

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

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10

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DAY 202

20

PROCEEDINGS ON 21 JANUARY 2020

CHAIRPERSON: Good morning Ms Wentzel, good morning everybody.
Are we ready?

ADV SUSAN WENTZEL: Yes we are ready.

CHAIRPERSON: Okay. Let us proceed. Mr White you are still bound
by the oath you took yesterday.

MR WHITE: Yes Chair.

CHAIRPERSON: You appreciate that? Thank you. Okay.

ADV SUSAN WENTZEL: Thank you Chair.

10 **CHAIRPERSON**: Let us continue.

ADV SUSAN WENTZEL: Chair when we adjourned yesterday you asked
Mr White what his conclusions were in respect of the benefits paid to
the various individuals involved in the Panday investigation. He has
overnight had a look at his report more carefully and he would like to
deal with each of those in turn.

CHAIRPERSON: Let us do that.

ADV SUSAN WENTZEL: Thank you. Mr White could you start please
in your report which is RR4a at page 311 dealing with the payment
made to the Oyster Box?

20 **MR WHITE**: Chair in – in that report it actually starts at page 308 I
summarise as I have briefly said yesterday the evidence that was
available relating to each of these payments, who the supplier was that
was paid, how they were paid and what information there was in both
the suppliers records as well as the records of Mr Panday's entities
recording how the money was paid and for whose benefit it was. Chair

then at the end of each of those payments I make a brief summary of the findings and the first one relating to the Oyster Box which was a payment of R6010.00 and the person whose benefit it was for was Colonel Madhoe. It is at page 311 and it is at paragraph 15.031 in the middle of that page.

CHAIRPERSON: I just want to get there. What paragraph again?

MR WHITE: 15.031 in the middle.

CHAIRPERSON: Yes.

MR WHITE: Under the heading Summary of findings.

10 **CHAIRPERSON:** Yes.

MR WHITE: And Chair just all these findings must – must also be at the same time taken into account that Mr Panday's entities were receiving in addition to the build up to the accommodation for the World Cup they were receiving various orders that they were cover quoting for at the same time.

CHAIRPERSON: Yes.

MR WHITE: So there was a big build up to the – to the R26 million procurement but there was ongoing procurement happening at the same time.

20 **CHAIRPERSON:** Yes.

MR WHITE: And relating to this payment I say:

“Based on the aforementioned observations it would be reasonable to conclude that Madhoe had received the benefit from Panday just shortly after an application dated 8 October 2009 was submitted to

the National Commissioner's office for authority for accommodation of police members for the soccer World Cup. It was also recorded in this letter that only Gold Coast Trading had responded to the request for quotations whilst Coastlands ignored the police's request to provide a quotation. So there was a statement that Coastlands refuted and they said they were never asked to quote at the early stage. So that was documentation already in 2009

10 and where they are effectively saying Coastlands is one of the only entities or the only entity that will be able to provide the accommodation. And there was a benefit to Mr or Colonel Madhoe at the same time who was the author of those documents."

Chair then the second payment is for flights from Durban to Cape Town in the amount of R8584.00. Those were air tickets for Colonel Madhoe and his family. Again paid for by Mr Panday.

CHAIRPERSON: I am sorry. Oh okay now I see.

MR WHITE: Chair and...

20 **CHAIRPERSON:** I was looking for the amount so I have seen where it is ja. Okay.

MR WHITE: It is in the heading Chair.

CHAIRPERSON: Yes.

MR WHITE: And then Chair the – I summarise my findings on that at page 315. And at page 315 the first paragraph in that – on that page

paragraph 15.041.

CHAIRPERSON: Hm.

MR WHITE: I state:

“I can conclude from the examination of the abovementioned documents that Panday has paid the cost for Madhoe and his family to fly return trip from Durban to Cape Town. Which means that Madhoe received a benefit in the amount of R8584.00. This benefit was received just shortly after the submission was made to the National Commissioner’s office on 8 October 2009 to obtain authority for accommodation of police members during the soccer World Cup. Where this application indicates that the only supplier who was able to accommodate police personnel was Gold Coast Trading.”

Chair the third payment which is directly below that relates to the payment to Varsity College of R43 500.00. Chair I summarise my findings...

CHAIRPERSON: I am still trying to see where that is.

20 **ADV SUSAN WENTZEL:** Sorry it is page 315 Chair roman numeral iii.

CHAIRPERSON: Page 315?

MR WHITE: Yes Chair.

ADV SUSAN WENTZEL: Yes and...

CHAIRPERSON: Oh okay.

ADV SUSAN WENTZEL: And Chair the summary that was being

referred to with regard to the flights is paragraph 15.041.

CHAIRPERSON: Ja.

ADV SUSAN WENTZEL: On page 315.

CHAIRPERSON: Okay. Yes. Then you move to R43 500.00.

CHAIRPERSON: Yes Chair and then the – the summary of the evidence is set out on the next three pages. And then I summarise my findings on page 317. And the last paragraph on that page at paragraph 15.049 and I state:

10 “I can conclude from the examination of the
 abovementioned documents that Panday as on 22
 January 2010 paid the Varsity fees for
 Narainpershad’s son in the amount of R43 500.00.
 This payment was made just shortly after the
 submission was made to the National
 Commissioner’s office on 8 October 2009 to obtain
 authority for accommodation of police personnel
 during the soccer World Cup and where it was
 recorded that the only supplier who was able to
 accommodate police personnel was Gold Coast
20 Trading.”

I continue on the following page, page 318 paragraph 15.050.

 “In this specific instance Narainpershad was also
 responsible for requesting quotations from suppliers.
 One of which was Coastlands who allegedly did not
 respond. However Coastlands have denied that they

were ever contacted in this regard and they have indicated that when Narainpershad provided the final numbers to them for accommodation just prior to the World Cup they were far less than what they had quoted. Narainpershad was approached about the concerns that they had but he indicated that he had divided the numbers between the three suppliers. I can conclude the numbers were never divided equally. In fact Gold Coast Trading was allocated 1030 members 80% at a cost of R32 810 000.00 and Coastlands, 20 members 16% at a cost...”

CHAIRPERSON: 200 members.

MR WHITE: Sorry.

ADV SUSAN WENTZEL: 200.

CHAIRPERSON: It is 200 members or is that wrong.

MR WHITE: No it is 200 members Chair.

CHAIRPERSON: ja.

MR WHITE: At 16% at a cost of R1 827 500.00.

“Even when Panday approached Coastlands for assistance during the soccer World Cup he allegedly indicated to them that he had been mandated by head office and asked them to reduce their rate per night as he was not making much of a profit. This is untrue as he was billing the SAPS at a rate of R850.00 per person per night.”

Chair maybe just to explain what I am actually saying there is that when the submissions were done to the National Office in 2009 in November they said that Coastlands had not responded to a request for a quotation. In fact most of the suppliers they asked they just said they did not respond. In effect and as a result Gold Coast was the only supplier that had rooms available. When Coastlands were interviewed by the police investigating the matter they said they were never asked to quote in 2009. They were in fact only asked to quote in April and May of 2010 and even although they said they had a significant number
10 of rooms available a very small portion of that rooms – in fact less than half was actually booked by the police. And in fact Captain Narainpershad allocated those rooms or those bookings to Gold Coast who then went and booked them at Coastlands and charged the police a significantly higher price.

CHAIRPERSON: Yes I was going to ask whether you were done with whatever benefits Colonel Madhoe may have received.

MR WHITE: Chair they were – no there is more Chair because they were done in date order.

CHAIRPERSON: Oh.

20 **MR WHITE:** I can jump around but the report was just set out in date order.

CHAIRPERSON: Yes.

MR WHITE: It was summarised one after the other.

CHAIRPERSON: Okay – okay you can continue as you had planned to but maybe later on you can put in a supplementary affidavit where you

– you prepare it according the suspects so to speak. The persons who benefitted to make it clear this is the case against so and so, this is the case against so and so, this is the case against so and so. I have no doubt that it is in your report it is a question of it has been arranged in a certain way and I would prefer – it would be convenient for me if I could have a document which makes it clear like that according to Colonel Madhoe what did he do, what did he benefit. The next one and so on and so on.

MR WHITE: I can do that Chair.

10 **CHAIRPERSON:** Okay so but for now we can continue the way you have arranged it.

ADV SUSAN WENTZEL: Chair the – the witness will certainly prepare that for you and I understand that.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: The only issue that an advantage of doing it in this way and explaining the evidence in this way just at this stage is with reference to the timeline that we looked at yesterday with regard to significant events.

CHAIRPERSON: Hm.

20 **ADV SUSAN WENTZEL:** So where he goes like this then you can see the gifts, the date of the gift and what significant event in the procurement process occurred.

CHAIRPERSON: Yes no that is fine.

ADV SUSAN WENTZEL: And – I just – I understood that as the [indistinct].

CHAIRPERSON: Yes. No, no, no that is fine.

ADV SUSAN WENTZEL: Thank you.

CHAIRPERSON: That is fine. Ja. Okay.

MR WHITE: Okay Chair so the fourth payment was the payment to Game stores that is in the middle of page 318. It was an amount of R7154.00. Chair that was the payment for the treadmill that was delivered to Captain Narainpershad's house. And Chair I summarise my finding relating to that on page 322.

CHAIRPERSON: That amount is written in an unusual way because of
10 that comma, is it not? R7 154.00.

MR WHITE: So Chair throughout my report I have put commas between the thousands.

CHAIRPERSON: Oh okay.

MR WHITE: Thousands and the millions.

CHAIRPERSON: Okay, okay.

MR WHITE: And then where it is cents it has a full stop.

CHAIRPERSON: Ja, ja. No, no, no that is fine. It is just looks unusual to the eye. Okay alright. Thank you.

MR WHITE: So Chair I summarise the findings to that at page 322 in
20 paragraph 15.065 at the top of that page. Sorry Chair I have jumped. Sorry I should be at page 319 Chair sorry. The paragraph 15.56 at the bottom of the page.

“I can conclude from the examination of abovementioned documents that Panday has purchased a Trojan treadmill in the amount of

R7 154.00 on his credit card which was delivered to the residential address of Narainpershad on 26 February 2010. This purchase was made subsequent to the SAPS application to the National Commissioner's office on 8 October 2009 to obtain authority for accommodation of police members where it is recorded that the only supplier who was able to accommodate police personnel was Gold Coast Trading. This purchases was also made prior
10 the appointment of Panday's related entities for a number of orders before the soccer World Cup."

Chair the – the fifth payment at the top of page 320 is the Toyota Corolla vehicle in an amount of R60 000.00. Chair will recall that yesterday that was the vehicle we spoke about that was purchased from Advocate Cars. And I summarise my findings on page 322

CHAIRPERSON: I wonder whether the owner of that business was once an advocate.

MR WHITE: At page.

CHAIRPERSON: Yes continue Mr White.

20 **MR WHITE:** 322 at the top of the page in paragraph 15.065.

"I can conclude from the examination of the abovementioned documents that Panday has purchased a 2002 Toyota Corolla in the amount of R60 000.00 for Mr T Madhoe on 8 March 2010. This purchase was made subsequent to the SAPS

application to the National Commissioner's office on
8 October 2009 to obtain authority for the
accommodation of police members during the soccer
World Cup where it is recorded that only supplier
was able to accommodate police personnel namely
Gold Coast Trading. In addition this purchase was
also made prior to the appointment of Panday's
related entities for a number of orders before the
soccer World Cup specifically the final order issued
10 to Gold Coast Trading in the amount R26320 250.00
dated 10 June 2010."

Chair the sixth payment is directly below that. That is the payment
relating to the Dish Restaurant which is in the Royal Palm Hotel and
the amount was R18 712.00. Chair I summarise the findings and there
is a number of documents in between as well as extracts from the
various affidavits relating to the involvement of the Provincial
Commissioner in trying to stop the investigation. Those are extracts
from Brigadier Kempt and Major General Booyesen's affidavits and I
summarise the findings at page 337 and 8 and it starts in the middle of
20 the page at paragraph 15.095 and I state:

"I can conclude from the examination of the abovementioned documents
that Panday has paid the cost of Lieutenant General Ngubeni's
husband's birthday party. It was held at the Royal Palm Hotel in
Umhlanga Rocks on 29 May 2010. The cost of this service amounted to
R20 962.00."

Chair that includes the amount that was paid to the DJ of the evening.

“Panday also requested Mr Singh who is the Operator or Manager of the restaurant to inflate an invoice for this function to the amount of R29 712.00 and to further prepare the invoice in the favour of Ms B M Ngubeni. I cannot determine on what basis Panday would have requested Mr Singh to have issued him with another invoice at an inflated amount and therefore cannot conclude why this would have been done. However I can conclude that this gift or gratification to Lieutenant General Ngubeni was done shortly before the deployments for the soccer World Cup and the final order. It was issued to Gold Coast Trading in the amount of R26 320 250.00 dated 10 June 2010.”

Continue on the following page, page 338.

“In addition Lieutenant General Ngubeni was aware from report received from Brigadier Kempt that there was an unusually high expenditure for detachment duties in the province and that SAPS SCM were not complying with their SCM Policy when making these appointments which reports were received just prior to the date of her husband’s 50th birthday party. She also appears to have been instrumental in attempting to stop this investigation.”

The seventh payment to...

CHAIRPERSON: I am sorry.

MR WHITE: Sorry Chair.

CHAIRPERSON: Please go back to 337 – page 337. Mr Panday requested that a further invoice be prepared in favour of Ms B M Ngubeni. That would be the Provincial Commissioner?

MR WHITE: That is correct Chair.

CHAIRPERSON: What is the significance of that invoice – of a further invoice being in favour of Ms B M Ngubeni?

10 **MR WHITE**: Chair I –

CHAIRPERSON: If you are able to indicate? I take it that when he talks about a further invoice I take it that there was one invoice that went to Mr Panday and now he was – he asked the people to prepare another invoice in favour of Ms Ngobeni.

MR WHITE: So Chair all I can – I can think is that Mr Panday was – was wanting to show the Provincial Commissioner that he had actually paid for something that was more expensive than he actually – his actual cost incurred. That is the only inference I can make.

20 **CHAIRPERSON**: But is my understanding the same as the understanding you gained when you did the investigation namely that there would have been a receipt or invoice – or invoice for that went to Mr Panday and another invoice or a further invoice that went to Ms Ngobeni?

MR WHITE: Chair the further invoice did not go to PC Ngobeni it also went to Mr Panday. So he got both. But there is just...

CHAIRPERSON: It – but it was in her name is that correct?

MR WHITE: Correct Chair and maybe if I could refer to the specific document just – it may be easier to explain and a copy of that – the second invoice is at page 325 and one can see at the top of the page that is just a photocopy of the document.

CHAIRPERSON: Yes.

MR WHITE: In the box in the middle it say the customer is Ms B M

CHAIRPERSON: Ngobeni.

MR WHITE: Ngobeni and then on the right hand side the job number, it
10 says Mr Panday.

CHAIRPERSON: Yes.

MR WHITE: Now Chair that invoice was not actually paid because the actual price was R18 712.00 for the same services.

CHAIRPERSON: Yes. But – so the – is it correct that there were two invoices there?

MR WHITE: Chair I do not recall if I saw the first invoice but I know...

CHAIRPERSON: The one for R18 000.00 and then this one.

MR WHITE: But the amount actually paid was R18 712.00.

CHAIRPERSON: So there would have been a separate invoice for
20 that?

MR WHITE: Correct Chair correct.

CHAIRPERSON: And then there would have been this invoice.

MR WHITE: Correct.

CHAIRPERSON: Which did not represent the true position.

MR WHITE: That is correct Chair.

CHAIRPERSON: In terms of the price.

MR WHITE: Correct.

CHAIRPERSON: Did the – did these people explain why they agreed to do this?

MR WHITE: They did not Chair.

CHAIRPERSON: Or they have not been asked?

MR WHITE: They have been asked and provided a statement and they said they – Mr Panday asked them to do it so they did it. They did not – they just did what he asked them to do.

10 **CHAIRPERSON**: So it may have been shown to Ms Ngobeni but you do not know?

MR WHITE: I do not know Chair.

CHAIRPERSON: But its purpose could only have been or would probably have been that that is the one that she would see?

MR WHITE: That would be inference that I would draw Chair.

CHAIRPERSON: Otherwise what was the point?

MR WHITE: Correct Chair.

CHAIRPERSON: Ja. Okay alright.

ADV SUSAN WENTZEL: Chair.

20 **CHAIRPERSON**: Thank you. Yes.

ADV SUSAN WENTZEL: If I might just remind you Colonel Van Loggerenberg testified about this and he said he personally went to this restaurant and spoke to Mr Singh about what had transpired and he said that there would – the two factors. The one was put the invoice in the name of Ms Ngobeni. The second was inflate the amount. The

witness appears to be addressing the second aspect why would he inflate the amount. That might be to show Ms Ngobeni that he paid more. Colonel Van Loggerenberg surmised perhaps there was a tax reason to this. But in regard to the first aspect change the name of the invoice. He admitted that he did change the name so that the first invoice was in the name Mr Panday. If I might just address that aspect with the witness?

CHAIRPERSON: Ja, ja.

ADV SUSAN WENTZEL: Thank you.

10 **CHAIRPERSON:** If he has knowledge of it.

ADV SUSAN WENTZEL: Yes. If this invoice and which you now categorise as a gift was in the name of Mr Panday paying for a birthday party of Ms Ngobeni would there be a paper trail between the gift paid by Mr Panday and Ms Ngobeni?

MR WHITE: So Chair there is a paper trail for R8 712.00. So the first deposit was made in cash by Mr Panday. The balance of the money was paid using his credit card. So – so there is some way of tracing it as a result but Chair the other point there is no tax benefit in doing what was done here.

20 **CHAIRPERSON:** Yes.

MR WHITE: Because if this invoice was made out in the name of Gold Coast then they could claim it as an expense as part of their normal business. But the fact that the invoice is made out to Ms B M Ngobeni or even Mr Panday in his personal name would mean his company cannot claim it as an expense for tax purposes. So inflating it there is

no reason to inflate it for tax purposes.

CHAIRPERSON: Hm.

MR WHITE: Because there would – otherwise it would have to have been made out in the name of Gold Coast.

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: So let us go back – leave the inflation of the invoice for the moment let us focus only on the change from the name of Mr Panday into the name of Ms Ngobeni. If this party had been invoiced to Ms Ngobeni and she had paid for the party would there have
10 been any difficulty?

MR WHITE: No Chair.

ADV SUSAN WENTZEL: If this was invoiced out to Ms Ngobeni as we – so on the face of it if it had been invoiced to her and she had paid for it there would be no difficulty?

MR WHITE: Chair there would not be but there is a mistake in trying to do that in this invoice is that Mr Panday's name still appears on the face of the document under job number.

CHAIRPERSON: Yes I was about to say that the ...

MR WHITE: So they did not achieve that objective if that is what they
20 were trying to do. They should have had his name nowhere on the document.

CHAIRPERSON: Ja it would be interesting to know what Mr Panday would have to say about why his name appears here in an invoice that is made to customer B M Ngobeni. Ja.

MR WHITE: So Chair just – just in that regard. None of the suspects

were interviewed. I mean the –

CHAIRPERSON: Yes.

MR WHITE: The intention was that once a charge sheet had been drawn up warning statements would be taken by the police and all these questions would be put to them.

CHAIRPERSON: Yes.

MR WHITE: If they ...

CHAIRPERSON: Yes, ja.

MR WHITE: If they did not decide to remain silent.

10 **CHAIRPERSON**: Because it leaves – it leaves it as an incomplete story in the sense that maybe at least in regard to certain matters. You do not know what the explanation is that may be given?

MR WHITE: I do not Chair.

CHAIRPERSON: Yes. Yes. Okay thank you.

ADV SUSAN WENTZEL: Mr White.

CHAIRPERSON: Yes. I think counsel for – yes.

ADV MANIKLALL: Judge I do not want to interject and I have...

CHAIRPERSON: Yes.

20 **ADV MANIKLALL**: I notice patiently that everyone appeared to be struggling a little bit with this issue.

CHAIRPERSON: Yes.

ADV MANIKLALL: But Judge there is no secret about this.

CHAIRPERSON: Yes oh.

ADV MANIKLALL: Yes Judge it is filed in high court papers.

CHAIRPERSON: Oh okay.

