a partner in the project that will implement the project for us. That - that was the difference Chair.

CHAIRPERSON: Are you - are you saying that the presence of an implementing agent meant that procurement procedures had to be
10 complied with in circumstances where otherwise they were not supposed to be - they were not applicable?

MR THABETHE: That is correct Chair.

CHAIRPERSON: Why is that? Why did it - did - why did it make that difference?

MR THABETHE: Ja. Chair, we - we had - we had engaged that process over a very long period of time. I - I took a very lengthy period trying to explain last time why - how we ended there.

CHAIRPERSON: No, no. I do not - I do not want a - a long thing. You have told me if money falls under transfers ...

20 **MR THABETHE:** Yes.

CHAIRPERSON: Procurement procedures do not apply.

MR THABETHE: That is correct Chair.

CHAIRPERSON: That is what SCOA mean - says?

MR THABETHE: That is correct Chair.

CHAIRPERSON: Okay. Now as I understand it now you want to

dispense money that falls under transfers?

MR THABETHE: That is correct Chair.

CHAIRPERSON: But suddenly you say procurement procedures now apply because you have brought in an implementing agent?

MR THABETHE: Yes Chair.

CHAIRPERSON: So where - where - what was the basis for saying dispensing money that falls under transfers is governed by procurement procedures?

MR THABETHE: Yes.

10 **CHAIRPERSON**: If you bring in an implementing agent, but if you do not bring in an implementing agent those procedures do not apply. That is what I am trying to understand.

MR THABETHE: *Ja*. Chair we had learnt from experience of the past ...

CHAIRPERSON: Hm.

MR THABETHE: That money were - which were - were meant for farmers were transferred to the farmers to implement the project and we had picked problems. Once the money land in - into the farmers account the farmers may decide not to implement the project but to do
20 something else. So we had been through that process ...

CHAIRPERSON: Huh-uh.

MR THABETHE: And we had engaged with both Provincial Treasury and the Auditor-General in that regard because the Auditor-General will say so much money was given to this farmer to do one, two, three, four. Can you go and see what if ...?

CHAIRPERSON: What he did with it?

MR THABETHE: What he did with the money ...

CHAIRPERSON: Hm.

MR THABETHE: And when we get there we are not able to see because we have given the money directly. Hence we had to come back to a drawing board and say but this - this system is not assisting us.

CHAIRPERSON: Hm.

MR THABETHE: Let us impose an additional restriction.

10 **CHAIRPERSON:** Hm.

MR THABETHE: So what we then did was an additional restriction to put it under control ...

CHAIRPERSON: Huh-uh.

MR THABETHE: To improve the quality of the work done and for us to be able to monitor properly.

CHAIRPERSON: Huh-uh.

MR THABETHE: Hence then in an area where we did not need a procurement process we then introduced a procurement process.

20 **CHAIRPERSON:** Right, but on your understanding once you were going to give the money to Estina and not to the beneficiaries themselves.

MR THABETHE: That is - that is correct Chair.

CHAIRPERSON: Was compliance with procurement procedures compulsory or not and when I say procedures I include deviation? In other words were you just deciding by yourselves for whatever reasons because of what had happened before to bring in - to invoke a

procedure that otherwise did not apply or was that the position that you were obliged by law? Now that the money was not going to be sent directly to the beneficiaries but was going to be sent to somebody else. You were obliged by law to then apply or comply with procurement procedures.

MR THABETHE: Hm.

CHAIRPERSON: What was your understanding?

MR THABETHE: No Chair, we - we were not compelled by law. We - we were just putting a merger ...

10 **CHAIRPERSON**: Hm.

MR THABETHE: To assist us to be able to implement the project properly.

CHAIRPERSON: So - but how was deviation going to assist you if you did not - I mean the - the procurement procedures as far as you were concerned were not applicable ...

MR THABETHE: That is correct.

CHAIRPERSON: Because this was money that fell under transfers?

MR THABETHE: That is correct Chair.

CHAIRPERSON: So deviation means do not follow procedures?

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

CHAIRPERSON: So how was it going to assist you doing a deviation?