ADV MANIKLALL: Already.

CHAIRPERSON: Oh is it so?

ADV MANIKLALL: The full explanation is under oath by Ms Ngobeni.

CHAIRPERSON: Ja.

ADV MANIKLALL: It seems that the witness and the investigators ...

CHAIRPERSON: Have not...

ADV MANIKLALL: Have not disclosed at all maybe have not seen it themselves.

CHAIRPERSON: Ja well – well if...

10 **ADV MANIKLALL:** That will come in our reply Judge.

CHAIRPERSON: Well thank you for that information. The investigators and the legal team if they got to know about that should have made sure we have got those papers.

ADV MANIKLALL: Judge yesterday in anticipation of this.

CHAIRPERSON: Yes.

ADV MANIKLALL: I mentioned it to the junior.

CHAIRPERSON: Yes.

ADV MANIKLALL: That it is already filed in – over at the high court.

CHAIRPERSON: Yes.

20 **ADV MANIKLALL:** There is no – there is no secret about this Judge.

CHAIRPERSON: Yes.

ADV MANIKLALL: So we – I...

CHAIRPERSON: Well thank for that I say to the legal team all the time if there is a witness who is going to be called and some of the issues that he or she is going to deal with are issues which have been covered

in some litigation get the papers from that litigation – from court so that we have as complete a picture as possible of what is happening.

ADV MANIKLALL: Judge. It is absolutely correct in fact I will even supply them the case numbers as well.

CHAIRPERSON: Ja please if you can give the case number.

ADV MANIKLALL: It is a matter of public record so it is...

CHAIRPERSON: Yes.

ADV MANIKLALL: It will assist with...

CHAIRPERSON: Yes with all of those things.

10 **ADV MANIKLALL:** Yes.

CHAIRPERSON: Yes. No thank you very much. Thank you.

ADV MANIKLALL: Thank you Judge.

MR WHITE: Thank you.

ADV SUSAN WENTZEL: Chair ...

CHAIRPERSON: Did?

ADV SUSAN WENTZEL: For the record ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: Apparently something was mentioned to my junior, but it was not conveyed to me. So I did not know about that.

20 What had transpired, but if I can deal with this perhaps with the witness.

CHAIRPERSON: *Ja*. Well my concern is how did it come about that the legal team did not know and the investigators did not know. It may be that the legal team might not know, but I would have thought that the investigators when they investigate they would get to know that

there was litigation and they would mention that to the legal team and the legal team would then say. Let us get hold of those papers so that we have a full picture.

ADV SUSAN WENTZEL: Yes Chair. Apparently this was mentioned at 4 o' clock yesterday afternoon. I can tell you that I was not aware of - of this, but what I would suggest is that I get a copy of the explanation and I will address it with this witness today. I will, but I do not obviously want to do it without consulting the witness on this issue. So if we can ...

10 **CHAIRPERSON:** *Ja.* No. That ...

ADV SUSAN WENTZEL: Park this for a ...

CHAIRPERSON: That is fine, but also do not deal with it if you have not done the homework - so to speak.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: If you get - get those papers and ...

ADV SUSAN WENTZEL: And I see ...

CHAIRPERSON: And get the whole story first.

ADV SUSAN WENTZEL: Yes.

20 **CHAIRPERSON:** But, I would have expected you to have asked the investigators these witnesses - are there no matters which have been to court that they will be dealing with, because you remember in regard to the IPID witnesses as - as well as General Booyen. I said let us get all litigation, court papers, judgments, affidavits.

Get everything that may be relevant to give us a whole picture. So I would have thought that you would have said to the

investigators is there any litigation that is relevant to this ...

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: And if they do not know. Somebody must just check, because some of - of these things are just in the public domain.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: *Ja.*

ADV SUSAN WENTZEL: Chair the only investigation that has been drawn to my attention by the investigators - I mean the - the court applications is the applications to have the evidence that was seized
10 and those subpoenas set aside pursuant to which the evidence was seized. So I was aware of that litigation.

I was aware that that was dismissed and that after that there was the attempt to bribe General Booyesen.

CHAIRPERSON: And do we have the papers relating to that?

ADV SUSAN WENTZEL: Yes. We do ...

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: And we have the - the judgment as well.

CHAIRPERSON: *Ja.*

ADV SUSAN WENTZEL: So we have all those papers.

20 **CHAIRPERSON:** Hm.

ADV SUSAN WENTZEL: I have never been told about or shown these. I can get and I will get an explanation from the investigators as to how, where or if they did know about this and I will report back to you on that issue.

CHAIRPERSON: *Ja.* No. That is fine, but just remember I always

emphasise the investigators must be guided by the legal team. You are the people who know what may be presented at the hearing. What ...

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: May not be presented. You are the people who are driving the process of presenting evidence and the investigators need guidance as to what they must pursue.

ADV SUSAN WENTZEL: Yes. I - I understand that and - and clearly Chair if I had been told this at 4 o' clock yesterday afternoon.

CHAIRPERSON: Hm.

10 **ADV SUSAN WENTZEL:** The first thing I would have done is obtain these papers and be in a position to properly address you this morning.

CHAIRPERSON: *Ja*. No. Well ...

ADV SUSAN WENTZEL: I - I apologise for that.

CHAIRPERSON: Getting to know yesterday is too - this morning is too short a time ...

ADV SUSAN WENTZEL: Yes. It is too short a time.

CHAIRPERSON: To get the papers. So - so there - there would not have been much time to get the papers.

ADV SUSAN WENTZEL: No. I understand.

20 **CHAIRPERSON:** *Ja*, but the process to get the papers must start as soon as possible.

ADV SUSAN WENTZEL: Yes. It will start as soon as possible.

CHAIRPERSON: Okay. Alright. Let us continue.

ADV SUSAN WENTZEL: Now if I can just continue with what you know Mr White. From your investigations did Ms Ngobeni ever pay this

invoice?

MR WHITE: Chair, she - she did not pay the restaurant - the Dish Restaurant. She did not pay that and from what I could see in the records of Gold Coast and the various other entities as well as Mr Panday's bank accounts. There was no payment from her paying the money back to Mr Panday either.

So Chair just for the record I was not aware that Ms Ngobeni had challenged this matter in a court proceeding.

CHAIRPERSON: Yes.

10 **MR WHITE:** I am only aware of what I have read in newspapers ...

CHAIRPERSON: Yes.

MR WHITE: Where she said she paid the money back ...

CHAIRPERSON: Hm.

MR WHITE: To Mr Panday.

CHAIRPERSON: Hm.

MR WHITE: There is no evidence that I have seen ...

CHAIRPERSON: Yes.

MR WHITE: That she did pay it back ...

CHAIRPERSON: Yes.

20 **MR WHITE:** And neither were in any newspaper articles ...

CHAIRPERSON: Yes.

MR WHITE: Was there something showing she had paid the money back.

CHAIRPERSON: Hm.

MR WHITE: I would also be interested to see what those ...

CHAIRPERSON: Yes.

MR WHITE: Court papers show.

CHAIRPERSON: Okay. Thank you.

ADV SUSAN WENTZEL: Thank you Chair. Mr White if you could then - you were dealing with your conclusion with regard to this payment. I think it was at page 3-3-7 to eight - 3-3-8. If you could deal with that.

MR WHITE: So Chair I completed that and then we just went back in response to your question ...

CHAIRPERSON: Oh, yes.

10 **MR WHITE:** Chair.

CHAIRPERSON: Yes. Okay. You may continue.

MR WHITE: Chair, the - the seventh payment continues at page 3-3-8 and that is the Protea Hotel Waterfront in Richards Bay and the summary of my findings is at page 340 and I say:

20 “I can conclude from the examination of the above mentioned documents that Panday paid the cost for accommodation of Narainpersad at the Protea Hotel Waterfront Richards Bay during the period 3 April 2010 to 5 April 2010 in the amount of R7 256,00.”

Chair, then the last payment was a payment to Europe Car in the amount of R1 535,92. Chair, I do not make a specific conclusion about Major-General R S Pillay’s involvement. I just summarised the facts as in summarising that he was the person that hired this vehicle at the Durban International Airport and that it was paid for by Gold

Coast Trading. Chair, I then ...

CHAIRPERSON: Is there any particular reason you did not make any conclusion?

MR WHITE: There is no - Chair, I do not - I do not know why I did not. I actually only noticed last night when I was ...

CHAIRPERSON: Hm.

MR WHITE: Preparing for this morning that I - that I had not, but I do refer ...

CHAIRPERSON: Yes.

10 **MR WHITE:** To him in - in the - in the final conclusions at - at the end of my report Chair ...

CHAIRPERSON: Yes.

MR WHITE: And Chair maybe it would then be appropriate to refer to that which is at page 509 which is the last two pages in that bundle - RR4A. Just - I summarise my findings most of which I have already referred to - to yesterday. There is effectively three paragraphs at the very end that - that draw it all together starting at paragraph 21.0-2-4. The second to last paragraph at page 509 and those paragraphs read as follows:

20 “Panday with the assistance of Privisha Panday - his wife - and Arvenda Panday - his mother - set up a number of entities which he controlled, but gave the impression they were independent of each other. These entities were then used with the assistance of Madhoe, Narainpersad and

Major-General Pillay to make various misrepresentations to the SAPS and in so doing manipulated the SAPS procurement process so that they were awarded orders for the supply of goods and accommodation at significantly inflated prices that were not market related. Lieutenant-General Ngobeni intervened in the investigation into the procurement related procedures and tried to put a stop to any further investigation by giving direct instructions in this regard.”

And then the last paragraph on the last page - 510.

“During the same period the goods/accommodation was being supplied by Panday linked entities at inflated prices to the prejudice of the SAPS and when Lieutenant-General Ngobeni tried to stop any further investigation. Panday was making payments on behalf of or purchasing various items from airfares, a car, accommodation, a birthday party etcetera for Madhoe, Narainpersad, Major-General Pillay and Lieutenant-General Ngobeni.”

CHAIRPERSON: Thank you.

ADV SUSAN WENTZEL: Mr White you have said broadly that ...

CHAIRPERSON: I am sorry. Does that conclude the findings that I

was looking for ...

MR WHITE: It does Chair ...

CHAIRPERSON: Or there were still some outstanding?

MR WHITE: It does in the format that - that ...

CHAIRPERSON: It does?

MR WHITE: I have included in this report.

CHAIRPERSON: Yes. Okay.

ADV SUSAN WENTZEL: Mr White are there not some further overall findings which you make from paragraphs 15.1.1.3 to 15.1.1.9 pages
10 3-4-1 to 3-4-3?

MR WHITE: Chair, there are. It is - it is fairly similar to what I have already said in one way or another elsewhere in my evidence to date. It is just worded - it is just summarised on those two pages.

CHAIRPERSON: *Ja.* Okay.

ADV SUSAN WENTZEL: Thank you. Now with regard to the involvement of Ms Ngobeni and stopping the investigation. You read your conclusions in this regard to the Chair, but those conclusions appear to be based on an affidavit by an Ms Kemp - Brigadier Kemp and an affidavit by General Booysen.

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

ADV SUSAN WENTZEL: You deal with these affidavits in some detail in your ...

CHAIRPERSON: I am just thinking about the papers and the application that we are talking about. Maybe there might be a way in the meantime with technology for us to have a set of those papers by

lunch time.

ADV SUSAN WENTZEL: Yes. I can see no reason why you should not ... (intervenes).

CHAIRPERSON: It - it ought to be possible. Yes. So - so could those - that be done. So that as soon as possible somebody can have a look at - at the - at the papers. I do not know how voluminous they maybe. They are ...

ADV SUSAN WENTZEL: Hm.

CHAIRPERSON: They may be quite voluminous, but let us get hold of
10 them as soon as possible. I think counsel wants to say something.

ADV SUSAN WENTZEL: Sure.

ADV MANIKLALL: Thank you Judge. I maybe of further assistance to the Commission.

CHAIRPERSON: I will be very grateful for that.

ADV MANIKLALL: Yes. Judge and that is in respect of the allegations that is being referred to in the report by the witness.

CHAIRPERSON: Yes.

ADV MANIKLALL: This was a subject matter ...

CHAIRPERSON: Hm.

20 **ADV MANIKLALL:** Of an application to strike off ...

CHAIRPERSON: *Ja.*

ADV MANIKLALL: That was brought before the Durban High Court.

CHAIRPERSON: Yes.

ADV MANIKLALL: I will - try and access the case number remotely as well ...

CHAIRPERSON: Thank you.

ADV MANIKLALL: To hand it over to my learned friends.

CHAIRPERSON: Thank you.

ADV MANIKLALL: It is quite apparent that the ...

CHAIRPERSON: Hm.

ADV MANIKLALL: The legal team and the witness ...

CHAIRPERSON: Hm.

ADV MANIKLALL: Do not have much knowledge of this.

CHAIRPERSON: *Ja.*

10 **ADV MANIKLALL:** This happened ...

CHAIRPERSON: Yes.

ADV MANIKLALL: A few years ago ...

CHAIRPERSON: Yes.

ADV MANIKLALL: But maybe subsequent to the report.

CHAIRPERSON: Yes. Okay. Okay.

ADV MANIKLALL: That is the reason I can assume why ...

CHAIRPERSON: *Ja.*

ADV MANIKLALL: This is not before the Commission ...

CHAIRPERSON: Yes. Okay. No. Thank you very much.

20 **ADV MANIKLALL:** But I will assist with the case numbers.

CHAIRPERSON: Thank you very much. Thank you.

ADV MANIKLALL: Thank you Judge.

CHAIRPERSON: Thank you.

ADV SUSAN WENTZEL: Thank you. I am indebted to my learned friend for his assistance. Apart from the - the payment of the birthday

party which you have referred to - to Lieutenant-General Ngobeni could you - you refer to two affidavits and you quote from them in your report and that is the affidavit of Brigadier Kemp and General Booysen.

Could you please deal with what was said in those affidavits that made you come to the conclusion that she was involved in stopping the investigation?

CHAIRPERSON: Where - where are you now?

ADV SUSAN WENTZEL: If one could start Chair at page 3-2-7.

CHAIRPERSON: Yes, but have I not heard evidence of people who
10 were called by Ms Ngobeni. General Booysen, I think testified and I think he - he was called by - by him and he has given evidence. I think there is another witness maybe - I think there is another witness if I am not mistaken who - who said he was called. So that should not be a problem.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: If Ms Ngobeni comes and testifies and denies. That is fine, but this witness does not have personal knowledge of those calls. He made certain conclusions, but there are witnesses who ...

ADV SUSAN WENTZEL: Yes.

20 **CHAIRPERSON:** Who - who have personal knowledge of that.

ADV SUSAN WENTZEL: Yes. I only wanted it to be made clear that he came to that conclusion on the basis of these affidavits that were provided to him.

CHAIRPERSON: *Ja*, but I think it does not really matter when we have got direct evidence.

ADV SUSAN WENTZEL: Yes. Thank you Chair. Chair, unless you have further questions about the investigation itself and what it revealed. I propose now to deal with what then transpired with regard to Mr White's report and the involvement of the National Prosecuting Authority.

CHAIRPERSON: How much of that would he know? Did his mandate not end with the report?

ADV SUSAN WENTZEL: No.

CHAIRPERSON: Oh, okay.

10 **ADV SUSAN WENTZEL:** He is - it is directly involved Chair.

CHAIRPERSON: You - you can continue then.

ADV SUSAN WENTZEL: Thank you.

CHAIRPERSON: *Ja.*

ADV SUSAN WENTZEL: Mr White, when you prepared your report did you first prepare it in a draft form?

20 **MR WHITE:** I did Chair and I set it out in my affidavit at RR4 on page 26. So Chair if one goes back. PricewaterhouseCoopers was appointed on 25 January 2012. Some 15 months later on 10 May 2013 I prepared a draft report. It was 373 pages and contained 20 lever arch files of annexures and that report was given to Colonel Van Loggerenberg - the lead investigator in the matter from the police and I was informed that it was then also given to Advocate Letsholo who was the assigned prosecutor in the matter.

ADV SUSAN WENTZEL: And to which unit? Do you know?

MR WHITE: From the Special Commercial Crime Court in Durban.

There was then a meeting held on 21 May 2013 that I attended and this was where the report was discussed with Advocate Letsholo. It was given to him and he said due to the length of it he would need some time to study it and once he had studied it he would come back with any queries that he had.

CHAIRPERSON: Was that just the report only or the lever arch files with annexures as well?

MR WHITE: It would have included the annexures Chair.

CHAIRPERSON: Sorry.

10 **MR WHITE:** It would have included the annexures.

CHAIRPERSON: Oh. Okay.

MR WHITE: Chair, the report you need to read it with the annexures.

CHAIRPERSON: Okay. Alright.

ADV SUSAN WENTZEL: Did Advocate Letsholo raise any queries or provide you with any comments at that stage?

MR WHITE: So Chair some six months passed and then I received a message from Colonel Van Loggerenberg on 2 December 2013 and he said Advocate Letsholo had studied the report and he wanted to meet to discuss his queries. Chair a meeting was scheduled for
20 10 December 2013. That meeting ...

CHAIRPERSON: Is that in the affidavit?

ADV SUSAN WENTZEL: Yes. Sorry Chair. I - I should have assisted you. I apologise. The witness indicated that he is now referring to his affidavit and he is dealing with his affidavit from paragraph 28 Chair on page 26.

CHAIRPERSON: From what paragraph ...

ADV SUSAN WENTZEL: He ... (intervenes).

CHAIRPERSON: Or page?

ADV SUSAN WENTZEL: 26.

CHAIRPERSON: Is that at page or paragraph?

ADV SUSAN WENTZEL: It is a page and he started - he has dealt with paragraph 28. He is now dealing with a meeting on 10 December 2013 dealt with at paragraph 30 Chair.

CHAIRPERSON: Okay.

10 **MR WHITE:** So Chair that meeting on 10 December it was chaired by the lead prosecutor in the matter - Advocate Letsholo and Advocate Vimbani - the Head of the Special Commercial Crime Court in Durban was also present as well as the ...

CHAIRPERSON: I guess units rather than court.

MR WHITE: Sorry Chair.

CHAIRPERSON: I think I saw that ...

MR WHITE: *Ja.* SCCU Chair.

CHAIRPERSON: An advocate cannot be head of a court.

MR WHITE: I apologise Chair.

20 **CHAIRPERSON:** *Ja.* He must be head of the special crime - specialised crime unit in the NPA. I think.

MR WHITE: Correct Chair.

CHAIRPERSON: *Ja.* Okay. Yes.

MR WHITE: As well as the various investigating officers and the Manager assisting me in the matter - Ms Frenelle Noble from PWC. At

this meeting Advocate Letsholo raised a number of queries mainly where he requested some clarification in the report. We made good progress, but we only got to page 116 and I can confirm that, because I kept notes of - of what was discussed.

ADV SUSAN WENTZEL: And ...

MR WHITE: There was a follow up meeting then scheduled after the Christmas break for ... (intervenes).

CHAIRPERSON: Okay. Before you go. You leave that meeting are there any queries that he raised that are important to share with me
10 that were discussed at that meeting?

MR WHITE: No Chair. It was more ...

CHAIRPERSON: Nothing of importance?

MR WHITE: Nothing that was not including in the final report.

CHAIRPERSON: Okay. Alright.

MR WHITE: So it was more of a clarification nature.

CHAIRPERSON: *Ja.*

MR WHITE: Add something extra here or ...

CHAIRPERSON: Yes. Okay.

MR WHITE: What do you mean by this?

20 **CHAIRPERSON:** Okay. Alright.

ADV SUSAN WENTZEL: Before you go on. You mentioned in - in your affidavit that Advocate Vimbani was also at that meeting?

MR WHITE: That is correct Chair.

ADV SUSAN WENTZEL: And was his involvement?

MR WHITE: Chair it is - it is a lady. She was just also there. I mean

...

CHAIRPERSON: Yes.

MR WHITE: I presume in support of Advocate Letsholo.

CHAIRPERSON: Okay.

MR WHITE: Chair, there was then a follow up meeting after the Christmas break on 15 January 2014. Again Advocate Letsholo and Advocate Vimbani were present and we went through the balance of the report and there was again a number of minor additional aspects that they wanted me to consider.

10 Chair that - I then amended the report. Dated it. Add - added additional information. It was not additional documents. It was just more of - of a clarification nature and there was a further meeting set for 14 March.

CHAIRPERSON: So up to the end of this second meeting there was nothing that appeared to give him any fundamental difficulty with the report?

MR WHITE: Correct Chair.

CHAIRPERSON: It was clarificatory questions and so on ...

MR WHITE: Correct Chair.

20 **CHAIRPERSON**: And maybe some minor suggestions about some issues?

MR WHITE: Correct Chair.

CHAIRPERSON: Okay. Alright.

MR WHITE: Chair, I attended to those queries and there was a further meeting set for 14 March 2014. Again this meeting was chaired by

Advocate Letsholo. A person who was new to this meeting that had not been at the previous meetings was Colonel Jones. Chair and - and the main purpose of this meeting was - my understanding - was discuss the final report that had now been prepared and to see whether there was - what the way forward was and to discuss ...

CHAIRPERSON: So - so the - the phase for clarificatory questions had passed. All the issues that he had raised had been addressed in terms of clarification?

MR WHITE: Correct.

10 **CHAIRPERSON:** As far as you understood?

MR WHITE: Correct Chair. So my understanding was this was to report back to say all the queries have been cleared ...

CHAIRPERSON: Ja. Okay.

MR WHITE: And ...

CHAIRPERSON: What is the way forward?

MR WHITE: What is the way forward? Effectively for me to issue the final report ...

CHAIRPERSON: Yes.

MR WHITE: And then for the - the process in the Criminal Justice
20 System to proceed.

CHAIRPERSON: Okay. Hm.

MR WHITE: Chair, there was some initial discussions during that meeting and discussed some of the queries and it indicated that they had all being cleared.

ADV SUSAN WENTZEL: Where was that meeting held?

MR WHITE: It was at PWC's offices in Durban Chair. Chair there was - and I then continue on page 28 - and then Advocate Letsholo asked the PWC representatives to please excuse themselves from the meeting as there was something confidential he needed to discuss with the DPCI representatives.

ADV SUSAN WENTZEL: And if you can just stop there, because I just want to clarify this. You say that also present at the meeting was Ms Frenelle Noble. Who was she? Where was she from?

MR WHITE: Chair, she is a Senior Manager from
10 PricewaterhouseCoopers who was effectively my main assistant on this investigation.

ADV SUSAN WENTZEL: And she was also excused from the meeting?

MR WHITE: Correct Chair ...

ADV SUSAN WENTZEL: Right.

MR WHITE: And she had been at the previous meetings as well.

ADV SUSAN WENTZEL: You can continue.

MR WHITE: Chair, a short while after that meeting - and Chair in my affidavit I say Colonel Van Loggerenberg. In hindsight I think it may have been Colonel S Y Govender.

20 **CHAIRPERSON:** I am sorry. Just repeat that.

MR WHITE: At paragraph 33.

CHAIRPERSON: Yes.

MR WHITE: I say in my affidavit: a short while after they had finished this meeting ...

CHAIRPERSON: Yes.

MR WHITE: Colonel Van Loggerenberg.

CHAIRPERSON: Yes.

MR WHITE: Chair, in hindsight I think it was Colonel Govender.

CHAIRPERSON: Huh-uh.

ADV SUSAN WENTZEL: Why do you say that in hindsight? What has made you ...

MR WHITE: Chair, I ...

ADV SUSAN WENTZEL: Say this?

MR WHITE: I heard Colonel Van Loggerenberg testifying ...

10 **CHAIRPERSON:** Hm.

MR WHITE: And part of his evidence was that he was sick at the time ...

CHAIRPERSON: Hm.

MR WHITE: Or his wife was sick ...

CHAIRPERSON: Hm.

MR WHITE: And he was not at the meeting.

CHAIRPERSON: Hm.

MR WHITE: So what was said is the same thing.

CHAIRPERSON: Hm. (Intervenues).

20 **MR WHITE:** He normally spoke on behalf of the investigation team.

CHAIRPERSON: Hm. You are just not sure whether it was him or it was somebody else?

MR WHITE: Or it - it was either him or - or Colonel S Y Govender.

CHAIRPERSON: *Ja.*

MR WHITE: They were ...

CHAIRPERSON: Yes.

MR WHITE: The two lead prosecutors.

CHAIRPERSON: Ja. Okay.

ADV SUSAN WENTZEL: Not prosecutors.

CHAIRPERSON: Investigators.

MR WHITE: Sorry. Sorry Chair. Investigators.

CHAIRPERSON: Yes. Okay.

MR WHITE: Chair, they then - one of them told me that Advocate Letsholo had decided that the evidence on which my report
10 had been based was tainted. As a result of an operation that had been undertaken by Crime Intelligence in the police in terms of the Interception and Monitoring Act being Act 70 of 2002 and that as a result Advocate Letsholo has decided to - not to prosecute any of the suspects.

So Chair, my understanding - I was not familiar with this Act, but my understanding during this investigation was that this Act is something that sets in place very stringent conditions on which people's telephones can be monitored and - and recorded and intercepted and that there is a - a rigorous process that has to be
20 signed off by a Judge. Chair that ...

ADV SUSAN WENTZEL: If you can just stop at that point. Were you - prior to this and prior to finalising your report - aware that there was any Act 70 monitoring going on?

MR WHITE: I was Chair, because it - and I will - I refer to the specific dates late in my affidavit and I refer to it in a letter I wrote. That it was

discussed at a meeting with Advocate Letsholo earlier on in the process. That there were monitoring taking place, but it was explained and the way I understood it was that this monitoring was initiated because there had been threats on the investigating officers lives and as a result Crime Intelligence had - had been tasked with monitoring the telephones of the people that were suspected of making the threats.

Chair, at no stage did myself or anybody from PWC have access to those recordings. The contents of those recordings was not discussed with me and to my understanding based on what I was told
10 that in addition to that the investigating offices in case 781 - which is the case that I prepared this report for - also did not have access to the recordings, because the - the application did not relate to this case.

The application for the monitoring was for Crime Intelligence to try and identify threats to the investigating officer's lives. So nothing that appeared in the 43 700 documents that I relied on were obtained as a result of the Act 70 monitoring. So Chair, so as a result I actually struggled to understand the logic and why it was said that the evidence was tainted.

CHAIRPERSON: And as I understand it, that monitoring was lawful
20 monitoring, if I understood from other witnesses, but you might not know that.

MR WHITE: Chair that was my understanding and I was told that there had been a formal process obtained to obtain ...[intervenes].

CHAIRPERSON: Ja to have authorisation.

MR WHITE: But that was just in passing that was said because it had

nothing to do with this case.

CHAIRPERSON: Yes okay.

ADV SUSAN WENTZEL: And just for clarity when you had prepared your draft report which was obviously before you ever had a meeting with Advocate Letsolo were you aware of the Act 70 monitoring?

MR WHITE: I was Chair and I referred to is specifically in a memo or letter I wrote to Colonel van Loggerenberg...[intervenes].

ADV SUSAN WENTZEL: Okay we will – let's deal with that in context because you then say that you refute – well I don't want to put the
10 words in your mouth but if we'll deal with that chronologically when it comes and I will clarify this aspect at a later stage. You have said that there was nothing in the thousands of documents presented to you on which your report was based. There was no evidence that you relied on that had been obtained as a result of this monitoring, is that correct?

MR WHITE: It was my understanding Chair, the documents that were provided to me, from what I could see were obtained, either subpoenas from banks or affidavits and supporting documents from suppliers to Mr Panday's entities or documents that were ceased from Mr Panday's business premises.

20 **ADV SUSAN WENTZEL**: Now I'd like to refer you to Annexure TSW28 it's Exhibit RR4 file D at page 1992.

CHAIRPERSON: That's Exhibit RR4 D, and what page?

ADV SUSAN WENTZEL: Page 1992.

CHAIRPERSON: Okay, yes.

ADV SUSAN WENTZEL: This is a memorandum dated the 25th of March

2014 to Advocate Vembani by Advocate Letsolo and it sets out the reasons why the decision had been made not to prosecute the case, did you know about this memorandum?

MR WHITE: I did Chair.

ADV SUSAN WENTZEL: And how did you get to know about it?

MR WHITE: Chair Colonel van Loggerenberg gave me a copy of it on the 9th of April 2014 and asked me for comment or input relating to it and I wrote a letter back to him, making some preliminary comments on the document.

10 **ADV SUSAN WENTZEL**: Now the letter that you wrote back, Chair is found in file RR4 B for boy or bad and it's at page 516 Chair.

CHAIRPERSON: Yes, that's fine if the witness has got it and you've got it you can continue, I remember the letter quite well.

ADV SUSAN WENTZEL: Thank you, now having regard to the reasons provided in the memorandum and your response could you tell the Chair what did you convey in your letter and what – and if there's anything you want to add with regard to the memorandum feel free to do so.

MR WHITE: Chair maybe just...[intervenes].

20 **CHAIRPERSON**: Maybe, let me put it this way at this stage we know what Advocate Letsolo said with regard for his reasons for declining to prosecute, you were given a copy of that letter, you responded quite in detail, this is the chance for you to tell me what your views were about that decision and the reasons that were given to justify that decision.

MR WHITE: So Chair based on my knowledge and my involvement over

the 18 months in the case the reasons given didn't make any sense to me, I'd never had access to anything from the Act 70 monitoring, Advocate Letsolo had been told at one of the early meetings that there was such monitoring taking place and it didn't relate to case 781 which is the reference on the police system for this investigation...[intervenes].

ADV SUSAN WENTZEL: Was that a matter that was denied by Advocate Letsolo?

MR WHITE: Well he said, Chair, that the first he knew of it was when
10 he received representations from Mr Panday in, I think, February 2014. Chair that just wasn't true because I'd been at a meeting where it was discussed way earlier in the investigative process. Chair the – so that was the one thing which just – was factually not true...[intervenes].

CHAIRPERSON: You can repeat your points you made in your letter if you – feel free do to that and just the important ones.

MR WHITE: So Chair maybe just before I do that if I could just highlight a couple of extracts from the memo written by Advocate Letsolo on the 25th of March, just in the context of what I've testified in the last days.

20 **CHAIRPERSON:** Yes.

MR WHITE: At the second page of his memo at page 1993 in the first paragraph at the top of that page he states,

“I informed them that based on the information contained in the docket given to me that there's just no evidence against the Provincial Commissioner. Colonel van Loggerenberg responded thereto

by saying, that if I'm not going to charge the Provincial Commissioner I may as well just close the docket",

Chair I do recall that discussion taking place, Colonel van Loggerenberg, in the discussions with Advocate Letsolo in those previous meetings when we were discussing the draft report he was asked what do you think of the evidence, how strong is the evidence, he confirmed he thought there was a strong case and that there was strong evidence against the accused. He was initially unsure about – against R S Pillay and then at a following meeting he agreed there was
10 evidence but he, at no stage, was mentioning the Provincial Commissioner. Colonel van Loggerenberg then said, what about the Provincial Commissioner and he was of the view that there was no evidence against the Provincial Commissioner.

ADV SUSAN WENTZEL: And did he say why?

MR WHITE: He just said he didn't think there was, he believed that the docket and the forensic report and the supporting documents didn't indicate – it included the affidavits of Brigadier Kemp and Major General Booyesen, he was of the view that there was no evidence. Colonel van Loggerenberg...[intervenes].

20 **CHAIRPERSON:** I'm sorry the case against the Provincial Commissioner did it relate to the instructions that the investigation should be stopped only or did it also relate to anything else she may or may not have done with regard to the benefit or the payment by Mr Panday for her husband's birthday party or was the position – was it the case that because she had – because Mr Panday was paying for the

birthday party of her husband this is what motivated her to give the instructions?

MR WHITE: So Chair that was the conclusion the investigating team came to, was that the interaction with Brigadier Kemp and Major General Booyesen was – started a few weeks prior to the birthday party being paid for. So the inference that the investigating team was drawing or was wanting the prosecutor to draw was that, that payment directly related to an inducement for the Provincial Commissioner to act in the interest of Mr Panday and try and stop this investigation.

10 **CHAIRPERSON**: Okay, alright.

MR WHITE: So that's what the investigating team was – and the timing it's all within a month Chair, the initial instructions to stop is followed by that and there's a further instruction to stop and the investigation continued but there were direct instructions to stop.

CHAIRPERSON: Yes okay, alright continue.

MR WHITE: Chair there's then, in paragraph 3 on page 1993 of that memo it says,

“On 14 February 2014 I was provided with a copy of the representations made on behalf of Dr Panday”,

20 Chair those representations weren't made available to myself so I couldn't comment on them so the meeting that took place now where a decision was made not to prosecute any of the suspects, that's not the normal process Chair in all the years I've been involved in these kind of investigations, assisting the police. The normal process is, the prosecutor would share those representations with the

investigating officer as well as the forensic auditors that are appointed so that we can provide input into seeing one, whether the representations are actually based on real facts compared to what we have but also secondly to then say normally there would be further work to be done by the investigation team because based on a representation the prosecutor may say go and check A and B and if you can prove those points then the representations aren't valid. So that would be the normal process. In this instance it wasn't made available to myself for comment and to my knowledge it wasn't made available to
10 the investigation officers either for their input. So that's just a second point which...[intervenes].

CHAIRPERSON: Well you said you have been involved in many investigations, forensic investigations over the past 20 years, would many of those have entailed you working with the police and prosecutors or not really or only some?

MR WHITE: Chair most of them which relate to criminal investigations had that involvement so Chair in many instances as the matter proceed even though the forensic report is complete there's then – the prosecutors ask for assistance with the summary of the substantial
20 facts for the indictment or the charge sheet because they just – the detail, not the actual charges but the facts and then in response to requests for further particulars. In some of those cases these requests are very substantial and in some instances because of our involvement with the documentation it's easier to identify the relevant extracts that the prosecutor needs to refer to in those responses, so it's very much –

normally a team effort. The investigating officers from the police, the forensic accountants as well as the prosecutors working together to get to the same – the end result.

CHAIRPERSON: Okay thank you, I think let's take the tea adjournment and then we can continue.

ADV SUSAN WENTZEL: Thank you Chair.

CHAIRPERSON: We'll take the tea adjournment and we'll resume at half past eleven, we adjourn.

INQUIRY ADJOURNS

10 **INQUIRY RESUMES**

CHAIRPERSON: Okay let us continue.

ADV SUSAN WENTZEL: Thank you Chair. Mr White before the tea adjournment you were dealing with the memorandum dated the 25 March 2014 from Advocate Letsholo to Advocate Vimbani it is at – we were dealing at this stage the memorandum starts at page 1992 and you were dealing with page 1993.

CHAIRPERSON: Maybe what we should do because it is a detailed letter your response. When you get to it maybe you can confirm whether the contents of your letter commenting on Advocate Letsholo's
20 decision and his reasons whether you stand by what is stated there and then you can highlight those points in your response that you regard as quite important to mention but you confirm that the whole contents are still what you think about that memorandum. Okay.

MR WHITE: [Not speaking into the microphone].

CHAIRPERSON: Yes. Ja.

ADV SUSAN WENTZEL: Thank you.

MR WHITE: Chair maybe just two other paragraphs in that memorandum of Advocate Letsholo. The first one at page 1993 paragraph 3.2. It reads:

“It was – it is important to note that at no stage whatsoever was I informed by the investigating officers in this case that there are tape recordings available in this matter.”

10 So Chair – well firstly it is correct there were no tape recordings in this matter because they related to a Crime Intelligence matter that was not related to case 781 it related to the threats on the investigating officers’ live. But in that regard Chair I was present at a meeting on the 21 May 2013 where that was explained to Advocate Letsholo. So he was told, there are – is monitoring and that is what it relates to. It does not relate to this case. He goes on further in this paragraph and says:

“The first time I became aware of this specific issue was as a result of the representations made on behalf of Toshan Panday.”

20 So Chair that is just not true. And then:

“Furthermore there is nothing in the docket to suggest or indicate that there was an application made for the Authority to permit the police to monitor certain telephone conversations. The nature of the investigations in this matter is straightforward and

there was no need for an application of this nature to be made.”

Chair it is 100% correct. You would not expect it to be in this docket, it did not relate to this docket, the matter was straightforward, it was based on documents and payments. So there was no need for a monitoring of the telephone conversations of Mr Panday, Mr Madhoe, Colonel Madhoe or anybody else.

CHAIRPERSON: Does the part that you just read of his memorandum suggest that

- 10 1. He thought the monitoring related to the 781 investigation.
 2. That he thought the monitoring of telephone conversations was done without necessary legal authorisation.

When I read that part I gained that impression but that impression may be wrong. I am just checking with you. When he says there was no application?

MR WHITE: Chair

CHAIRPERSON: There was no application in 781?

MR WHITE: Correct Chair.

CHAIRPERSON: But as I understand the position there was an
20 application in regard to the death threats of the investigators.

MR WHITE: Correct Chair.

CHAIRPERSON: But I got the impression that he was saying or suggesting that the monitoring that had happened had been – had not been legal. Is that the same impression you got or not necessarily or am I missing something?

MR WHITE: Chair it is not that impression I got because I knew for a fact that he had been told. So I did not read it that way because...

CHAIRPERSON: Yes.

MR WHITE: I knew he had been told there was monitoring and he had been told what it was about.

CHAIRPERSON: Yes.

MR WHITE: So I did not read it in the way.

CHAIRPERSON: Yes.

MR WHITE: That the Chair suggested.

10 **CHAIRPERSON:** Yes.

MR WHITE: Because I knew the background.

CHAIRPERSON: Yes. But why would he – why would the – why would it be relevant to say there was no application in this case? Again maybe I asking you something you would not be able to deal with because you – you do not deal with those things. I was just wondering why – why it was important for him to say there was no application unless he took it – he was of the view that the monitoring of the conversations was illegal.

20 **MR WHITE:** Chair the – the inference that can be drawn is that an excuse is being looked for Chair. The evidence it has been confirmed, it is good evidence. There is now further questions being asked about the Provisional Commissioner. The Prosecutor was uncomfortable with – whether there was sufficient evidence. The investigating officers were fairly insistent there was sufficient evidence. And suddenly without addressing the fact or the query from the investigating officer of

– is there sufficient evidence to prosecute the Provincial Commissioner suddenly the case is – is – there is a decline to prosecute the entire case without dealing with the merits of the case but for an external reason. Which then does not deal with a case that the prosecutor has already said there is a good case. And Chair and in that regard in the last page of that – that memorandum at paragraph 7.-and the last page is page 1997.

CHAIRPERSON: Yes.

MR WHITE: At 7.41 he then states:

10 “I am not prepared as a representative of the state to go to court with dirty hands. I do not want to be seen to be condoning improper investigative techniques by the police.”

In paragraph 8.

 “I have therefore taken a decision to decline to prosecute this matter.”

But Chair nowhere does he say there is no case but he now comes with a reason which on the facts is actually incorrect Chair because the facts do not – as I know them – do not support the Act 70 and the use
20 of it in this case. Because that was Crime Intelligence matter.

CHAIRPERSON: Ms Wentzel is my understanding correct that the monitoring of the conversations had been done – had been authorised by a Judge?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: So – so it would have been lawful monitoring?

ADV SUSAN WENTZEL: Yes it was.

CHAIRPERSON: So going – just the paragraph to which you have just referred Mr White. It is difficult to think that he would regard – he would have regarded that monitoring as an improper investigative technique as he refers in paragraph 7.41 at page 1997 if he thought – if he – if he thought or knew that the monitoring of the conversations – telephone conversation was lawful.

MR WHITE: So Chair the – the point he tries to make in his memorandum is that somebody from Crime Intelligence is alleged to
10 have told Mr Panday that they knew what his defence was in this matter based on telephone conversations they had overheard.

CHAIRPERSON: Hm.

MR WHITE: I think that is the point he is trying to make.

CHAIRPERSON: Hm.

MR WHITE: To say that that is the improper investigative techniques.

CHAIRPERSON: Hm.

MR WHITE: But Chair the – that was not shared with the investigating team.

CHAIRPERSON: Hm.

20 **MR WHITE:** To my – I was never – had any knowledge of that and to my understanding the investigating officers in the case 781 also did not have any knowledge of that.

CHAIRPERSON: Yes. Okay thank you.

MR WHITE: Chair I just – when that memorandum was given to me on the 9 April I immediately the same day wrote a response to Colonel Van

Loggerenberg which is at – in bundle RR4b at page 516.