MR THABETHE: Chair exactly that is what - what was - I was saying because in the department we had make - made an internal arrangement that this is how we are going to do it. Whether the law did not require it. We are going to do it. Hence in this particular instance

we were then saying we are deviating from our own agreement also.
Even though the law did not require it to be done.

CHAIRPERSON: Oh then you are confuse me more now. I understood that all along when you talk about deviation ...

MR THABETHE: Yes Chair.

CHAIRPERSON: We mean deviation as provided for in the PFMA ...

MR THABETHE: That is correct.

CHAIRPERSON: Policies.

MR THABETHE: That is correct Chair.

10 **CHAIRPERSON**: But now you seem to be saying no, no, no. This deviation we are talking about we are deviating from our own obligations that we had placed ourselves by way of an agreement internally. Not from the PFMA.

MR THABETHE: You - you are correct Chair.

CHAIRPERSON: Yes.

MR THABETHE: You are correct Chair.

CHAIRPERSON: Okay. Alright. So the deviation that you - you sought was a deviation from your own internal arrangement?

20 **MR THABETHE**: Arrangement because this deviation did not qualify in terms of the PFMA.

CHAIRPERSON: Yes. So - but this internal arrangement did not really put any obligation - legal obligation upon you. It was just an arrangement is it not?

MR THABETHE: It - it is a nice thing to do Chair.

CHAIRPERSON: Yes.

MR THABETHE: (Intervenes).

CHAIRPERSON: That is why I say it is not an obligation.

MR THABETHE: No. It is not Chair.

CHAIRPERSON: So you sought an - a deviation from a nice thing to do?

MR THABETHE: That is correct Chair.

CHAIRPERSON: Okay. Alright. Okay. Thank you. Ms Gcabashe anything arising?

ADV GCABASHE: No Chair.

10 **CHAIRPERSON:** Yes.

ADV GCABASHE: No Chairman. Other than that ...

CHAIRPERSON: Hm.

ADV GCABASHE: We have a copy of the accounting manual for departments.

CHAIRPERSON: Yes.

ADV GCABASHE: The standard chart of accounts and systems.

CHAIRPERSON: Yes.

ADV GCABASHE: It might be useful for Mr Thabethe to indicate on your document ...

20 **CHAIRPERSON:** Yes, yes.

ADV GCABASHE: Which I was about - I was just looking for a clip in my (intervenes).

CHAIRPERSON: Yes, yes.

ADV GCABASHE: Which provisions he relied on so that you understand

CHAIRPERSON: Yes. That ...

ADV GCABASHE: Very clearly.

CHAIRPERSON: That would be helpful.

ADV GCABASHE: What it is that he - he has relied on.

CHAIRPERSON: Yes. Maybe let us do that if - if you would be able to Mr Thabethe. I do not know if you might need more time then ...

MR THABETHE: Please - please Chair if I could be allowed. Then I will ...

CHAIRPERSON: Have - to have more time?

10 **MR THABETHE:** Yes. So that I get the right people to help me to identify it and then I (clearing of throat) it.

CHAIRPERSON: Okay. Then what we can do is that maybe you can file a - just a supplementary affidavit and attach the document or the relevant parts of the document and say these are the provisions in SCOA that guided my understanding.

MR THABETHE: That is correct Chair.

CHAIRPERSON: *Ja*. Is that fine with you?

ADV GCABASHE: That is fine with us Chairman.

CHAIRPERSON: Yes, yes.

20 **ADV GCABASHE:** I - in that event I presume that ...

CHAIRPERSON: Yes.

ADV GCABASHE: Mr Thabethe will attach a copy of that document.

CHAIRPERSON: Yes.

ADV GCABASHE: I do not know if you want to mark what we have just handed up or if you will simply wait for Mr Thabethe to file - properly

file his copy.

CHAIRPERSON: Maybe let us mark this and ...

ADV GCABASHE: Shall we put it in the reference bundle Chairman?

CHAIRPERSON: Yes. Let us do that.

MR THABETHE: *Ja*. Chair.

CHAIRPERSON: Which - which reference?

MR THABETHE: Chair.

CHAIRPERSON: Oh, I am sorry.