ADV SUSAN WENTZEL: There are just a few aspects I would like to deal with – with this memorandum before we got there if you do not mind? If we can just go back to page 1994. And I want to refer you to paragraph 3.6 again where it is stated:

10 “Once again it needs to be emphasised that taking into account the nature and extent of the investigations that were being carried out in this matter there was no need whatsoever for such applications to be made.”

You see that?

MR WHITE: I do Chair.

ADV SUSAN WENTZEL: Now as far as you are aware was there any illegal monitoring in this matter being take – undertaken by the investigators in this matter?

MR WHITE: No Chair.

ADV SUSAN WENTZEL: And if one then has regard to paragraph 7 on page 1996 it says:

20 “In light of what is postulated above and more in particular taking into consideration that public policy is concerned not only in ensuring that the guilty are held accountable but also that the investigating and prosecutorial agencies conduct themselves with propriety in securing evidence against criminal suspects. That public policy also sets itself firmly

against admitting evidence obtained through improper means or evidence obtained in deliberate or flagrant violation of the constitution.”

Was any of the evidence that you relied on obtained by improper means or n deliberate or flagrant violation of the constitution?

MR WHITE: Not to my knowledge Chair. And Chair where – like by way of example we relied on the documents seized from Mr Panday’s business premises. There were court challenges in those processes and the investigating officers were found to have complied with the law.

10 **ADV SUSAN WENTZEL:** And then paragraph 7.2 it says:

CHAIRPERSON: Well before that just I think the paragraph to which you have just referred Ms Wentzel.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: So he says there was no need whatsoever for such applications to be made and in the paragraph before that he says that is 3.5, he had – had – he had learnt that or had been told that various applications for the tapping of the phones and to monitor conversations of certain individuals had been made. Then he says, he was not in a position to give more details referring to – I am not sure who he is referring to. But he says, it was clear that the other applications were
20 made – were done in respect of the investigations in this case. Those I think are applications for authorisations for monitoring – the monitoring of conversations. So you would emphasise that as far as you know no such application was made in regard to the investigation in which you got involved namely case 781?

MR WHITE: Correct Chair and at no stage did any of the investigating officers in the case say to me oh we have just learnt about X because of some recording. That was never ...

CHAIRPERSON: Yes.

MR WHITE: Said at any stage during the investigation.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: And Chair Colonel Van Loggerenberg testified that he was the head investigator and no applications in case 781 for monitoring were made.

10 **CHAIRPERSON:** Yes.

ADV SUSAN WENTZEL: Now referring just finally on page 1966 after we have said that the implication is that the evidence had been secured and a clandestine illegal, improper, unconstitutional manner. It is then said in 7.1:

“It is submitted with respect that the issues surrounding the tapping of the phones is inextricably linked to the manner in which the evidence was obtained in this matter. That the evidence as it stands at this point is irredeemably stained.”

20 Was there any evidence that had been submitted to the advocate prior to this, dealt with in your report or in the docket that indicated that there was any evidence obtained through the monitoring of a phone?

MR WHITE: There was none Chair.

ADV SUSAN WENTZEL: He then concludes 7.2:

“To take this case to court under these

circumstances would mean that I as the prosecutor will have to turn a blind eye to the manner in which the evidence had been obtained and subject the judicial process in moral defilement something I am not prepared to do.”

Was the – [indistinct – mumbling].

MR WHITE: Chair again there was – to my knowledge there was nothing wrong with the manner in which the evidence was obtained and where it had been obtained in terms of a search warrant it had been
10 challenged and the finding was not in favour of the state.

CHAIRPERSON: Do you – do you remember whether he provided in his – in this memorandum any evidence showing that there was evidence obtained for the 781 investigation that was improperly obtained?

MR WHITE: There is not Chair.

CHAIRPERSON: Yes.

MR WHITE: This memorandum all he does is refer to representations made by Mr Panday.

CHAIRPERSON: Yes.

MR WHITE: Which the prosecuting – which the investigating team was
20 not asked to provide input on.

CHAIRPERSON: Yes. And as far as you know the persons that he says in his memorandum gave certain information to Mr Panday. Do you know whether any statements from those persons were made available to the investigators in the 781 investigation and to you?

MR WHITE: They were definitely not made available to me and to my

knowledge they were not made available to the investigators either.

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: Thank you. Mr White if you could then please go to your response. It is contained in bundle B so Exhibit RR4b at page 516.

CHAIRPERSON: Are you done with Advocate Letsholo's memorandum?

ADV SUSAN WENTZEL: Yes it is subject to you wanting to ...

CHAIRPERSON: From your side are you done?

ADV SUSAN WENTZEL: Yes from my side yes.

10 **CHAIRPERSON**: And Mr White are done with your response to that memorandum?

MR WHITE: Chair apart from referring to the written response I made at the time.

CHAIRPERSON: Yes.

MR WHITE: So as far as commenting on it yes.

CHAIRPERSON: Ja.

MR WHITE: Just not...

CHAIRPERSON: And you confirm that all the points you made in that letter you stand by them?

20 **MR WHITE**: I do Chair.

CHAIRPERSON: Okay thank you.

ADV SUSAN WENTZEL: Now if we could just...

CHAIRPERSON: Do you want me to go to which Exhibit?

ADV SUSAN WENTZEL: Chair it is Exhibit RR4b.

CHAIRPERSON: B for Beatrice?

ADV SUSAN WENTZEL: B for Beatrice.

CHAIRPERSON: Okay. Yes. Page 516?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: So Mr White this is the letter that you referred to and it is the letter you just confirmed.

MR WHITE: That is correct Chair. That is the letter I wrote to Colonel Van Loggerenberg on the 9 April 2014 commenting on the memorandum that had been prepared by Advocate Letsholo.

10 **ADV SUSAN WENTZEL:** If you could just deal please – we have dealt with your comment in paragraph 4. If you could please deal with paragraphs 5 and 6 on pages 517 and what you state there?

MR WHITE: Chair paragraph 5 states:

“Towards the end of the meeting on 15 January 2014”

So Chair that was the second meeting to discuss the draft report.

“Advocate Letsholo was asked by one of the SAPS members present I cannot recall which one, what he thought of the case and our evidence.

Advocate Letsholo stated that it was his view that there is a very good case against Narainpershad, Madhoe and Panday. After some

20 discussion and further clarity regarding R S Pillay he agreed that there was also a case for Mr Pillay to answer.”

In paragraph 6:

“Up to this stage Advocate Letsholo had made no mention of the Provincial Commissioner Ngobeni.

Colonel Van Loggerenberg asked what about the PC

to which Advocate Letsholo replied that he had some reservations. There was then further discussion during which Colonel Van Loggerenberg compared the evidence implicating Narainpershad specific mention was made about the tread for Mr – treadmill Mr Panday had bought for him and the birthday party that Mr Panday paid for for the PC's husband. Colonel Van Loggerenberg then went on to say if Advocate Letsholo does not think there was enough
10 evidence against the PC then there was not enough evidence against Narainpershad as the evidence was the same and he might as well close the docket. Advocate Letsholo then said, he would relook at the evidence and would provide feedback at the next meeting. No feedback was provided at – in this regard while I was present in the meeting which was on 14 March 2014.”

Now Chair that was the date of the – when that memorandum was written subsequent to that meeting saying that he had decided not to
20 prosecute any of the suspects. But at no stage did he say there is no evidence. He just had drawn his own conclusion that it was tainted and the conclusion appears to be based on the incorrect facts Chair.

CHAIRPERSON: And – and if I recall correctly in his memorandum he really does not refer in any significant way to the evidence against the suspects on the merits.

MR WHITE: He does not refer to it at all Chair.

CHAIRPERSON: At all ja. And you said that you had been working on this investigation on your part of the investigation for about eighteen months before you finished your report or was it more than eighteen months?

MR WHITE: Chair it was fifteen months I think up until when we provided the first draft.

CHAIRPERSON: Yes.

MR WHITE: Which was in the May of the previous year.

10 **CHAIRPERSON:** Hm.

MR WHITE: Then – we then did not do any more detailed work because it was sitting with the prosecutor for six months and then there were these meetings just before Christmas and then early in this New Year.

CHAIRPERSON: Hm.

MR WHITE: So the only additional work done from – from my side was to update the report to address the prosecutor's queries and at the meeting on the 14 March I was ready to sign the report. I thought it was all addressed we can sign the report and – and I was expecting to be asked for information relating to a charge sheet that would be drawn
20 up.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: You have indicated the view that was expressed by Colonel Van Loggerenberg at that meeting that the evidence against Captain Narainpershad and that against the Provincial Commissioner was the same. Do you agree with that view?

MR WHITE: I do Chair to the extent that I was of the opinion that they were both being receiving some form of gratification to do something that was improper. It was different things they were being asked to do. As in Captain Narainpershad was being asked to not comply with the police procurement processes for the benefit of Mr Panday and his entities while based on the affidavits that have been provided to me the Provincial Commissioner was being given a gratification to try and stop this investigation so again something for the benefit of Mr Panday and his entities.

10 **CHAIRPERSON:** Of course – of course the – it could not be really 100% correct to say the evidence against the Provincial Commissioner is the same as the evidence against Colonel Madhoe, Mr – and Mr Panday and whoever else because they certainly on what I have seen here this is not the same situation as where people are together and they do something and they are witnessed by one or two witnesses and those witnesses say the same thing in regard to all those people who were there doing there doing whatever it was they were doing. It is an illegal gathering or assaulting somebody. In regard to the Provincial Commissioner the main conduct of her part – maybe it is not the main
20 but very prominent part is the fact that she was said to have made certain phone calls to people under her to say, stop the investigations. Now the people who would testify whether that happened are not the people who would – they were not going to give evidence about phone calls to - made by somebody else in relation to the same thing. So – so it might not be accurate.

MR WHITE: Chair I get your point. It was not the same alleged irregular or illegal conduct.

CHAIRPERSON: Yes.

MR WHITE: It was just – and also the one is based on documentary evidence relating to Captain Narainpeshad whereas the Provincial Commissioner is based on what two of her subordinates said. There are not documents to prove that that is what she said.

CHAIRPERSON: Yes.

MR WHITE: So there is a difference in that regard. The – the – my
10 understanding of where Colonel Van Loggerenberg was saying it is the same is that based on the documents and the affidavits of suppliers both Captain Narainpershad and the Provincial Commissioner received a benefit to do something improper that is not in the course of their duties for the benefit of Mr Panday. So that is the extent to which it is the same but I take your point Chair that the evidence is not exactly the same.

CHAIRPERSON: Ja okay.

ADV SUSAN WENTZEL: Thank you Chair. Now after you had been
20 shown the memorandum by Advocate Letsholo and you had responded did you discuss the reason for stopping the investigation with Colonel Van Loggerenberg?

MR WHITE: I did Chair because we were all – I think probably the right word is a bit taken aback – this – the people had been working diligently on this for months and in the case of the investigating officers years and suddenly it was just stopped in its

tracks for want of a better word. And the investigating officers were very upset about that and they wanted to identify how it could be taken – taken forward. And I am not sure who suggested it but in the next couple of months a suggestion came out that the matter should be reported to IPID. Because this matter is alleged to involve the alleged police corruption and as a result it would fall under IPID's mandate and as a result there was then a decision made that it be reported to IDIP and they be asked to look at the evidence and proceed – proceed further. So Chair that – but prior to that meeting with IPID being set up

10 the Provincial Director of Public Prosecutions Advocate Noko also wrote a memorandum. It was actually dealing – its main purpose was to deal with case 466 which is the case dealing with the alleged bribe by Mr Panday and Colonel Madhoe of General Booyesen, but in that memorandum she also deals with case 781 and - and ...

ADV SUSAN WENTZEL: So let us just find that memorandum first and then we will comment. Chair, it is RR4B for Beatrice. Annexure TSW5 page 5-1-9.

MR WHITE: So Chair that - that memorandum it starts at 5-1-9. It is addressed to the SAPS investigating officers and it is from

20 Advocate Moipone Noko - the Director of Public Prosecutions KwaZulu-Natal and it is dated 21 October 2014 and the subject is Durban Central CAS 466/9/2011.

Corruption against Mr Thoshan Panday and Colonel Navin Madhoe. Chair, in this memorandum just at - at a high level what she does is. She now provides reasons why there is no

prosecution in cases 466 and 781 and effectively she says:

“There could not have been a bribe in 466 if there was no evidence in case 781.”

It is effectively what she says, because the bribe related to the - to the former case. What she then does Chair is she does not use the reasons advanced by Advocate Letsholo for saying there is no case being that the evidence was tainted. She now actually says that Advocate Letsholo has come to the conclusion that there is no evidence against the suspects.

10 Chair which is just factually wrong, because that was not Advocate Letsholo’s view. His view in meetings was that there was a good case. So Chair, she ...

ADV SUSAN WENTZEL: If ...

MR WHITE: Has some ...

ADV SUSAN WENTZEL: If you can just refer then to paragraph 2.3 where this is said and perhaps just read what was said into the record please. That you are commenting on.

CHAIRPERSON: Well - well if he has covered it. It is fine. It ...

ADV SUSAN WENTZEL: Yes.

20 **CHAIRPERSON:** It might not need to be read. Unless there is a special reason why it should be read.

ADV SUSAN WENTZEL: There are aspects ...

CHAIRPERSON: If it is covered but - by what he has said.

ADV SUSAN WENTZEL: Yes. There is.

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: There are some aspects that I would like the witness to comment on - if I may Chair.

CHAIRPERSON: Tell him what - what the points are that are made in the paragraph and let him comment.

ADV SUSAN WENTZEL: Yes. It - it is suggested there that there was absolutely no evidence to prosecute any person with any offence and then it is said when the investigators realised that the PC could not be charged simply because there was no evidence against her. Then the prosecutor - the investigator - who is Mr Van Loggerenberg - said he
10 may as well close the 781 case. Can you comment on that?

MR WHITE: Chair, the way it is written ...

ADV SUSAN WENTZEL: Yes.

MR WHITE: It contains a number of facts that are just wrong Chair. So just - because it is written as if the reasons given are that the investigation was directed to try to implicate the Provincial Commissioner. Chair that was - was never the intention. It was around procurement and the Provincial Commissioner comes right at the end of the investigation in - in the timeline and in - in what happened and if one reads and just one sentence I would like to read out of this
20 paragraph which is two thirds of the way down. It said:

“It appears Mr Panday and Colonel Madhoe featured nowhere in the 781 then as the focus was on the PC.”

Chair if anyone read my report or the docket they would see that is not the case.

CHAIRPERSON: I mean the - the whole investigation under 781 related to Mr Panday and he - and he and his entities and the conduct of certain people within SAPS.

MR WHITE: Hm.

CHAIRPERSON: Colonel Madhoe and so on.

MR WHITE: That is 100 percent correct Chair.

CHAIRPERSON: So - so the point you make is only somebody who had no clue what the - your report contained and what the 20 lever arch that you told me about contained would say this?

10 **MR WHITE:** Chair to use your words. Yes. The person had no clue.

CHAIRPERSON: *Ja.*

MR WHITE: Either they did not read it ...

CHAIRPERSON: *Ja.*

MR WHITE: Of if they did they did not care what it said ...

CHAIRPERSON: Hm.

MR WHITE: And they wrote something that is just ...

CHAIRPERSON: Hm.

MR WHITE: It is based on the wrong facts Chair.

20 **CHAIRPERSON:** Hm, but one would have expected that before she wrote that there was no evidence. She would have taken the trouble to go and check the files.

MR WHITE: Chair, taking into account that this involved the most senior member of the police service in the province.

CHAIRPERSON: Hm.

MR WHITE: It involved other senior police officials. The amount of

money was significant. *Ja*. It just ...

CHAIRPERSON: It is difficult to understand the reasoning.

MR WHITE: Chair, based on - on all logic it - it - on the facts it is difficult to understand.

CHAIRPERSON: Hm.

MR WHITE: Unless there is an ulterior motive.

CHAIRPERSON: Hm.

MR WHITE: That can be the only inference that can be drawn.

CHAIRPERSON: Hm. Hm.

10 **ADV SUSAN WENTZEL**: Hm.

CHAIRPERSON: And - and - well she may have misconstrued Advocate Letsholo's reasons to decline to prosecute in 781 as well, because you made the point that it is - it is apparent from her note that she thought Advocate Letsholo said there was no evidence to justify prosecuting the suspects in 781.

Whereas his approach what he said was certain things tainted the investigation and because of that he was declining to prosecute irrespective of what the strength of the evidence is, but as you said he did say in - in your meetings that at least the case against certain of
20 the suspects was strong. That is what you say he said. Is that right?

MR WHITE: Chair that is correct.

CHAIRPERSON: *Ja*.

MR WHITE: Chair and - and with respect I cannot see that she could have had that memorandum ...

CHAIRPERSON: Hm.

MR WHITE: Or referred to it when writing this ...

CHAIRPERSON: Hm.

MR WHITE: Because that memorandum is very clear.

CHAIRPERSON: Hm. Hm.

MR WHITE: It does not ever say there is no evidence.

CHAIRPERSON: Hm.

MR WHITE: It just - a cursory read of it would - would lead one to that conclusion.

CHAIRPERSON: Hm. Well I - well she might have read it at some
10 stage and did not have it at the time or she might just have heard that
Advocate Letsholo refused or declined to prosecute and took what
would be the normal reason for not prosecuting, because the normal
reason would be there is not enough evidence or there is no evidence,
but this was a case where Advocate Letsholo was not relying on that.
Okay.

MR WHITE: I cannot take it any further Chair.

CHAIRPERSON: Yes. Okay. Thank you.

ADV SUSAN WENTZEL: Yes Chair and just to remind the Chair that in
the memorandum it was said twice and if not three times in the course
20 of the memorandum that there was absolutely no need for any
monitoring, because it was a straightforward case. The - the
memorandum is premised on the basis that there is good evidence ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: But then a conclusion is drawn that the
evidence was tainted which the witness has said is fundamentally

flawed. At paragraph - I - I do not know if you - if you want to comment on it, but you can. At paragraph 2.10 if you wish on page 5-2-2 Advocate Noko comments on why on earth would it be necessary to backdate this report and says - and when read with the previous statement made about Colonel Madhoe which is to the effect that he had done nothing wrong.

There was absolutely nothing wrong. There was no evidence against him. Do you agree with the conclusion that there would have no motive for Colonel Madhoe to bribe General Booyesen?

10 **MR WHITE:** So Chair there - there was a motive. Chair and - well it is - if one does not understand the background to this. It is quite difficult to understand, because it is referring to this report. The report that is being referred to is a document prepared by Major-General Booyesen and that contained evidence that was used in support of the applications for the - the Section 205 subpoenas of the bank statements from the - from the various banks relating to Mr Panday's entities.

If that report had been dated after the subpoenas it would have mean that the subpoenas were applied for without there being
20 reasonable grounds to ask and as a result could have been invalidated which would mean all those documents that had been relied upon in the investigation would be inadmissible.

So that is what the attempted bribe was to do. Was to get General Booyesen to date it after the dates of the subpoenas so that there could be a legal - a technical legal argument that the evidence

was inadmissible. So that is what - but then my understanding of what Advocate Noko is trying to do here is to say, because there is no evidence in 781.

There would not have been a reason to backdate it or to - to get the - to pay a bribe to try and get the evidence to be inadmissible. So it is a bit of a circular reasoning, but ...

CHAIRPERSON: *Ja*.

MR WHITE: At the end of the day ...

CHAIRPERSON: But the argument falls flat if there was evidence?

10 **MR WHITE**: Correct Chair.

CHAIRPERSON: *Ja*. Thank you.

ADV SUSAN WENTZEL: And Chair, if there was - if there was no evidence one would wonder why an application would be made to set aside a subpoena to exclude evidence. It - it just does not make any sense whatsoever. Mr White if we could then go to page 34 paragraph 41 of your report?

CHAIRPERSON: What page?

ADV SUSAN WENTZEL: Page 34.

CHAIRPERSON: Huh-uh.

20 **MR WHITE**: Chair, it is RR4. It is the affidavit.

ADV SUSAN WENTZEL: The affidavit. I beg your pardon Chair.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: Sorry Chair.

CHAIRPERSON: You confused me.

ADV SUSAN WENTZEL: Sorry Chair.

CHAIRPERSON: Thank you Mr White.

MR WHITE: So Chair, at paragraph 41 I then - previously I had said that there was discussions about taking the matter to IPID and a meeting was scheduled for 14 November 2014 at IPID's Offices in Durban. The meeting was convened by General Maharaj who was the KZN Head of IPID and the Executive Director being the Head of IPID Nationally - Mr Robert McBride also attended the meeting.

I was present as well as a number of the investigating officers. Mr McBride was briefed around the details relating to the case
10 and the dissatisfaction from the police's perspective about the fact that the decision had been made not to prosecute. He then called someone from his cellphone in the meeting who I believe was the NDPP at the time - just based on the conversation from what I could hear - which was Mr Nxasane and he said that this matter is ...

CHAIRPERSON: That would be Mr Nxasane ...

MR WHITE: Nxasane.

CHAIRPERSON: And for the transcribers N-X-A-S-A-N-E. Yes.

ADV SUSAN WENTZEL: Thank you Chair.

MR WHITE: And Chair he - he then said this was a - a serious matter -
20 that being Mr McBride - and needed to be taken forwarded and the perpetrators prosecuted. Chair, there was then - if I could jump forward in my - my document to page 39 of my affidavit. There was a - at paragraph 43 - there was then a follow up meeting scheduled to discuss the detail, because Mr McBride wanted to involve senior investigators out of the Pretoria Office of IPID and that meeting was set

for 21 November 2014.

There were a number of IPID members present. I do not specifically recall all their names and again they asked me to explain the background to the matter and some of the detail which I did and then they asked why the report was still in draft, because subsequent to the meeting where Advocate Letsholo declined to prosecute I had never issued a final report, because I was of the view that if there was a new prosecutor appointed at some point in the future.

They may have different queries. I explained to the IPID
10 members that the report was final as far as I was concerned and could be issued. They then requested that if that was the case if I could issue a final report so that they could take the appropriate actions. I then issued the final report three days later when I was back in Durban on 24 November 2014 and that is the report that is attached as Annexure TSW1 to this affidavit.

Chair, continuing at page 40 of my affidavit. There were then two further follow up meetings with IPID representatives to work through the detail to - I mean - it is a significant amount of evidence. That was on 26 November 2014 and 23 January 2015. Chair, I was
20 then asked to attend a further meeting in Pretoria at IPID's Office on 3 February 2015 to again discuss this matter.

When I arrived at the meeting there were a number of IPID representatives including Mr McBride and also in attendance was Advocate Gerrie Nel and Mr Andrew Leask from the NPA in Pretoria as well as Major-General Booyesen and Colonel Van Loggerenberg. Chair,

the - the purpose of as it was explained to me of Advocate Gerrie Nel being present was that the NDPP ...

CHAIRPERSON: I am sorry Mr White. Somehow I have lost you.

ADV SUSAN WENTZEL: Hm.

CHAIRPERSON: Ms Wentzel where - where are we now?

ADV SUSAN WENTZEL: Chair yes.

CHAIRPERSON: I thought we went to page 43 at some stage.

ADV SUSAN WENTZEL: No. He is dealing with paragraph 46 now on page 40 Chair.

10 **CHAIRPERSON**: On - on page 40?

ADV SUSAN WENTZEL: Page 40 paragraph 46 Chair.

CHAIRPERSON: Okay. Thank you. You may proceed.

MR WHITE: So Chair maybe just to recap. That was the meeting on 3 February 2015 at IPID's Offices and this was now also attended by Advocate Gerrie Nel and Mr Andrew Leask from the NPA. It was the first time I had met either of them relating to this matter and it was explained to me that or it was explained in the meeting that Advocate Nel was attending the meeting on instruction of the NDPP as he wanted him to consider the matter to see whether the NDPP should
20 consider reopening the cases and whether somebody should be prosecuted in the matter.

ADV SUSAN WENTZEL: And who explained that to you?

MR WHITE: Chair, I am not specifically sure. It was either Mr McBride or - or Advocate Nel himself ...

ADV SUSAN WENTZEL: Yes.

MR WHITE: But Chair before the meeting formally started Mr McBride made what I thought at the time was a very strange comment. He said that he is going to dust off his fishing rods as he is going to be doing a lot of fishing in the near future. Everybody looked at him with a bit of amazement and asked him what he meant by this and he said that we have been going places we are not supposed to and are treading on the toes of the wrong people and that he had heard in the corridors that he was going to be suspended shortly.

Chair that meeting was on 3 February 2015. Mr McBride was
10 suspended the following month. In March 2015 and I continue at the following page. Page 41 paragraph 48. Advocate Nel in the meeting said he did not understand Advocate Letsholo's decision and the basis on which he came to it and he said he would recommend to the NDPP that the NPA proceed with the formalities of reopening the matter.

However shortly after that in May 2015 the NDPP vacated his position and Advocate Abrahams was appointed. Chair, since that date I have not been further consulted in the matter. So it is some five years Chair. All that happened subsequent to that was IPID requested further copies of the documents, because Chair at the time people in
20 IPID were being suspended, reinstated, suspended and I assumed documents had been lost.

So further copies were provided in June 2016 and then in addition to that ...

CHAIRPERSON: Sorry. So if a decision had to be taken whether the decision not to prosecute in this case was to be reversed. The person

who would have had to reverse it would have been Mr Nxasane, because he was the NDPP at the time. Is that right?

MR WHITE: Chair that is my ...

CHAIRPERSON: As you understood the position.

MR WHITE: Chair that is my understanding, because the - the DPP had made the decision not to prosecute.

CHAIRPERSON: *Ja*, at provincial level.

MR WHITE: So that would be the only way for it to be reopened would be for the NDPP ...

10 **CHAIRPERSON:** Yes.

MR WHITE: To become involved and - and take it on review and - and come to a different conclusion.

CHAIRPERSON: Yes. Yes. Continue.

MR WHITE: So Chair ...

CHAIRPERSON: And - I am sorry. Early on you testified about a meeting which you attended where Mr McBride made a call to Mr Nxasane. Is that right?

MR WHITE: Correct Chair.

20 **CHAIRPERSON:** And that call - that meeting was it discussing the matter to which your report relates?

MR WHITE: Correct Chair. It - it ...

CHAIRPERSON: Or the 466 matter?

MR WHITE: It related to both Chair.

CHAIRPERSON: To both. *Ja*.

MR WHITE: So both cases were presented to Mr McBride at that

meeting ...

CHAIRPERSON: Yes.

MR WHITE: Because they - they linked in a way ...

CHAIRPERSON: Ja.

MR WHITE: Because 466 is a direct ...

CHAIRPERSON: Offshoot.

MR WHITE: Result of 781.

CHAIRPERSON: Ja. Yes. Okay.

MR WHITE: So - so the DPP had come to the conclusion that there
10 was no evidence against the suspects in 781 and 466.

CHAIRPERSON: Hm. Hm. Okay.

MR WHITE: So Chair that was some five years ago. I was then or a
person in my office became aware that in September 2018 Advocate
O'Brien from the SCCU in - in Durban had now been allocated this
matter and she had requested copies of the flow of funds and the
timeline diagrams which were provided to her.

Chair, but as far as further consultations or processes I - I
have heard nothing in that regard.

CHAIRPERSON: Hm.

20 **MR WHITE:** So for - effectively for five years nothing has happened
Chair.

CHAIRPERSON: Hm. Hm and all the evidence was ready as far as you
knew?

MR WHITE: Chair, there is literally 100's of affidavits ...

CHAIRPERSON: Hm.

MR WHITE: In the docket.

CHAIRPERSON: Hm.

MR WHITE: The forensic report is complete.

CHAIRPERSON: Hm.

MR WHITE: It is - it is issued in 2014.

CHAIRPERSON: Hm.

MR WHITE: My understanding was the investigating team was just waiting for a charge sheet from the prosecutor.

CHAIRPERSON: Hm. Yes. Okay. Thank you.

10 **ADV SUSAN WENTZEL:** And on your understanding has a charge sheet ever been prepared?

MR WHITE: No Chair.

ADV SUSAN WENTZEL: And Mr Panday ever arrested?

MR WHITE: Not in relation to - to 781 Chair.

ADV SUSAN WENTZEL: Then if we can just - if you do not mind. I want you to deal with a response by Colonel Booyesen to Advocate Noko's memorandum. You deal with it in your affidavit at paragraph 42 on page 35 and Chair the memorandum itself he - he quotes from the memorandum. The memorandum itself is in EXHIBIT
20 RR4B at page 5-2-7.

CHAIRPERSON: What - what is the point about the memorandum?

ADV SUSAN WENTZEL: So is it correct that you responded to Advocate Letsholo's memorandum and by that letter that we referred to earlier in your evidence?

MR WHITE: That is correct Chair.

ADV SUSAN WENTZEL: And that the memorandum of Advocate Noko that we just referred to was - was responded to by Major-General Booysen on 19 November 2014?

MR WHITE: Correct Chair.

ADV SUSAN WENTZEL: And you quote from this memorandum in your affidavit and he deals - well I - I am just going to deal with it in your affidavit at paragraph 36 from your quote. Where he says at the top of the page:

10 “Quite how it has been revealed by the SCCU that
the SAPS members charged with the investigation
of Durban Central case 781 was gunning for the
KwaZulu-Natal Provincial Commission
Lieutenant-General Ngobeni is unclear.”

I want to ask you were you at any stage when you were - in the 15 months you were conducting this investigation told by the investigators to focus on the Provincial Commissioner?

MR WHITE: No Chair.

ADV SUSAN WENTZEL: And ...

20 **CHAIRPERSON:** Was there anything in your interactions with the
investigators that suggested that they wanted the Provincial
Commissioner - they were - they - they wanted the Provincial
Commissioner to be given some special focus?

MR WHITE: Hm.

CHAIRPERSON: Even if they did not say so in so many words.

MR WHITE: No Chair. There were - there was - she was not being

singled out for specific attention.

CHAIRPERSON: Hm.

MR WHITE: There was no greater focus on her than any of the other suspects in the matter ...

CHAIRPERSON: Hm. Okay.

MR WHITE: And Chair that is also quite clear if one looks at the 400 pages of report. There is - I - I do not know off the top of my head - 30 or 40 pages that deal with her ... (intervenes).

CHAIRPERSON: Yes.

10 **MR WHITE:** She was not the focus, because ...

CHAIRPERSON: Yes.

MR WHITE: She had a specific involvement at the - at the end of the time period.

CHAIRPERSON: Yes. Yes.

MR WHITE: We were investigating.

CHAIRPERSON: Yes. So in the entire files of evidence - 20 lever arch files I think you said. You - you would say more or less whatever related to her might have taken about 20 or so pages.

20 **MR WHITE:** So Chair the - the evidence against her is the handful of documents from the - the Dish Restaurant ...

CHAIRPERSON: Hm.

MR WHITE: Relating to the payment.

CHAIRPERSON: Hm.

MR WHITE: The bank statements showing the payment ...

CHAIRPERSON: Hm.

MR WHITE: And then the affidavits of General Booyen and Brigadier Kemp.

CHAIRPERSON: Hm.

MR WHITE: I - I do not recall off the top of my head how long they are ...

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL:

MR WHITE: But they are not - they in the 10's of pages. Not the 100's of pages.

10 **CHAIRPERSON:** Hm. Hm.

ADV SUSAN WENTZEL: And then I would like to refer you to the middle of page 36 of your affidavit also still quoting from a letter of General Booyen. It is just the - what he says in the middle of that paragraph on the top of that page. He says:

20 "The investigation focused on irregularities before her appointment as Provincial Commissioner, it is thus ludicrous to believe a suspect i.e. Panday and Madhoe in this regard. The investigating officers could not have wanted to falsely implicate the Provincial Commissioner for a crime that took place before she assumed her post. Her involvement in the matter relates to attempts by her to interfere with the investigation after she assumed her position as Provincial Commissioner and not with regard to the procurement of the irregularities *per se*".

Now can you comment on that?

CHAIRPERSON: Well he has already said that isn't it, he has said that the investigation under case 781 related to the procurement issues relating to Mr Panday and whatever related to the Provincial Commissioner was the allegations that she stopped the investigation and the payment for – by Mr Panday for her husband's birthday party.

ADV SUSAN WENTZEL: Yes Chair the averment that was made by Advocate Noko in the memorandum was also that the reason – although there was absolutely no evidence against the Provincial Commissioner that this investigation had been focused on her was because General
10 Booyesen wanted her post and the point that he is making here is that the investigation started before she got her post and then the allegations against her only arose after she was then appointed. It could never have then had the affect of stopping her getting her post.

CHAIRPERSON: Yes but you covered that didn't you with the head of the investigation Colonel van Loggerenberg?

ADV SUSAN WENTZEL: Yes it has been covered thank you Chair. Chair...[intervenes].

CHAIRPERSON: I would like us to move as fast as we can, we are not moving as fast as I would like to I'm not blaming anybody but I'd like us
20 to move rather faster.

ADV SUSAN WENTZEL: Thank you Chair. Chair I now wish to – unless there's anything further that you would like to address with regard to the Panday matter, I would like to now move on to the investigation into the Intaka matter

CHAIRPERSON: Lets go straight to it.

ADV SUSAN WENTZEL: Thank you. Mr White how did you come to be involved in the investigation in the Intaka matter?

MR WHITE: Chair I set it out by saying...[intervenes].

CHAIRPERSON: Maybe let's start by saying what was the Intaka matter?

MR WHITE: So Chair Intaka is a name of an entity based in Cape Town that supplied, amongst other things, water purification plants and self generating oxygen plants that were supplied to the Department of Health and the Department of Local Government in KZN as well as to
10 the Department of Health and various municipalities in the Northern Cape. So it's called Intaka because it's the name of the entity it's also colloquially called the Amigos case because that is the manner in which Dr Savoi, the owner and main shareholder of Intaka refers to people in emails and letters, he's from South America and that's the way it got the terminology.

CHAIRPERSON: Yes.

MR WHITE: It relates to allegations of, again, procurement irregularities around the appointment of this entity and then around allegations of corrupt payments made by Intaka to various officials
20 within the Department of Health and Local Government both in the Northern Cape and KZN as well as alleged payments to the Political Heads of the Departments or for their benefit that also – whose departments did business with Intaka.

CHAIRPERSON: Yes how did you get involved?

MR WHITE: Sorry Chair?

CHAIRPERSON: How did you get involved in the investigation?

MR WHITE: Chair I set it out at page 42 or RR4, Chair initially PWC was appointed by the Department of Health in KZN in May of 2009 to investigate the initial contracts that the Department of Health had entered into, it was then – our mandate was further extended in February of 2010 and Chair then it was identified that this case is a lot bigger than the Department of Health it also involves Local Government in KZN as well as significant payments to entities in the Northern Cape. At that stage the investigating officer in the matter, Colonel du Ploy
10 approached National Treasury, the Accountant General and said that this case goes across a number of Departments in a number of provinces and requested that National Treasury become involved because of the procurement irregularities that were involved. National Treasury agreed and the appointment of PWC to undertake these investigations and to assist the police going forward in preparing reports for Court, the mandate then came from National Treasury.

ADV SUSAN WENTZEL: Were you given instructions as to the manner you should carry out this investigation?

MR WHITE: So Chair we were to take instructions from the police so
20 while National Treasury was paying the fees, for want of a better word, they were not directing how to undertake the investigation because we reported to the police so the police directed the investigation together with prosecutors that were then – became involved in the case, there were a lot of jurisdictional issues and trying to manage it as one investigation even although it was a number of departments and a

number of – and two different provinces but the one piece – rather than direction and I'd rather say it's advice that the Accountant General gave us at the time was, if you ...[intervenes].

CHAIRPERSON: Did you say Accountant General?

MR WHITE: Accountant General Chair, in the National Treasury.

CHAIRPERSON: Yes.

MR WHITE: Mr Freeman Nomvalo he said, do the investigation from the bottom up and his explanation – because it didn't, initially make sense to me, was if you start at the top and politicians are involved
10 you're not going to make headway with your investigation. So prove the case from the bottom up and if at the last minute politicians are identified as being involved, it's very hard to derail the case because you've, effectively finished and that's effectively how the investigation was done. The Supply Chain Management processes were investigated, who was involved, how they were involved, reports were prepared and where it was identified that there were allegations based on that evidence, that politicians were involved, further supplementary reports or affidavits were prepared that were then given to the prosecutors.

20 **ADV SUSAN WENTZEL**: So Mr White you deal with the reports that you prepared on paragraph 56 page 43, could you please briefly explain to the Chair which – what each of these reports dealt with just in high-level terms, we'll go into greater detail in due course?

MR WHITE: So Chair as I said before there's two types of – mainly two types of products that were being purchased. So the one is the

Oxyintaka self generating oxygen plants. What that plant is Chair, is effectively a plant that had been designed by Intaka it's installed on site at a hospital and the benefit it has is that it generates oxygen on site so there's no need for tankers or cylinders to be trucked to the site, you effectively make the oxygen on the site. So that was – so those were purchased in KZN and in the Northern Cape. There was then water purification plants that were purchased by the Department of Health in KZN and in the Northern Cape and by Local Government in KZN as well as by some municipalities in the Northern Cape and then in
10 addition to that there was also procurement in the Northern Cape of 16 dialysis machines, also from Intaka, not made by Intaka or under license from them, they had bought them from a third party and then there are two additional reports which I refer to that there's the supplementary report that relates to the MEC of Health at the time Ms Peggy Nkonyeni in KZN as well as in an affidavit I set out the involvement of the MEC for Traditional Affairs and Local Government in KZN Mr Michael Mabuyakhulu. Chair those reports are attached again to this affidavit, the lever arch files of supporting documentation, there's some 30 files, have been made available to the Commission in
20 electronic form, so again in those reports we report – documents are referred to in the right hand column on each page, the Annexures have been provided in electronic form to the Commission.

ADV SUSAN WENTZEL: Now you've prepared a diagram, it is TSW19 and Chair, if you'll just bear with me it's contained in Bundle D – sorry Chair Exhibit RR4 Bundle D at page 158.

MR WHITE: Sorry Chair it's 1958.

ADV SUSAN WENTZEL: Sorry I beg your pardon.

CHAIRPERSON: Yes thank you.

ADV SUSAN WENTZEL: Sorry Chair we need this diagram to be put on the overhead screen if you might bear with us.

CHAIRPERSON: Just remember that when you speak away from the phone the transcribers will have a problem transcribing – typing what you were saying, there will be a lot of inaudibles, so try and speak when you are closer to the phone – the mic.

10 **ADV SUSAN WENTZEL:** Yes Char I apologise I've got my assistant for the bundles so – perhaps yes. Sorry Chair if you'll just bear with me – thank you Chair, I appreciate the indulgence. Mr White with reference to this diagram could you please explain to the Chair what your investigation entailed and what it revealed?

MR WHITE: Chair what I've attempted to do in this diagram at page 1598 was prepared at the time that the investigation was done, some ten years ago. What this diagram sets out to do is to explain the significant events or transactions that took place relating to the alleged crimes that happened in Kwa-Zulu Natal. So it doesn't deal with the
20 Northern Cape which was, effectively a different set of investigating officers, different set of prosecutors. So I was requested to comment on the matters in KZN so I've restricted my affidavit to that as well as this diagram. So Chair what this diagram shows is that at the centre of the diagram is Intaka and flowing to or from that are various arrows in different colours and briefly what I'm trying to show in that diagram

Chair, if one looks at the bottom half of the diagram it's the dealings that took place between Intaka and on the bottom right the Department of Health in KZN. If one goes up to the right-hand side – the top right of that diagram I then deal with the transactions with the Department of Traditional Affairs and Local Government in KZN as well as the payment that Intaka made via the bank account of Kuboni and Shezi attorneys of R1 053 000.00 which Dr Savoi, in his affidavits – affidavit that he provided to the police described as a donation to the ANC and just – I then track where that money flowed via the Attorney's Trust account
10 how it was spent on personal expenses of Mr Tshabalala, the head of the Department of Health in KZN and subsequently in cash to the MEC of Traditional Affairs and Local Government Mr Mabuyakhulu . Chair then on the left of that page I then also detail two payments that were made to an entity called Rowmoor Investments, two payments of R500 000.00 each. Rowmoor investments is an entity – the director of which is a gentleman by the name of Lindon Mkhwanazi who at the time was the boyfriend of the MEC of Health in KZN Ms Peggy Nkonyeni. So Chair and we'll come to all the detail, but effectively there was procurement irregularities, the procurement process was manipulated to
20 the benefit of Intaka in both the Department of Health on two instances for the purchase of the water purification plants as well as for the purchase of the Oxyintaka plants it was also manipulated in the Department of Traditional Affairs and Local Government and at the same time the MEC's for both those departments or people linked to them were receiving payments. Chair, I'm not sure if Ms Wentzel wants

me to go into the details but I can.