MR THABETHE: *Ja*. Chair.

10 **CHAIRPERSON**: Yes. Mr Thabethe.

MR THABETHE: Chair it is - it is me Chair.

CHAIRPERSON: Yes.

MR THABETHE: Can I request that we - we do not do it now? In case I might have referred to a wrong document. So that I - I attach the correct document. I - I took it that that is the document.

CHAIRPERSON: Yes.

MR THABETHE: But ...

CHAIRPERSON: But ...

20 **MR THABETHE**: Maybe when reading it I may realise no I have attached the wrong document.

CHAIRPERSON: Yes. You might - yes.

MR THABETHE: So that (intervenes).

CHAIRPERSON: Okay. Maybe let us - let us leave it on the basis that when your supplementary affidavit comes it will come with the right document which maybe this one or maybe another one.

MR THABETHE: That is ...

CHAIRPERSON: Which informed your understanding

MR THABETHE: That is correct Chair.

CHAIRPERSON: Okay. So maybe let us not ...

ADV GCABASHE: Hand that up?

CHAIRPERSON: *Ja*. Hand it up at this stage. Okay. Thank you very much Mr Thabethe. I do not know whether your counsel has some - something. Oh. He wants to - to talk to you.

ADV GCABASHE: I - I think so Chair ...

10 **CHAIRPERSON:** Okay. I think just ...

ADV GCABASHE: Chairman.

CHAIRPERSON: *Ja*. It is fine, *ja*.

ADV GCABASHE: Chairman, two issues.

CHAIRPERSON: Yes, hm.

ADV GCABASHE: The first Mr Buthelezi was just checking on whether this is the end of the hearing of Mr Thabethe's evidence for purposes of the supplementary or does he have to come and speak to the supplementary when he comes back. That is the first question.

CHAIRPERSON: Yes.

20 **ADV GCABASHE:** The second question is - relates to a right to re-examine. There are a few things that he would like - Mr Buthelezi ...

CHAIRPERSON: Yes.

ADV GCABASHE: Would like to clear up ...

CHAIRPERSON: Yes.

ADV GCABASHE: That he thinks that his client ...

CHAIRPERSON: Yes.

ADV GCABASHE: Glossed over ...

CHAIRPERSON: Yes.

ADV GCABASHE: And they are important (indistinct).

CHAIRPERSON: Okay. First one, I think from your side you indicated that you had no further questions for him ...

ADV GCABASHE: We have no further questions.

CHAIRPERSON: And I do not think I have any further questions for him. So subject to what might come up out of the re-examination this
10 would be the end of his evidence. If anything crops up later then other
- other arrangements can be made, but for all intents and purposes this
should be it.

To the extent that Mr Thabethe's counsel would like to re-examine we can allow that now or if there is a problem look at other arrangements but otherwise we can allow it now. I can allow it.

ADV GCABASHE: Thank you Chairman.

ADV BUTHELEZI: Thank you. Good afternoon Chair.

CHAIRPERSON: Good afternoon. Good afternoon.

ADV BUTHELEZI: Thank you. It is not my intention to be long Chair.

20 **CHAIRPERSON:** Yes, yes.

ADV BUTHELEZI: Hm.

CHAIRPERSON: You just want to clear up (intervenes)?

ADV BUTHELEZI: Given that Mr Thabethe's evidence has spanned quite a long period ...

CHAIRPERSON: Yes.

ADV BUTHELEZI: And given how long it has taken to go through Mr Thabethe's evidence.

CHAIRPERSON: Yes.

ADV BUTHELEZI: I think some of the things need to come from him one more time to either be reaffirmed or ...

CHAIRPERSON: Yes.

ADV BUTHELEZI: Clarified one last time. Mr Thabethe ...

CHAIRPERSON: Yes.

ADV BUTHELEZI: If - if you go through a couple of questions with me
10 please. Firstly in your understanding as the former DG of the Department of Agriculture Free State the Estina Dairy Project as it is known very shortly why did this project fail - in your view?

MR THABETHE: Ja. Thank you very much Chair. Two things has happened Chair. The withdrawal of the funding to the project by - which was an instruction by National Treasury to the National Department of Agriculture. Secondly, after - I think we had spoken to this- after a lengthy media act - interaction with Estina they also - no my apologies Chair - to Paras.

They felt it very difficult for them to be able to proceed with
20 the project until to the time where we decided we are then going to terminate the agreement. So those - those are the things Chair that resulted to the project failing.

ADV BUTHELEZI: Right. Thank you. The next question becomes about monies that the Department of Agriculture Free State either paid towards the project or paid towards Paras. Why were those monies

paid if the project in essence never happened?

MR THABETHE: Chair those monies were paid on the work done.

ADV BUTHELEZI: Please specify the work done.

MR THABETHE: Which - which Chair was what was done on the ground in terms of implementing the project.

ADV BUTHELEZI: Example.

MR THABETHE: The - Chair the details would be that the - the dairy plant was put in place, animals were procured, fields were planted, equipment was bought and - and all those things were - we were able to
10 verify on the ground to say this is what we had paid for.

ADV BUTHELEZI: Thank you. Now how do you reconcile that answer with the evidence of the farmers of Vrede who have come and testified here that they never received any cattle or anything to that effect?

MR THABETHE: That is - that is correct Chair. They had not received because we had - by the time we put the project on hold we had not come to that phase where we would then give the farmers the cattle. We would then transfer the projects to the beneficiaries. So we had not come to that stage. So their testimony was correct. They had not yet received.

20 **ADV BUTHELEZI**: So - but come back with me to the previous point. You said the money for amongst other things paid for cattle. Was that not what you just said?

MR THABETHE: Ja. Chair the money that was paid for the cattle was paid for the cattle on the project. Remember there were - there was a phase where animals would also be donated to farmers for them to be

able to do the project and then milk be collected and be put together with that of the project.

The one in the project was the project of the farmers who will jointly own but they will have their own cattle on their farms where they will also - the department will then provide them with those cattle. So both these stages have not been referred to them yet.

ADV BUTHELEZI: So clarify for me this point. Were cattle purchased or not purchased?

MR THABETHE: Cattle were purchased Chair for - for the project site.

10 **ADV BUTHELEZI:** Where are those cattle today?

MR THABETHE: Chair by - by the time I left the province the cattle were on the project site.

ADV BUTHELEZI: Okay. Now based on the evidence that you are taken through today can you provide one aspect of clarity in terms of who the role players were more specifically the role of members of the Gupta family? What was their role in the entire scheme?

MR THABETHE: Chair, they - according to my understanding - they had no role in the scheme.

ADV BUTHELEZI: Well I have to ask that question again because you
20 have already admitted to having a meeting at Saxonwold. Have you not?

MR THABETHE: Yes. I have Chair.

ADV BUTHELEZI: Now would it reconcile then to say that they had no role scheme and yet you were at Saxonwold?

MR THABETHE: Ja. Chair, my - my understanding is that the - the

meeting that was organised for me was to meet the Paras people who were responsible - had the responsibility for implementing the project but they never had a direct role to play in the implementation of the project.

ADV BUTHELEZI: So who was facilitating this meeting?

MR THABETHE: Chair, my understanding was that there was a person which I am not able to identify who was facilitating the meeting.

ADV BUTHELEZI: Okay. Can you clarify this point? You say when you were arrested you were arrested with one Gupta. Is that correct?

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

ADV BUTHELEZI: Had you met him before?

MR THABETHE: I had not met him before Chair.

ADV BUTHELEZI: Okay. Now where I - I need you to take us through one more time is this aspect of you being at Saxonwold and the people you interact with at Saxonwold and the nature of the discussions of what happens when you arrive at Saxonwold. Can you just run us through that one more time please?

MR THABETHE: Ja. Thank you very much Chair. When - when I arrived at - at the meeting. I was introduced to people who - who came
20 from Paras and in that meeting I was then requested to assist them with work - work permits. I then explained to them that the issue of the work permits needs to be facilitated for them by - by Estina. That - that was the nature of the meeting that I had attended Chair.

ADV BUTHELEZI: Were you - after this issue became a public issue - were you interviewed by the Public Protector at any point?