CHAIRPERSON: Ja she will lead you.

ADV SUSAN WENTZEL: Thank you. Mr White can we start first and remembering that the Chair doesn't know all the details and what each matter involved so we need to explain these things very carefully, can you deal with the procurement in the first instance that involved Mr Tshabalala and then when we've done that, we will then as a separate inquiry, look at the procurement that involved the MEC for Health Mr Peggy Nkonyeni, is that suitable?

10 **MR WHITE**: Yes Chair.

ADV SUSAN WENTZEL: Okay so can we start now dealing with the procurement that Mr Tshabalala was involved with and perhaps we can start with a memorandum dated the 9th of May 2005, it's Annexure TSW13 on volume C Chair, page 1088.

CHAIRPERSON: You explained that Ms Peggy Nkonyeni was MEC for Health and you explained who Mr L H Mokoena was, I think you said Mr Mabuyakhulu was MEC for Traditional Affairs is that correct?

MR WHITE: And Local Government.

CHAIRPERSON: And Local Government.

20 **MR WHITE**: Yes.

CHAIRPERSON: What was Mr Tshabalala's position?

MR WHITE: Chair he was Head of Department for the Kwa-Zulu Natal Provincial Government – sorry Head of the Finance Department, Treasury.

CHAIRPERSON: Provincial Treasury?

MR WHITE: Provincial Treasury Chair.

CHAIRPERSON: Oh okay and S D D Tshabalala that appears there was his spouse?

MR WHITE: No Chair that's Mr Tshabalala himself, Mr Siphon Tshabalala.

CHAIRPERSON: Oh and then the B N O – the initials B N O is the wife?

MR WHITE: That's the wife Chair.

CHAIRPERSON: Oh okay.

10 **MR WHITE**: You had a separate business that she had entered into of which Gaston Savoi – Dr Savoi was also a Director of.

CHAIRPERSON: They were Directors of a particular entity Shiroz Medical?

MR WHITE: Correct Chair.

CHAIRPERSON: Yes okay, thank you.

ADV SUSAN WENTZEL: So we're now referring to the memorandum it starts at page 1088 or 1089 it's Annexure TSW 13 and if I might refer you to page 1116...[intervenes].

CHAIRPERSON: Just give me the page numbers again and it's RR4 C?

20 **ADV SUSAN WENTZEL**: Yes Chair.

CHAIRPERSON: Ja page number?

ADV SUSAN WENTZEL: And the document Chair, starts at page 1089 and perhaps Mr White you can identify the document, it's a report by you dated the 29th of July 2011, is that correct?

MR WHITE: That's correct Chair, that's the report that I prepared

based on the investigation that had been conducted into the purchase of 20 water purification plants by the Department of Local Government and Traditional Affairs in Kwa-Zulu Natal. So that effectively summarises the procurement process, who was involved, what they did, what they did incorrectly down to the payments, the flow of funds, I refer to a number of affidavits that were obtained by the investigating officers in the case. Chair this investigation was different to the Panday investigation that I referred to previously, in that myself as well as staff working for me, assisted the police with actually interviewing
10 witnesses and obtaining statements. So it was – there was more involvement in this investigation whereas the Panday investigation was more just an analysis of documents that were provided.

CHAIRPERSON: Okay.

MR WHITE: Chair just to – the link into KZN, Mr Siphos Tshabalala the head of the Provincial Treasury was one of the first people that met Dr Savoi from Intaka. He was introduced to him there was a trip to South America to Brazil and I think to one other country that amongst others Mr Tshabalala went with to see what products and services Intaka could provide to see them in operation in Brazil that was a trip that was paid
20 for by Intaka. Following that there was then ...[intervenes].

CHAIRPERSON: Do you know why it would have been – it should have been paid for by Intaka in terms of Mr Tshabalala why it wasn't paid for by Government or was that one of the issues you had to look at?

MR WHITE: Chair it wasn't something we investigated.

CHAIRPERSON: Ja.

MR WHITE: It appeared that the trip was at the suggestion of Intaka to try and convince the provincial Government, these are the things and you should come and see them so that we can then take further what we can offer you.

CHAIRPERSON: Okay.

MR WHITE: Char that...[intervenes].

ADV SUSAN WENTZEL: If we can return to the memorandum that I was referring to it's on page 1116 Chair...[intervenes].

CHAIRPERSON: Was there something you still wanted to say Mr
10 White?

MR WHITE: No Chair, it's fine.

CHAIRPERSON: Is it fine?

MR WHITE: Yes.

CHAIRPERSON: Okay alright.

ADV SUSAN WENTZEL: If we can refer to the memorandum from Mr Tshabalala to Dr Makizi, dated the 9th of May 2005 appearing on 1116 and if you could please explain that and what it revealed to the Chair, Mr White.

MR WHITE: So Chair subsequent to the visit to South America there's
20 then various documents that are prepared, many of which Mr Tshabalala either initiates or is part of the preparation or one of the signatories to the documents that are proposing the use of Intaka for various – the supply of Oxyintaka being the oxygen units and the Wataka being the water purification units and this memorandum is written to the MEC at the time Dr Nkeez and it's relating to the proposal

to supply gas generating equipment and water purification to the province and I just state in the document that he states – in my report I just take some extracts and he says, this being Mr Tshabalala,

“Proposal have been received from a company in Cape Town to supply equipment for on site generation of gas as well as equipment that purifies water at source. The Department of Health is piloting the gas generating equipment at Murchison Hospital Trade and Investment KZN has been involved in the water purification equipment for some time”,

10 Chair the Trade and Investment entity in KZN, the idea was they were trying to convince Intaka to set up a manufacturing plant in KZN, so to generate jobs. That never happened in the end, it’s used as one of the reasons to appoint Intaka to provide Wataka’s, the water purification plants but Intaka doesn’t manufacture the plants themselves anyway they outsource it to a third party and the manufacturer of those plants was based in Cape Town because that’s where Intaka was based but this memorandum Chair, which is the first initiation of the appointment, it’s effectively where it started to appoint Intaka by the Traditional Affairs and Local Government, Mr Tshabalala
20 states, and I’ll read from paragraph 9.33 third line,

“Going through communities during the pre-budget roadshows we experience...[intervenes].

CHAIRPERSON: I’m sorry this is not a memo written by Mr Tshabalala it’s your summary of what that memo said.

MR WHITE: It’s extracts of it Chair, so some of it is direct quotes and

some of it is a summary. So if its in italics...[intervenes].

CHAIRPERSON: Yes so in other words it's your comment on that memo.

MR WHITE: Correct.

CHAIRPERSON: It's not the memo itself.

MR WHITE: Correct Chair.

CHAIRPERSON: Ja.

MR WHITE: So Chair just – if there's a need for the documents that reference in the right-hand column D1 would be the electronic version
10 the Commission has.

CHAIRPERSON: Ja okay.

MR WHITE: So in that memorandum by Mr Tshabalala I've quoted an extract in paragraph 9.33 where he states,

“Going through communities during the pre-budget roadshows we experienced first-hand that communities still need water desperately whereas we are undergoing an exercise with Umgeni Water on the long-term solution of water provisioning in the Province we still have to contend with the fact that our community still do not have access to clean water”.

20 **ADV SUSAN WENTZEL**: And what recommendations did he make in the letter?

MR WHITE: Chair I quote the recommendations on the following page, page 1117, he made the following recommendations,

“It is recommended that we encourage the MEC for Health and the head of department to finalise the installation of the

Oxyintaka at Murchison and to consider seriously the acquisition of further equipment to optimise on the benefit of the equipment. It is recommended that an amount of R22million be allocated from the Poverty Alleviation to provide the water generating equipment to all the municipal districts. It is also recommended that negotiations are commenced with the benefiting municipalities on the running cost of the equipment”.

CHAIRPERSON: Okay I think we’ll have to stop there for the lunch
10 break, we’ll take the lunch break now and we’ll resume at 2 o’clock.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Let us continue.

ADV SUSAN WENTZEL: Thank you Chair. Mr White prior to the lunch adjournment you dealt with the memorandum dated the 9 May 2005.

CHAIRPERSON: Can you switch on your microphone. Thank you.

ADV SUSAN WENTZEL: From Mr Shabalala at bundle C page 1116, is that correct?

MR WHITE: That is correct Chair.

20 **ADV SUSAN WENTZEL:** Now after that was there further correspondence between Mr Shabalala and Mr Savoi?

MR WHITE: There was Chair.

ADV SUSAN WENTZEL: And do you deal with that correspondence in your report?

MR WHITE: I do Chair. I set out various interactions with them on the

pages that – on the next few pages that follow Chair.

ADV SUSAN WENTZEL: Then the next significant correspondence appears at page 1125. If we could go to that? And this is a letter from Mr Shabalala to Gumbi-Masilela dated the 31 August 2005. Is that correct?

MR WHITE: That is correct. I – Chair that is where I refer to that letter and then copy some extracts of that into my report.

ADV SUSAN WENTZEL: Who was Gumbi-Masilele?

MR WHITE: Chair she was the Head of Department of the KwaZulu
10 Natal Local Government and Traditional Affairs at the time.

ADV SUSAN WENTZEL: Could you please tell the Chair about this letter and what it stated?

MR WHITE: So Chair this again – appears to indicate that the – if there was any urgency in this process to procure these water purification plants from Intaka the only urgency was to spend the money rather than an urgency for the community that needed clean drinking water. And I say that Chair because – and I quote an extract out of that letter which is from Mr Shabala at paragraph 9.053 at the bottom of that page and it reads in the – starting at the end of the third
20 line:

“As we are now approaching mid-year in the financial year there is a considerable urgency to allocate and expend the funds in question lest we are left with unspent funds at the financial year end. As this project requires careful investigation an extensive

consultation with the Municipalities it would be appreciated if you would update this office as a matter of urgency as the progress to date if any.”

ADV SUSAN WENTZEL: And the process with what did that refer?

MR WHITE: Chair that is progress with identifying the Municipalities that would require these water purification plants and installation thereof. Because the issue Chair there was quite a history to this but when it came to installing them one needed to identify an appropriate site with a source of water, with a local municipality that was prepared
10 to pay for the maintenance as well as the chemicals to run the plant. So there a number of things that needed to be done. It was not just a matter of dumping something somewhere and it would just work. So you needed buy-in from up to 20 municipalities to take these plants and have them installed in their areas.

ADV SUSAN WENTZEL: So ultimately just to explain that how many of these water purification plants were bought?

MR WHITE: So Chair 20 were bought in the end and I will come to the detail later. But in some of them three years later they still had not been installed. But they bought on the basis that it was an emergency.

20 **ADV SUSAN WENTZEL:** And why was emergency utilised – the?

MR WHITE: Chair my view the sole purpose of that was to avoid going out on a competitive tender process. There could be no other reason.

ADV SUSAN WENTZEL: Then if we could go to page 1127.

MR WHITE: So Chair in that – on that page in the middle I refer to the meetings of the inter-departmental task team that were held in

September and October of 2005. Chair because this – the installation of these water purification plants now involved more than one department because Provincial Treasury was pushing or motivating the idea. They were arranging for the money to be reallocated from the poverty alleviation fund to the Department of Local Government. Local Government needed to identify the communities where they would be installed and then Economic Development was also involved because there was an initial thought that Intaka would set up a construction facility in KZN to build these plants – a manufacturing facility. So as a result they set up this task team of the three departments to try and manage and sort out all the logistics of procuring these. And again Chair I just want to refer and in the fourth line of – of paragraph 9.058 I state:

“It must be noted that even at this early stage the only emergency seemed to be the need regarding the funding for this project with the following being stated in the minutes. There was extreme urgency to finalise this project given the fact that six months of the financial year had already lapsed. The adjusted estimate was just around the corner and a decision regarding the funding needed to be made soon.”

So Chair not an urgency or an emergency that the communities do not have clean drinking water but rather the need to spend the money.

ADV SUSAN WENTZEL: Then if we could go to page 1133? And the joint memorandum dated the 10 October 2005 referred to in paragraph

9.068.

MR WHITE: Chair just for the record if I could make two corrections to that paragraph? In that paragraph in the third line I refer to the Minister of Finance and the Minister of Local Government. Chair it should be the MEC in both instances it should not be the Minister. Chair that is a memorandum that was issued jointly by Mr Shabalala the Head of the Provincial Treasury, Ms Gumbi-Masilela the Head of Local Government and Traditional Affairs and I think it is Ms Phaphama the acting Head of Economic Development. That memorandum was
10 addressed to Doctor Mkhize as the MEC of Finance and Economic Development and Mr Mabuyakhulu as the MEC for Local Government and Traditional Affairs. That memorandum is title Proposal to allocate R43 million ...

CHAIRPERSON: It is a – I am sorry Mr White.

MR WHITE: Yes Chair.

CHAIRPERSON: It Mabuyakhulu. It sounded like you were saying Mabayakhulu. I may have misheard you.

MR WHITE: Thank you Chair I will try and get ...

CHAIRPERSON: Mabuya – buyakhulu.

20 **MR WHITE:** Correct going forward.

CHAIRPERSON: It should not be difficult.

ADV SUSAN WENTZEL: Thank you Chair.

MR WHITE: I am from KZN Chair so I have got no excuse. The proposal to allocate R47 – sorry R43 million from the Poverty Alleviation Fund to the Department of Local Government and Traditional

Affairs to purchase Itaka water purification plants.

ADV SUSAN WENTZEL: Okay if you can stop here. The memorandum that we spoke about before the lunch adjournment referred to a figure of R22 million. How have we now got to a figure of R43 million?

MR WHITE: Chair in the intervening period there was a quotation that had been sent to Mr Shabalala. It said it would cost R43 million and other than that there was no reason for the increase in the amount.

CHAIRPERSON: The initial – was there an initial amount which was less than R43 million?

10 **MR WHITE:** It was 22 Chair and I refer to it in one of those previous...

CHAIRPERSON: Oh yes, no I think I remember I saw that. Ja

MR WHITE: Ja.

CHAIRPERSON: You testified about that.

MR WHITE: So they have just increased the amount now. Now it is at 43. Chair it ultimately ends up at 44.5 plus transport of 5.8 million. So it just steadily increases over the time.

CHAIRPERSON: And it is never explained how it increased?

MR WHITE: No Chair.

CHAIRPERSON: Hm. Okay.

20 **MR WHITE:** But Chair just to put it into context. The cost according to the manufacturer of the Watakas so the entity external to Intaka that manufactures them said the delivered cost would be R750 000.00 each. Here they bought 20 for R44 500 000.00 each so R2.2 million each plus there was a further R5.9 million transport for the 20. So they effectively paid R50 million close to R2.5 million each and the cost

price to Intaka is R750 000.00 delivered.

ADV SUSAN WENTZEL: Thank you Chair. If you can then deal further with this memorandum of the 10 October 2005?

MR WHITE: So Chair this memorandum effectively summarises what the departments will do that are going to – to make this procurement happen and the processes. So the entities identified as Intaka Investments and then in paragraph 2 on that page, 1133,

10 “The Department of Local Government and Traditional Affairs made a number of comments including and then I quote Chair – accepting responsibility for the project. Conducting preliminary investigations. Compiling a business plan and then importantly obtaining waiver of tender requirements approval from the Central Procurement Committee with the assistance of Treasury. Entering into a contract with the supplier to purchase 20 plants at a price of original quotation and compiling memoranda of agreements with district municipalities prepared to accept plants.”

20 So Chair one of the – the key things they needed to do was to obtain a waiver of the tender requirements with the assistance of the Provincial Treasury of which Mr Shabalala was the head of and I will show you ultimately had a significant role in obtaining that waiver. And then if we go to the bottom of the page what Provincial Treasury made two commitments to expedite the project. The first one is transferring an

amount of R43 million from the Poverty Alleviation Fund to Local Government and Traditional Affairs in the adjustment estimates for the 2005/2006 financial year subject to an approved business plan. And then the second point. Ensuring that Local Government and Traditional Affairs obtains central procurement committee approval for waiver of tender procedures. Chair just at the time in KZN there was a – all tenders were approved regardless of which department they were by a central procurement committee. Each department could not approve the acceptance of a tender it went to this committee which was chaired
10 by Mr Shabalala.

ADV SUSAN WENTZEL: So am I understanding you correctly that he was going to chair a committee that was going to – was asked to approve a waiver of tender requirements in respect of a tender that he had introduced to the department and in respect of which he had travelled overseas with Mr Savoi?

MR WHITE: Correct Chair.

CHAIRPERSON: But is the position not – should not that – there was going to be no tender?

MR WHITE: Ja but Chair there needed to be a waiver.

20 **CHAIRPERSON:** Ja they had...

MR WHITE: So – so ...

CHAIRPERSON: That is the waiver ja.

MR WHITE: So the waiver goes to the tender committee to approve that there is no requirement to have an external – third parties quote for it.

CHAIRPERSON: Hm.

ADV SUSAN WENTZEL: Yes Chair you are correct. The – my use of the word tender in that instance was – was misused. Thank you. Could we then – so this is happening now on the 10 October 2005, is that correct?

MR WHITE: Correct Chair.

ADV SUSAN WENTZEL: If we could then go to page 1138.

MR WHITE: So Chair at the top of that page in paragraph 9.077 I summarise – in fact I quote from an email that was sent by Mr
10 Shabalala to Doctor Savoi of Intaka on the 3 November 2005. Chair in these – this came from the electronic records of Intake that had been seized by the South African Police Service. So they seized, they made images of computers and then they provided it to us for further analysis. And this was one the emails identified. It is titled Intaka and then Holla Amigo.

“Thank you for the email I have received it. Thank
you also for the...”

CHAIRPERSON: I am sorry I am look – it looks like I am looking at – am I looking at the right place 9.077 the paragraph?

20 **MR WHITE:** Correct Chair and then the number 1 below that, the sub
1.

CHAIRPERSON: Yes okay alright.

MR WHITE: So I am referring to an email from Shabalala to Doctor Savoi dated the 3 November 2005. And the contents of that email read:

“Wataka, Holla Amigo thank you for the email I have

received it. Thank you also for the tie it is bright and lovely. I wish to ensure you that the province is really doing its best to ensure that by the end of the year there is real progress on this issue.”

ADV SUSAN WENTZEL: And this if you just – for the timeline this is approximately weeks after the memorandum was addressed requested a waiver of the tender requirements?

MR WHITE: Correct Chair and it is not – it is just not the type of email you would be expecting from a Head of Provincial Treasury to a
10 prospective supplier. There was a relationship between the two that was much closer than one would normally expect from an official in this situation.

ADV SUSAN WENTZEL: Then if you can give...

CHAIRPERSON: Ja well I see that it says Holla Amigo. I think that some of us will understand that language in a certain way especially certainly in the townships they will understand it. Okay alright. Thank you.

ADV SUSAN WENTZEL: Thank you Chair. Could you then deal – still
20 on page 1138 with the submission from Gumbi-Masilela to the Central Procurement Committee dated the 16 November 2005?

MR WHITE: So Chair even although all these decisions had been made there was then still a need for want of a better – better words to tick the boxes to say it has gone to the Central Procurement Committee and they have decided that there is no need to go out to tender. So effectively grant the tender waiver. The formalities had to be – to be

followed through. Chair this submission which came from the Head of Local Government and Traditional Affairs it is to request the waiver for the purchase of the water purification plants and then reading from the fifth line down a quote from the memorandum:

“The entire project can therefore be regarded as a pilot project with major growth potential. As a result establishing a manufacturing plant in KZN job creation and skills transfers.”

Chair then I go on to say:

10 “The writer does not include relevant delegation applicable to the waiver but concludes it is submitted that the waiver of tender and the placing of an order upon Messrs Intaka Investments is the only avenue by which the equipment can be procured and payment effected within the timeframe of this financial year.”

Chair there is absolutely no motivation as to why this is urgent or an emergency.