MR THABETHE: Chair, I was not interviewed by the Public Protector. Only of late.

ADV BUTHELEZI: What do you mean by of late?

MR THABETHE: I only got an interview from the Public Protector I think Chair it was this year when - when the Public Protector was - was dealing with the - the participation of politicians. Then I was then asked and I was interviewed by the Public Protector.

ADV BUTHELEZI: Okay. Two more points. Can you take us through this process of how these are monies - the monies that were allocated
10 to Estina were gazetted?

MR THABETHE: Chair the - the money gets - gets allocated after we have submitted our budget to Treasury and there - then the MEC for Treasury presents the Provincial Budget Speech and - and if agreed then the MEC then presents the Budget Speech to the Legislature and then after that has been done the - the budget gets referred to a committee in the - in the legislature that then interrogates and approves the budget and once that committee has then agreed on the budget then the budget gets gazetted.

ADV BUTHELEZI: Now more specifically in this instance the money
20 that was gazetted was this specifically for the Vrede Dairy Project or was this for a totality of other projects of which the Vrede Dairy Project was just one of them?

MR THABETHE: Chair my understanding is that we had explained exactly on the gazetting for what purpose the money was going to be used for and we had also supplied the project list of all the gazettes

were the money was going to be - to be spent. It was not only the Vrede but it was a list of Vrede plus other projects where amounts were indicated. How much is allocated to - to which project.

ADV BUTHELEZI: Okay, this last point, what was the role of the State Law Advisors in all the decisions that you took with regards to this project?

MR THABETHE: Chair there were a number of instances that were referred to the State Law Advisors, more specifically when it came to drafting legal documents, then the State Law Advisors will come in and
10 advise us. Some will be in writing, some will be verbal.

ADV BUTHELEZI: Your testimony, the last time you were here, not today, went along the lines of saying that you prevented National Treasury from conducting certain investigations, do you recall that?

MR THABETHE: I do Chair.

ADV BUTHELEZI: In preventing National Treasury from conducting those investigations, did you consult with the State Law Advisors?

MR THABETHE: Chair, my understanding of preventing also included me preventing National Treasury to speak to the State Law Advisors, which I had said I did not understand why the investigation of National
20 Treasury must seek permission from me to talk to the State Law Advisors.

CHAIRPERSON: I'm not sure if – that's n answer to the question, Mr Buthelezi I don't know if you want to just put your question again to Mr Thabethe?

ADV BUTHELEZI: Thank you, I'll come back, you say right now you

stopped National Treasury from conducting a certain investigation, is that correct?

MR THABETHE: That's what they say Chair.

ADV BUTHELEZI: What do you say?

MR THABETHE: It's not me who said I stopped them.

ADV BUTHELEZI: Okay what do you say?

MR THABETHE: I had never stopped them to do the investigation Chair, I have never stopped them. It's their report that says so.

ADV BUTHELEZI: What was your response to National Treasury when
10 they wanted to conduct investigations?

MR THABETHE: Chair National Treasury has been requesting documents from me and they have been requesting meetings from me because they had told me they are coming to do an investigation. So there is no way I can say you can't do the investigation.

ADV BUTHELEZI: Mr Thabethe we'll go back to your previous evidence and I need you to clarify this point for the Commission and the Chair in particular. It was your evidence, previously that you had certain misgivings about the information that National Treasury wanted, do you remember?

20 **MR THABETHE:** Yes Chair, I think that was relating to a particular meeting that they had requested to have with Estina for the investigation that was the particular one.

ADV BUTHELEZI: Can you provide more details please?

MR THABETHE: Ja Chair, what I had indicated is that they had then requested to have a meeting with Estina. What I then requested them

is that in the first meeting that they're going to have with Estina we would then request the Department to be part of the meeting so that we are able to deal with the issues that they had raised in terms of the intellectual property, that is what I had raised Chair.

ADV BUTHELEZI: Now ...[intervenes].

CHAIRPERSON: Did you – I'm sorry, did you – my recollection is that you accepted that your attitude was that they should not have a meeting with Estina if the Department would not be represented, is that right?

10 **MR THABETHE:** Chair that is what I had raised with them.

CHAIRPERSON: Ja okay.

ADV BUTHELEZI: When news first broke or publically became known around things happening around Estina, were you still in the employ of the Department at that time?

MR THABETHE: That's correct Chair.

ADV BUTHELEZI: Do you know anything about monies that were paid into the Estina project that paid for a wedding?

MR THABETHE: No I don't know Chair.

20 **ADV BUTHELEZI:** What was the Department's response to those rumours surfacing?

MR THABETHE: Chair, we had to make our input most of the media came to us and wanted our view point in terms of what they had raised and we had made our input into that. At the same time there were also questions that were raised to ask at the Legislature which we were able to respond to that, no we did not pay, and we were also asked to

respond to – I'm trying to think because there were a number of requests that were looking for responses to us. Those that I can remember for now, I think those were the ones that we had to respond to, to say no, that has not been correctly interpreted.

ADV BUTHELEZI: Now help us understand, why then would a perception exist in as far as saying, monies that the Department of Agriculture had paid into Estina were used to finance a wedding. Can you give reasons as to why that conjecture would exist?

MR THABETHE: I don't know Chair, where it came from.

10 **ADV BUTHELEZI:** Okay, and then when did you stop working at the Department or are you still working there?

MR THABETHE: No Chair, I last worked there at the end of April 2018.

ADV BUTHELEZI: That is last year?

MR THABETHE: 2018, that's correct Chair.

ADV BUTHELEZI: Can you give us details around the circumstances of your departure from the Department?

MR THABETHE: Chair my contract came to an end at the end of April 2018.

20 **ADV BUTHELEZI:** And what are you doing now?

MR THABETHE: Chair I'm farming, I'm a pensioner – I'm farming.

ADV BUTHELEZI: Farming where?

MR THABETHE: In my home province, which is Mpumalanga in Ermelo.

ADV BUTHELEZI: Are you saying you have a farm sir?

MR THABETHE: That's correct Chair.

ADV BUTHELEZI: Alright thank you, no further questions Chair.

CHAIRPERSON: Thank you very much Mr Buthelezi. Mr Thabethe before I release you, is your evidence that you were never – you didn't have any meetings or telephone communications with the – with anybody from the Gupta family unless the person who phoned you to arrange the meeting that you attended was a Gupta family member because you said that one did phone you a few times or for quite some time?

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

CHAIRPERSON: So you had some communication with that person?

MR THABETHE: That's correct.

CHAIRPERSON: But was it only about that meeting?

MR THABETHE: It was about the meeting Chair.

CHAIRPERSON: Yes and when you say he did call you a few times or whatever, a number of times it would have been around the time of the meeting?

MR THABETHE: Yes sir, to confirm are you coming.

CHAIRPERSON: Yes.

20 **MR THABETHE:** That's correct Chair.

CHAIRPERSON: Not at any other time?

MR THABETHE: That's correct Chair.

CHAIRPERSON: Okay alright.

ADV GCABASHE: Chairman, with your leave, there's one aspect I indicated in my introduction that I would like to put to Mr Thabethe and

it's a very small point.

CHAIRPERSON: Yes okay.

ADV GCABASHE: It's just the dairy companies and their affidavits Mr Thabethe that we were able to get from the NPA dockets. So we have an affidavit from Parmalat, there's one from Nestle South Africa and there's one from dairy farmers who really represent Clover. The long and short of what they say is, at no stage did you invite them to form part of either a think tank around the Vrede Dairy Project or involve them in any way in the Vrede Dairy Project, that's contrary to what you
10 have stated. That you reached out to them and they were not interested, do you have a comment on that?

MR THABETHE: Chair I still stand on my witnessing that we did consult them.

ADV GCABASHE: Those affidavits, Chairman can be found in reference Bundle F at pages 2072 all the way to page 2113.

CHAIRPERSON: Yes, do we know whether the person who have deposed to the affidavits would have been the persons that he would have talked to?

ADV GCABASHE: Chairman they speak in their representative
20 capacities, representing the organisation having done a search within the organisation to establish the facts that were then put to them regarding what Mr Thabethe and the Department had said even prior to the Commission starting Chairman.