CHAIRPERSON: Yes I am just thinking about this waiver issue. I – I
20 had last year a number of witnesses particularly from Transnet where there were issues about tender procedures that had not been followed. And there was a lot of evidence about exceptions when procedures do not have to be followed. One of them I think is that if the product you are looking for or the service or the goods and there is only one supplier for that product if I recall correctly. And my query was always

what is wrong with inviting anybody who can provide that because if that supplier is the only one then it will be the only one which will respond to the invitation. But just in case there is somebody else that you do not know about who can provide then they can come up and that is – that is – that should be good for you as a government entity. But the question that arises is whether this was a situation where Intaka was the only entity that could supply this because I think the person who is writing there seems to suggest that as a basis for seeking a waiver.

- 10 **MR WHITE:** So Chair if one reads this carefully they do not actually – nowhere do they say this – they are the sole supplier of this product. What they in a roundabout way are trying to get to is to say that Intaka says they will build a manufacturing plant in KZN if you order these as a first step and then order further from us in the future.

CHAIRPERSON: Well I think I was looking at that last sentence. It says:

- 20 “It is submitted that waiver of tender and the placing of an order upon Messrs Intaka Investment is the only avenue by which the equipment can be procured.”

MR WHITE: Chair but...

CHAIRPERSON:

“And payment effected within the time frame of this financial year.”

MR WHITE: Chair the...

CHAIRPERSON: I think I was look – I was focussing on the only way in which the plant can be procured.

MR WHITE: Chair the problem is the word and. Because and paid for within the financial year. So if they went out to tender.

CHAIRPERSON: Yes but the...

MR WHITE: They may not have been able to pay for it now.

CHAIRPERSON: Ja but the question I am asking is, whether this plant could be obtained anywhere other than through Intaka as a matter of fact?

10 **MR WHITE:** Chair as a matter of fact there were similar products that could be made – that could be purchased.

CHAIRPERSON: That could be?

MR WHITE: Yes.

CHAIRPERSON: Which could do the job just as well?

MR WHITE: They are not exactly the – they are not exactly the same.

CHAIRPERSON: Ja.

MR WHITE: But they are similar.

CHAIRPERSON: Ja. But they could – they do the same job?

MR WHITE: Correct Chair it is purifying water Chair it is not a...

20 **CHAIRPERSON:** Yes.

MR WHITE: It is not a unique

CHAIRPERSON: Yes.

MR WHITE: Thing that they doing.

CHAIRPERSON: So as a matter of fact it would not be – it would not have been true to say Intaka was the only one who – which provided a

plant that would do the kind of job that would be used for the purpose for which this one was required.

MR WHITE: Correct Chair.

CHAIRPERSON: Okay.

MR WHITE: Intaka is not a sole supplier.

CHAIRPERSON: Yes was not a sole supplier.

MR WHITE: There are other entities and we did speak to some others in the process of the investigation trying to work out what a comparative pricing would be.

10 **CHAIRPERSON**: Ja.

MR WHITE: So that is why I can say with – as a matter of fact there is some similar products out there.

CHAIRPERSON: Yes. Okay that is helpful.

ADV SUSAN WENTZEL: And did Intaka manufacture these plants?

MR WHITE: No Chair they were manufactured on their behalf by a manufacturer in Cape Town.

CHAIRPERSON: So – so there is a man – there was a manufacturer in Cape Town?

20 **MR WHITE**: That – that – the manufacturer in Cape Town actually made stainless steel vats for the wine industry.

CHAIRPERSON: Hm.

MR WHITE: And effectively they used stainless steel tanks with some pumps and a filtering process that is attached to the stainless steel tank.

CHAIRPERSON: Yes.

MR WHITE: So they used – they gave the design to them to manufacture for Intaka.

CHAIRPERSON: Yes. Thank you.

ADV SUSAN WENTZEL: Yes. And just to digress pursuant to the Chair's point about being the only people who could manufacture these plants. In the course of your investigation was the – did it ever occur that it was only Intaka that met the bid specifications and how did that occur? And we will deal with it in more detail later but if you can just alert the Chair to that?

10 **MR WHITE:** So Chair there were no bid specifications. It was – this was effectively an unsolicited bid that worked its way through the process starting with Mr Shabalala and they never went to them and said, this is what we require.

CHAIRPERSON: Yes.

MR WHITE: It was – it was different with the Ox-Intaka where there were bid specifications but the issue with that is Intaka helped the department set the bid specifications so they ended up being the only one that was compliant.

CHAIRPERSON: Yes.

20 **MR WHITE:** So that was different. But on the Watakas there were no bid specifications set.

CHAIRPERSON: Hm okay.

ADV SUSAN WENTZEL: Thank you.

MR WHITE: Chair just to continue with that submission and the approvals that were then given. The approval was not done in a formal

meeting it was done on a round robin basis. So the submission was sent to all the members of the Central Procurement Committee where they could write approved or not approved and their reasons. Chair I set those out on the following page, page 1139 and what the various comments were by the different members if they wrote a comment. So For Mr Siphos Shabalala he merely said approved. He did not declare any conflict of interest. He did not abstain from giving a view. He said approved. Doctor Mbnjwana [?] supported the recommendation. Mrs Coetzee supported the recommendation but she made a comment next

10 to her – her signature which said, more info on how the particular supplier was selected would be useful. So she effectively asked a question. Mr Conradie supported the recommendation and made the comment, I have no problem with the waiver as an urgent case but the market should have been tested. Mr Malloy also supported it with the comment, information provided not entirely satisfactory however the need and desirability for the project implementation is admissible and Mr Ibrahim just said supported. So Chair three of the members while they supported it effectively raised queries about the process that had been followed. Chair that never – so that led to some questions

20 effectively in the process that followed. And there were some questions from Local Government and Traditional Affairs as to whether this was approved or not and whether further action needed to be taken.

ADV SUSAN WENTZEL: So then if I can refer you to page 1141 and the letter from SCN to Tender Award Committee Department dated the

12 December 2005 at paragraph 9.8 – 9.086?

MR WHITE: So Chair based on that submission that had been prepared to the Central Procurement Committee and the comments about supported with various comments attached there was then a letter prepared by Supply Chain Management and Provincial Treasury which summarised the outcome of the process and in that she stated:

“The Central Procurement Committee has by way of round robin granted approval for the waiver of normal tender procedures for the procurement of 22 mobile water purification plant through the Poverty

10 **CHAIRPERSON:** I am - I am sorry. Where are you reading from?

MR WHITE: Sorry Chair. On the bottom of page 1-1-4-1

CHAIRPERSON: Oh.

MR WHITE: Paragraph 9.0-8-6.

CHAIRPERSON: Okay.

MR WHITE: And from the - the middle of the fourth line in that paragraph.

20 “Central Procurement Committee has by way of round robin granted approval for the waiver of normal tender procedures for the procurement of 22 mobile water purification plant through the Poverty Alleviation Fund from Intaka Investments at a total cost of 43 230 000. However concerns were expressed that there is no problem with the waiver as an urgent, but market price should be tested.”

Chair that is an exact quote out of her - her memorandum

that was prepared. Chair, I - and I know you asked me just briefly before that about a sole supplier. The difference between what may have happened at Transnet and what happened in KwaZulu-Natal at the time was KwaZulu-Natal had a KZN Procurement Act.

So they needed to comply with that Act when procuring and Chair if one - I then extracted from that Act at the bottom of that page. Where I say I examined the KZN Procurement Act and there is no provision for urgent cases. Nor does it detail waivers in such a case, but there is a subsequent KZN Provisional - Provincial Treasury
10 Practice Note 2 of 2006 that does define urgent and emergency cases.

“When the following criteria have been met.”

And I am reading from the top of page 1-1-4-2 and there is three criteria.

“The duration of invitation of bids would have a material impact on service delivery community/public i.e. is of critical importance resulted from natural disaster i.e. beyond human control and immediate action is required to avoid a dangerous or life threatening situation, misery or
20 want. Poor planning is not a justifiable cause of an emergency or urgent situation. Written motivation must be provided detailing the reasons as to why procurement must be done under circumstances of urgency or emergency.”

Chair, the - the submission to the Central Procurement

Committee never covered any of those criteria. Chair while there - there was a doubt in anybody that we spoke to that there was a need to provide clean drinking water in the rural areas in KZN. There was no specific emergency identified where it needed to be done now to such an extent that you could not follow a procurement process and Chair what is interesting is that this process some four years later some of these Watakas had still not been installed. So ...

CHAIRPERSON: Hm.

MR WHITE: Any justification even if it was justified as an emergency.

10 **CHAIRPERSON:** Hm.

MR WHITE: You cannot justify it four years in advance of using it.

CHAIRPERSON: Hm. Hm.

ADV SUSAN WENTZEL: Could you then refer to the further letter from Mr Shabalala to Gumbi-Masilela dated 27 January 2006 referred to on page 1-1-4-2 paragraph 9.0-8-7.

MR WHITE: So Chair that is where Mr Shabalala as the Chairperson of the Central Procurement Committee - there was this letter written where he refers to the waiver of tender and he notes that there has been slow progress in this key poverty alleviation project and that it is
20 effectively of great concern with the need to commit the funds before the end of March 2006 which is only two months from the end of the financial year.

ADV SUSAN WENTZEL: And you say that the fact that only two months remains in this financial year seems to be as important to Shabalala as the basic needs of the affected communities.

MR WHITE: Correct Chair. The - the common thread throughout these - these meetings and minutes and memorandums etcetera is the need to spend the money. One would think the starting point would be the need of the community and the spending the money and the date you spend it by is once you follow the process.

Whereas here it looks like you are more interested in spending the money than - than actually delivering a service to people.

ADV SUSAN WENTZEL: And what happens if the end of a financial year comes and you have not spent the money as a department?

10 **MR WHITE:** Chair, it - it goes back to the Treasury or to the National Treasury.

ADV SUSAN WENTZEL: So now the further minute referred to on the same page - 1-1-4-2 of the KwaZulu-Natal CPC Meeting held on 2 February 2006. If you could please deal with that.

MR WHITE: So Chair that meeting on 2 February ratified the decision that had been taken by round robin, but the minutes for that meeting ...

CHAIRPERSON: Before you talk about the minutes. I just want to raise something here. You mentioned that the approval of the waiver was not done in circumstances which complied with the criteria - which
20 met the criteria spelt out in Practice Note 2 of 2006. That is earlier in - on the same page.

MR WHITE: Correct Chair.

CHAIRPERSON: If the meeting of the KZN CPC was on 2 February 2006 was that practice note in operation already?

MR WHITE: Chair, I would have to check. I do not ...

CHAIRPERSON: *Ja*, because it is quite early - the meeting is quite early in the year. There - there may well be a possibility that the practice note came after the date of the meeting.

MR WHITE: I would have to check Chair ...

CHAIRPERSON: *Ja*.

MR WHITE: But the point being even if it was not spelt out in that practice note similar provisions appear in procurement policies and procedures throughout the country. So one would not be able to just make up the basis for a waiver.

10 **CHAIRPERSON:** *Ja*. No, no. I under - understand that. It is just that if we say they acted in breach of that practice note - the requirements of that practice note. You must just check whether it was in operation or not. You are probably right that there would be some other legislation or policies that would apply. That would prescribe certain requirements.

What one does not know would be whether they would be exactly the same. I think the last two requirements or criteria as they call them in the practice note seem to be quite familiar. The - they - they or they cannot be contentious. I think it is the first one that I am
20 not sure about whether it would appear in other policies as well. At least the way it is framed.

MR WHITE: I take your point Chair.

CHAIRPERSON: *Ja*. Okay. Thank you.

ADV SUSAN WENTZEL: Thank you Chair. Now Mr White in the minutes of the meeting held on 2 February 2006 there it is stated that:

“The decision had been granted by way of round robin for the waiver. However concerns were expressed that the market price should have been tested.”

The minutes were only confirmed and signed on 2 June 2006 by what appears to be Mr Shabalala. If you could just deal with that and then what transpired the next day on 3 February 2006?

MR WHITE: So Chair because of the way those minutes were recorded indicating that there were concerns about the market price. On the
10 next page I refer to a letter - it is at the top of page 1-1-4-3. That Gumbi-Masilela - the Head of Local Government and Traditional Affairs - sent to Mr Shabalala on 3 February 2006 and she questioned the market price should be tested as it was not understood and whether quotations should be obtained prior to issuing the order to Intaka, because it was not clear from the minutes.

The waiver was approved, but should they now be getting quotations or not. Chair that document was responded to not personally by Mr Shabalala, but by somebody from his office. Chair and I apologise. The - the lines are not numbered, but if one goes
20 down to approximately the middle of the page. Mr Shabalala's office then made a similar report to Gumbi-Masilela on 13 February 2006 and stated and I quote:

“It is clear that the CPC's reference to the market price should be tested was only meant to refer to the ideal situation which would apply in normal

circumstances when time is not an issue and where waiver of tender is not required.”

As a result of that and the fact that the minutes were ultimately approved on 2 June 2006 and order was subsequently placed with Intaka for R44 million - R44.5 million on 5 June 2006. So Chair effectively despite the concerns of members of the Central Procurement Committee about the fact that the market had not been tested.

Prices had not been obtained and the process had dragged on now for more than six months. The decision was now made to place
10 the order.

CHAIRPERSON: But even those members of the - of that committee. They did not represent that the queries they were raising were of sufficient concern for them to say we cannot make a decision until we know about A, B, C, D. They were happy to approve and just provide some comment.

MR WHITE: (Intervenues).

CHAIRPERSON: If they felt strongly that they were not satisfied. They should not have provided approval.

MR WHITE: I agree Chair.

20 **CHAIRPERSON:** *Ja.* It - it maybe - it comes across as a situation where they were happy to approve, but they just wanted to mention something - you know - and - and the question is whether really it puts them in any different position to those who just approved without any comments, because they did not say I am approving on condition that the following will be - the following requirement will be met or

something like that.

MR WHITE: I agree Chair.

CHAIRPERSON: Ja. Okay.

MR WHITE: So effectively Chair that whole committee just rubberstamped the approval.

CHAIRPERSON: Hm. Hm.

MR WHITE: It was almost a formality ...

CHAIRPERSON: Hm.

MR WHITE: Process that had been started by Mr Shabalala some
10 months before.

CHAIRPERSON: Hm.

MR WHITE: He had undertaken in the - the joint memorandum that Treasury would arrange for the ten - tender waiver.

CHAIRPERSON: Hm.

MR WHITE: He chaired the committee that now approved it.

CHAIRPERSON: Hm.

MR WHITE: So effectively he did what he said he will do. I will get the tender waiver.

CHAIRPERSON: Hm.

20 **MR WHITE:** So it was not - it was almost like there was no doubt for months before that this would be the outcome.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: And also his response to the concern raised that the market should be tested, because that is only relevant when you are not asking for a tender waiver.

MR WHITE: Correct Chair.

ADV SUSAN WENTZEL: Now you say these minutes were then signed on 2 June 2006 and three days later the order was placed on 5 June. What happened after that?

MR WHITE: So Chair maybe if I could go back to TSW19 which is on - in RR4D at page 1-9-5-8. That diagram Chair.

CHAIRPERSON: You want the diagram to be put on the screen?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Okay.

10 **MR WHITE:** It needs to be TSW19. So Chair that - that diagram and the piece we have been referring to at the moment is at - is to the top right of that diagram - the Department of Traditional Affairs and Local Government - and the lines I am referring to are the - are the blue line that flows from the department to Intaka.

So there is an order on 5 June 2006 for 21 Watakas as a price of R44.5 million. Chair there was then some backwards and forwards between Intaka and the department and Intaka said this is an ex-works price Cape Town. If you want the product in KZN you must pay for the delivery. Suddenly the department did not have ...

20 **CHAIRPERSON:** And that was never part of any documentation?

MR WHITE: No Chair. (Intervenues).

CHAIRPERSON: And how could - how could anybody have thought that there would be an extra if it was not in the documentation?

MR WHITE: I agree Chair and all along the - the funding available had come from the Poverty Alleviation Fund and it was 43 million.

CHAIRPERSON: Yes.

MR WHITE: They have now actually spent 1.5 million more than they received from the Poverty Alleviation Fund and now Intaka says you need to pay for the transport and delivery. So as a result the whole process delayed by another six months. Then on 5 November 2006 a further order was placed on Intaka for the transport of R5.6 million.

ADV SUSAN WENTZEL: So if the matter was urgent why did it take so long for the transport to be arranged?

MR WHITE: Well Chair that is - that is why everything goes against the
10 fact that it was urgent. Chair then there were some further delays, because the department ...

CHAIRPERSON: So - I am sorry. So - so the amount now with delivery would have gone up to about 50?

MR WHITE: 50.1 million Chair.

CHAIRPERSON: 50.1 million?

MR WHITE: *Ja.*

CHAIRPERSON: Coming from 22 million?

MR WHITE: Correct Chair.

CHAIRPERSON: *Ja.* Yes.

20 **MR WHITE:** Chair there were then further delays with the delivery, because the Department of Local Government could not tell Intaka where to deliver them to and the - and the issue with that was the specific sites and municipalities had not been identified.

CHAIRPERSON: And if it was urgent why would all of those things not have been done in time?

MR WHITE: So Chair when the - that - that is the question. The - that begs the question.

CHAIRPERSON: How - how can you say - how can you take all kinds of measures to say we do not have time even to follow procurement procedures because this is urgent and yet do not know where you will put it once it is delivered.

MR WHITE: I agree Chair ...

CHAIRPERSON: Hm.

MR WHITE: But then what happened was the - one, the financial year
10 end of March 2007 was now approaching plus Intaka was now saying
we manufactured the goods. We want to be paid. If you cannot tell us
where to deliver them. It is not our fault. The department ...
(intervenes).

CHAIRPERSON: And you cannot blame them for that.

MR WHITE: I - I agree Chair.

CHAIRPERSON: At least that part of it. Yes.

MR WHITE: An inspection was then allegedly done by Mr Koen from
the Department of Traditional Affairs and Local Government.

CHAIRPERSON: By Mr ...?

20 **MR WHITE:** Koen.

CHAIRPERSON: Yes.

MR WHITE: And he said I verified they have been manufactured in
Cape Town and as a result a payment was then made. So the payment
by the department of 44.5 million - so not for the transport, but for the
manufacture was then made on 5 March 2007.

CHAIRPERSON: Yes.

MR WHITE: Chair, I will later refer to where I verified some of these Watakas in 2010 and 10 of the 20 were standing on a piece of vacant ground outside of Durban in storage and the manufacturer's plate that was riveted onto them with a serial number etcetera said they were only manufactured in 2008.

So if Mr Koen verified plants that had been manufactured in February 2007. It was not the ones that came ...

CHAIRPERSON: Yes.

10 **MR WHITE:** To KZN.

CHAIRPERSON: Yes.

MR WHITE: It may have been ones that went to the Northern Cape or somewhere else.

CHAIRPERSON: *Ja.*

MR WHITE: They were paying in advance of their plants being manufactured.

CHAIRPERSON: Yes. Yes.

ADV SUSAN WENTZEL: And when you did the inspection were there only 10 plants at that inspection?

20 **MR WHITE:** So - so that is correct Chair. I - during our investigation we received information that where some of these plants were being stored. It was just outside of Amanzimtoti South of Durban and on 26 July 2010 I physically went there with the investigating officer and some members of my team verified that 10 of the plants were standing there.

We took photographs and Chair this was more than three years after they had been paid for. They were still now standing uninstalled.

CHAIRPERSON: And where they were standing was not the site where they were supposed to be or was it the site where they were supposed to be, but not installed ...

MR WHITE: So Chair it was ...

CHAIRPERSON: Or you do not know?

MR WHITE: It was in an industrial park where there are factories
10 around this and was an undeveloped piece of land.

CHAIRPERSON: *Ja.* So it was not ...

MR WHITE: (Intervenues).

CHAIRPERSON: It was clearly not where they were supposed to serve the community?

MR WHITE: No Chair. It was just land that was rented as storage space for them to be placed on until the sites could be - be identified.

CHAIRPERSON: And what was their condition three years after they were paid for ...

MR WHITE: So Chair ...

20 **CHAIRPERSON:** Or had they just arrived there?

MR WHITE: No Chair. They had been standing there for some time. You could see they had been standing there for some time.

CHAIRPERSON: Yes.

MR WHITE: But they are stainless steel. So they do not rust, but you could ...