CHAIRPERSON: Yes.

ADV GCABASHE: So these are in fact, 2018 affidavits that were

sourced for purposes of the NPA investigations.

CHAIRPERSON: Okay do you remember the names of the persons that you met with or interacted with who came from the local companies that you said you invited to come on board and partner with the Department on this project but they were not interested. Do you remember the names of the persons you spoke to?

MR THABETHE: Ja Chair, I would not remember exactly who but it was the local people in the Free State...[intervenes].

CHAIRPERSON: Have you seen the affidavits that she is talking
10 about?

MR THABETHE: No I haven't seen them Chair.

CHAIRPERSON: They are NPA affidavits, in the sense that they were obtained by the NPA.

ADV GCABASHE: Correct Chairman.

CHAIRPERSON: Oh but he has not seen them?

ADV GCABASHE: No he has not Chairman they're in the reference bundle, unless he's seen them prior to...[intervenes].

CHAIRPERSON: No I think he should – they should be made available to him and his lawyers then maybe he can then put in a supplementary
20 affidavit because it may be that once he has seen them he is able to either remember having dealt with the people or he might have something to say, I think let's do it that way.

ADV GCABASHE: That's fine Chairman.

CHAIRPERSON: Yes so Mr Thabethe you'll get copies via your lawyers and then a supplementary affidavit would – should be delivered

to the Commission where you comment on the contents of those affidavits.

MR THABETHE: Okay that's correct Chair, I'll do so.

CHAIRPERSON: Okay, alright.

ADV GCABASHE: Thank you Chairman.

CHAIRPERSON: In terms of timeframes in terms of – I think we have talked about two supplementary affidavits now that Mr Thabethe must put in, let's say within 14 days, Mr Buthelezi would that be fine? Ja within 14 days from today, okay alright. Unless there's something else

10 Ms Gcabashe I'm going to release Mr Thabethe.

ADV GCABASHE: My colleague is reminding me that Mr Thabethe had earlier on indicated that he would want to respond to the ENS report but I have assumed that he has elected not to do so.

CHAIRPERSON: No actually I was thinking there's supposed to be something on which he was supposed to comment yes. No thank you that, Mr Thabethe do you remember that arrangement?

MR THABETHE: Ja Chair I wanted to last time but when I interacted with the lawyers, we chose not to Chair.

CHAIRPERSON: Well if you choose not to, it will mean that except
20 that which you may have disputed while on the witness stand, it may mean that – I will take it that you have no issues with the report, is that fine? That is for you Mr Thabethe, so I will take it that you have no issues with the report because if you had issues you would articulate them and you would have used the opportunity to do so.

MR THABETHE: Ja Chair, let me say we will respond to it together

with these ones, we will be able to say yes we don't have issue or yes we have issues.

CHAIRPERSON: But you were given time and you said – you just told me you made an election Mr Thabethe. We are going to leave it on the basis that you elected not to do anything but should you and your lawyers later on think that might not have been the right decision, your lawyers will know how it should be handled.

MR THABETHE: Thank you Chair.

CHAIRPERSON: Alright thank you very much Mr Thabethe for having
10 come to give evidence. If anything arises with regard to further investigations or if any further clarification is required, you will be contacted but for now thank you very much and you are excused.

MR THABETHE: Thank you Chair.

CHAIRPERSON: Thank you. That's where we will leave it for today are there other Estina witnesses – there was the one witness who was going to talk about members of Parliament at some stage.

ADV GCABASHE: Chairman there is a supplementary affidavit that was prepared by Mr Jankielsohn but that evidence doesn't fit squarely within the Estina Vrede Dairy Farm evidence, I believe that will fall
20 within the Free State stream, work stream, yes Chairman. Then of course we have a few other witnesses whom we are serving Rule 10(6) notices on and we will then schedule those hearings when it's convenient for you to schedule them.

CHAIRPERSON: Alright, thank you very much, we are going to adjourn for the day and tomorrow we will start at 10 o'clock and the

evidence will be relating to certain matters connected with New Age.

We adjourn.

INQUIRY ADJOURNS TO 29 OCTOBER 2019