CHAIRPERSON: Yes.

MR WHITE: Just see by looking at them that they were not - they had not come yesterday.

CHAIRPERSON: Yes. *Ja.*

MR WHITE: They had obviously been standing there for some time.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: But the department if they were still there three years later obviously viewed no urgency in deploying this to the community that needed purified water or to drink clean water.

10 **MR WHITE:** So Chair there was - I - I agree 100 percent. The problem was they could not identify the sites to install them. They bought something that they now did not know where to put.

CHAIRPERSON: But they - in the memorandums - in the - in the letters they projected themselves - that is now Government people/officials involved in this thing - projected themselves as being concerned - very much concerned about the needs of the communities which would be helped by these plants.

20 Did not the - were these plants such that they could not be installed in the communities where they were required or did they require a special kind of environment or what?

MR WHITE: Chair, they just had not identified the sites. So the initial ... (intervenes).

CHAIRPERSON: So they had not gone there to - they gone out to the communities and basically have a look?

MR WHITE: No Chair.

CHAIRPERSON: Which might suggest they - when they talked about communities or a community that needed this kind of plant. They may have just been talking in general. Not because there was a specific community or there were specific communities which had been identified.

MR WHITE: Correct Chair ...

CHAIRPERSON: *Ja.*

MR WHITE: Because one of the initial lists that had GPS coordinates where they should be installed - one of the coordinates was in the
10 middle of a dam. Another coordinate was on the top of a hill where there was no water source and that is why Intaka said we cannot install these, because there is no - you cannot put them in those sites.

So that is the lack of actual thought that had gone through the process and that is why it took years to eventually install them.

CHAIRPERSON: But how do you - how do you as a Government official commit a Government department to paying millions of taxpayers money to get a product that you have not done your homework about to see how and if it will be used? I guess ...

MR WHITE: So Chair ...

20 **CHAIRPERSON:** That is not a question really for you, but ...

MR WHITE: But the unfortunate thing is the negative inference can be drawn is that it was done, because there was a promise of a payment to Mr Shabalala. So he had negotiated at the beginning and I will refer to an affidavit from Dr Savoi of Intaka. That he required a donation linked to this procurement ...

CHAIRPERSON: Hm.

MR WHITE: And that is what I am referring to in that - in that diagram
Chair. The ...

CHAIRPERSON: Is that the R100 - R100 million donation?

MR WHITE: No Chair. It is the R1 million.

CHAIRPERSON: I am sorry. R1 million.

ADV SUSAN WENTZEL: Sorry. Before you go there ...

CHAIRPERSON: Well - well you - you cannot blame me Mr White. I
have heard evidence here of lots of 100's of millions. R600 million and
10 - and billions of Rands. So R1 million has not featured much. Yes.

ADV SUSAN WENTZEL: If we can just go back to the timeline. What
date did you say the payment was made to Mr Savoï's company -
Intaka?

MR WHITE: It is 5 March 2007.

ADV SUSAN WENTZEL: And what happened seven days after that
payment was affected?

MR WHITE: So that is when the payment of R1 053 000,00 was made
to a firm of attorneys in Durban called Khuboni and Shezi Attorneys.

CHAIRPERSON: I am sorry. How much was that?

20 **MR WHITE:** 1 053 000.

CHAIRPERSON: Oh, okay. That was made - that payment was made
...

MR WHITE: Seven days later Chair.

CHAIRPERSON: About seven days after the department had paid
Intaka?

MR WHITE: Correct Chair and that is also referred to on that diagram at TSW19. Where if you look at you can see there is then a - a payment to that firm of attorneys.

CHAIRPERSON: Yes.

MR WHITE: Chair, maybe to then link that ...

CHAIRPERSON: Maybe - I am sorry Mr White. We will come back just now. I just would like us to take a five minutes comfort break. We will just adjourn for five minutes. We adjourn.

REGISTRAR: All rise.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Okay let's continue.

ADV SUSAN WENTZEL: Thank you Chair. Mr White before the adjournment, we were referring to your diagram Annexure TSW19 and you indicated that seven days after payment was made by the Department to Intaka, an amount of R1053million was paid on the 12th of March 2007 to Kuboni & Shezi Attorneys was that paid into a business account or a Trust account?

20 **MR WHITE:** My understanding it was paid into the Trust account of the Attorneys Chair.

CHAIRPERSON: I'm sorry?

MR WHITE: To the Trust account of the Attorneys.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: And now to explain what then happened to the money, I'd like to refer you to the further diagram Annexure TSW21,

Chair Bundle D page 1978.

CHAIRPERSON: I take it that's in the same Exhibit, same lever arch file?

ADV SUSAN WENTZEL: Yes it's RR4 D.

CHAIRPERSON: 1978 you said?

ADV SUSAN WENTZEL: Yes, Chair it won't be in that same file, the file that I think you're working with now is C and this is in D.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Sorry Chair.

10 **CHAIRPERSON**: Now we were looking before the break at the diagram and I'm looking at the file that had the diagram that we were looking at before the five-minute adjournment.

ADV SUSAN WENTZEL: Yes that is the same file, that is the correct file.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: So...[intervenes].

CHAIRPERSON: That is D?

ADV SUSAN WENTZEL: That is D and we were looking at TSW19 and we now want to refer to Annexure TSW21.

20 **CHAIRPERSON**: At 1978?

ADV SUSAN WENTZEL: Yes I believe so Chair.

CHAIRPERSON: Okay it looks like I'm about to find it – okay thank you.

ADV SUSAN WENTZEL: Now we know the money you say goes into Kuboni & Shezi Attorneys Trust account, could you, with reference to

document TSW21 explain to the Chair, what then happened to the money?

CHAIRPERSON: Maybe before that are you able to throw any particular light why it was not R1million it was R1 053 000?

MR WHITE: Sorry Chair?

CHAIRPERSON: The amount was R1million and something, is that right?

MR WHITE: Correct Chair.

CHAIRPERSON: Was it R53 000?

10 **MR WHITE**: Correct Chair.

CHAIRPERSON: Oh okay alright, no it just sounds a little unusual – it looks unusual in my eyes.

ADV SUSAN WENTZEL: Yes Chair and you will in a very short while understand why, perhaps that amount looks like that.

CHAIRPERSON: Alright okay, continue.

ADV SUSAN WENTZEL: Let's just look at this side of the transaction and then we'll go back. What was this money that was paid into the Attorney's Trust account, what happened to it, did you follow the money?

20 **MR WHITE**: So Chair we did and in that diagram at page 1978 in the box in the middle of that page I summarise what happened to that money. So that money was then dispersed by the attorneys on the instruction of Mr Tshabalala or his wife to various entities predominantly relating to the operations of his farm. So Chair it was used to buy...[intervenes].

CHAIRPERSON: To the operation of his?

MR WHITE: To his, being Mr Tshabalala's farm.

CHAIRPERSON: Farm?

MR WHITE: Farm.

CHAIRPERSON: Okay.

MR WHITE: So Chair it was for the community watch, it was to purchase fertilizer, it was to repair a tractor, it was to procure irrigation parts and to repair irrigation systems and then in the second line of those boxes, Blue Serenity is an entity owned by his wife and R300 000
10 in two separate payments was paid to that entity. So Chair, effectively what happened and how it was possible, I can only assume it was because the money earned interest over the time that these payments took place but R1 056 000 was spent for the benefit of Mr Tshabalala and his wife. Chair then those payments started taking place on the 19th of February 2007 so Chair...[intervenes].

CHAIRPERSON: Would that have been within a few days after Kuboni Attorneys...[intervenes].

MR WHITE: It was a week Chair.

CHAIRPERSON: Within a week?

20 **MR WHITE**: Within a week.

CHAIRPERSON: Okay.

MR WHITE: And the money, the final payment...[intervenes].

CHAIRPERSON: It couldn't have earned much interest while it was with them.

MR WHITE: No Chair but it was paid out over the next six months.

CHAIRPERSON: Oh okay so the first payment was within a week?

MR WHITE: The first payment was on the 19th of February and the last payment was on the 21st of August.

CHAIRPERSON: Okay.

MR WHITE: So they used this money over that six-month period to defray their personal expenses on their farm, Mr Tshabalala and his wife.

CHAIRPERSON: So it was paid out, so to speak in instalments?

MR WHITE: In instalments.

10 **CHAIRPERSON**: And it was paid out to the Tshabalala's – all the instalments were directed either to their accounts or to the accounts of entities associated with them?

MR WHITE: Well to entities that they owed money to.

CHAIRPERSON: Oh that they owed money to?

MR WHITE: So these were effectively suppliers to the farm, to equipment for repairs for security etcetera on his farm and him or his wife gave the Attorneys at Kuboni Shezi Attorneys instructions on who to pay and how much.

CHAIRPERSON: That's unusual I would imagine.

20 **MR WHITE**: I agree Chair there's nothing usual about this transaction.

CHAIRPERSON: That's unusual unless you are – you normally do that for that client but it's unusual with a kind of once-off payment that you then, you know, don't pay it to the client you get directed where to pay it by the client but maybe that's just my experience it might not be everybody's experience.

MR WHITE: So Chair based on the facts the prosecutors allocated to this matter drew the conclusion that this was just a way of laundering a corrupt payment. So it was paid through these attorneys on an invoice that they had submitted to Intaka for legal services provided. So again why it goes into a Trust account and not into a business account is unanswered but Kuboni Shezi Attorneys issued an invoice to Intaka, and I will refer to it shortly, it's a one-line invoice for legal services rendered.

CHAIRPERSON: Well it is usual for attorneys to receive the month into
10 – for their services into the Trust account and then transfer it into their business account afterwards so that part is usual it's just easier to account for it if it goes that way or at least that part is normal because you can always check first, you know, if there is enough money this side and then go over that side.

MR WHITE: But Chair the allegation here was, the services had already been rendered so it wasn't paid as a retainer.

CHAIRPERSON: Yes – no, no even when the service has been rendered it's quite usual to do it that way, maybe other firms do it differently that – during my time in practice a lot of – at least black
20 firms would receive the money in the Trust account and at the end of the month when you are supposed to pay your bills, pay your staff, you then check what you have worked for and then you transfer money from the Trust account, because the money in the Trust account is the client's money, you transfer it if you have worked for it, you have earned it, it's your fees, into your business account then you pay

yourself and you pay other people, okay alright.

MR WHITE: Understand Chair.

ADV SUSAN WENTZEL: Chair unfortunately I think that, that in this instance is entirely theoretical because is it clear Mr White that – or is it true Mr White that Mr Savoi himself deposed to an affidavit where he explained why he had made this payment to these Attorneys and before we get to it, so that we can just make this clear, did he say that any legal services were rendered to him in respect of this payment?

MR WHITE: Chair he said the invoice was arranged by Mr Tshabalala
10 and that this firm had provided no legal services to Intaka.

CHAIRPERSON: So was there an invoice that was sent out by this law firm to Intaka?

MR WHITE: Correct Chair.

CHAIRPERSON: And for how much was it, if you remember?

MR WHITE: R1 053 000 Chair.

CHAIRPERSON: Exactly the amount?

MR WHITE: Chair maybe if I could refer to this specific invoice.

CHAIRPERSON: Okay.

MR WHITE: It's in RR4 C.

20 **CHAIRPERSON:** C?

MR WHITE: C, Chair at page 1398.

CHAIRPERSON: What page on C?

MR WHITE: 1398 Chair.

CHAIRPERSON: 1398, so the invoice is dated 14 February 2007 and it's addressed to Dr G Savoi, Intaka Investments Pty Limited and it

says,

“to our fees for work done with the taking of instructions, telephone calls, correspondence, drafting of contracts, consultations, attending meetings, drafting legal opinions, correspondence and miscellaneous attendances, period 2003 to 2006 and then the total is R1 053 000.00”.

Okay so that is the invoice that was issued by the attorneys.

MR WHITE: Correct Chair.

CHAIRPERSON: And you're saying Dr Savoi said they never rendered
10 the services that they say in the invoice they rendered?

MR WHITE: Correct Chair.

ADV SUSAN WENTZEL: But you were saying something about Tshabalala – Mr Tshabalala and his involvement in this invoice or?

MR WHITE: So Chair in that same file with that invoice – that invoice was actually attached to Dr Savoi's affidavit and the affidavit starts at 1386, that same file if you go back about 12 pages.

CHAIRPERSON: 1386?

MR WHITE: 1386 Chair.

CHAIRPERSON: Yes I've got it.

20 **MR WHITE**: Chair that, some twelve page affidavit is an affidavit that Dr Gaston Savoi provided to the police and my understanding is that he came to know that these investigations were taking place, particularly around the R1 053 000 as well as two payment of R500 000 to Linda Makwanazi of Rowmoor Investments and he – my understanding was in an attempt to try and convince the police that he would co-operate

provided this affidavit and this affidavit sets out the background to the payment of this payment to Kuboni Shezi Attorneys and Chair just to read some of the relevant paragraphs if I could go to page 1389 at paragraph 14...[intervenes].

ADV SUSAN WENTZEL: If you could perhaps start...[intervenes].

CHAIRPERSON: 1289 – 1389?

MR WHITE: Correct Chair.

ADV SUSAN WENTZEL: Just to put it in context and the purpose of the affidavit if you could just first read paragraph five on 1386.

10 **MR WHITE**: So Chair that's on the first page of the affidavit at the bottom of the page and it reads,

“I've been advised that the issues that have been raised and with which I should deal in this affidavit are firstly a certain donation that was paid by Intaka in February 2007 and secondly two commission payments paid by Intaka to Rowmoor Investments 738 Pty Limited in August 2007, I shall now deal with each of these issues”.

CHAIRPERSON: Yes, you wanted to go to a paragraph at 1389?

MR WHITE: That's at paragraph 14 Chair and he states,

20 “In addition at this time the question of a donation to the party was also raised which I understood to refer to the ANC”...[intervenes].

ADV SUSAN WENTZEL: Perhaps you should start with paragraph 13 please to just put that in context on page 1388.

MR WHITE: So Chair, paragraph 13 reads,

“The issue of Intaka possibly building a factory in KZN to manufacture water purification and treatment units and create jobs in KZN was also raised by tick KZN from the time of our initial discussions. In response I indicated whilst we were always supportive of local economic development initiatives we already had a factory in Cape Town and a decision as to whether or not to build a further factory in KZN would be based on business considerations such as the number of units ordered. At the time, as I recall there was some discussion of the possibility of 80 units for one area alone in KZN”

10

It then continues at paragraph 14 on the following page,

“In addition at this time the question of a donation to the party was also raised which I understood to refer to the ANC. As I recall the person that did so was Mr Siphso Tshabalala head KZN treasury and I was not averse to the idea of making such a donation as it is a common procedure in any country, however, I did not pursue the matter any further at that time. Paragraph 15 continues, against this background, at Intaka’s costs I therefore arranged a fact finding visit to South America, [indistinct] and Rio de Janeiro for a delegation from KZN so that its members could see for themselves how both the self generating oxygen and water purification plants operated in order to assist the delegation in deciding whether the equipment might indeed prove useful in KZN”,

20

Chair Mr Tshabalala was one of those delegates and then on page – the following page 1390 paragraph 20,

“Against this background the KZN Provincial Government via its department of Local Government and Traditional Affairs subsequently purchased 20 Wataka units from our company at a unit cost of R2 228 181.82 the total amount involved was therefore R44 563 636.40 inclusive of VAT and the relevant department contract tender number being ZNT14262005LS. I have no direct knowledge of the procedures followed within the KZN PG in order to purchase the equipment from Intaka but I’ve always assumed that whatever necessary steps – steps necessary to be taken departmentally were in fact taken”.

CHAIRPERSON: Yes Ms Wentzel I think we were looking at the donation and the trip it made, let’s not get out of that track, let’s finish that.

ADV SUSAN WENTZEL: Yes it will be dealt with if you could perhaps then go to page 1393 where in paragraph 31 you say, you note that the Wataka’s were finally launched with some publicity by the MEC for the Department of Local Government and Traditional Affairs on the 5th of April 2008 some two years after the initial purchase of the equipment. You can then deal with what is said in paragraphs 32, 33, 34 and 35.

MR WHITE: So Chair in those paragraphs Dr Savoi now refers to the donation, and in paragraph 32 he says ...[intervenes]

CHAIRPERSON: But before that the paragraph 31 that talks about the launching, the launch, this would have been a launch before the sites

were identified where these plants would be installed.

MR WHITE: Well Chair they installed ...[intervenes]

CHAIRPERSON: They installed some?

MR WHITE: Ja, one or two, so that was the start of the project.

CHAIRPERSON: Okay, okay.

MR WHITE: So just before they launched the first one, or installed the first one it took two years.

CHAIRPERSON: Mmm.

MR WHITE: So in 2020 they may have got to ten, there were still ten
10 left.

CHAIRPERSON: Yes.

MR WHITE: Over the next two years they installed another nine.

CHAIRPERSON: Yes.

MR WHITE: But even the very first one took more than two years, and that's on Intaka's version.

CHAIRPERSON: As far as you know the last time you knew what was the position about what ultimately happened with ...[intervenes]

MR WHITE: Chair I don't know what happened to the last ten.

CHAIRPERSON: *Ja*, yes okay.

20 **MR WHITE:** Chair then in paragraph 32 Dr Savoi goes on to state:

“Be that as it may when Intaka finally received payment in early 2007 I asked Mr Tshabalala about the issue of the donation to the party, which had originally been raised right at the outset of the initial discussions in KZN. He informed me that Intaka would be sent an invoice against which we

should make payment. I also note that as a general you make payments for any goods or services only against invoices and that we had been informed by professional advisors that we should always obtain documentation in support of payments.”

It goes on in paragraph 33:

“Subsequently I received an invoice from a firm of attorneys called Shezi and Gabone for an amount of R1 032 000 inclusive of VAT, which invoice was subsequently paid by Intaka. I attach a copy of the invoice and supporting documentation for the payment.”

He then goes on, on the following page in paragraphs 34 and 35 to say:

“I have no knowledge of what happened to this money once it had been paid to the attorneys and do not know whether the party in fact received it. I have no acknowledgement of this. However I confirm that no legal services as referred to in that invoice were ever rendered to Intaka by the attorneys concerned.

Although I acknowledge that it is incorrect to have categorised the donation as legal expenses I am not familiar with the manner in which political donations are sourced and dealt with in South Africa. I merely responded to the directions of Mr Tshabalala in this regard. I feel I should also add that Mr Tshabalala was one of the most helpful officials with whom we dealt with in the KwaZulu Natal

Provincial government and that he has never requested a personal donation for himself from me.

CHAIRPERSON: Yes.

MR WHITE: So Chair on Intaka's own version they link the payment of this R1 053 000 to the money they received from the department of Judicial Affairs and Local Government, so that's not just an inference I am making that it is the same money, they say it is the same money, the issue of a donation was discussed when we first discussed doing business in the province with Mr Tshabalala, now that we have received
10 a significant payment we asked him about it and he arranged effectively fraudulent documentation from attorneys that didn't provide a service, he effectively laundered the proceeds of this donation.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: And Chair it is my submission that that would explain why the invoice or the amount paid wasn't exactly R1million, the invoice which had been requested by Mr Tshabalala was the amount of R1 053 000 and the amount that was ultimately paid to the benefit of Mr Tshabalala was R1 056 204.98, it is only that difference, with respect Chair, that can be accounted for by interest and it is my
20 submission that the only inference for it being made in that amount is to disguise the fact that it was a round figure million Rand and not for legal fees.

Now in your investigations did you determine whether we know from following the money, the money from the trust account is used to pay Mr and Mrs Tshabalala and expenses in respect of the farm, it pays

their expenses, is that correct?

MR WHITE: That is correct Chair.

ADV SUSAN WENTZEL: Now ...[intervenes]

CHAIRPERSON: Sorry, so it came into the trust account of the attorneys and it went out to Mr Tshabalala's creditors through the same account.

MR WHITE: Correct Chair.

CHAIRPERSON: It didn't go via the business account.

MR WHITE: Correct Chair.

10 **CHAIRPERSON:** Yes. Now well maybe later you will deal with it but I would be interested to know how the attorneys explained not being paid for their services.

MR WHITE: They don't Chair.

CHAIRPERSON: They don't?

MR WHITE: They were merely following the instructions of Mr Tshabalala.

CHAIRPERSON: But they were owed according to their invoice a certain amount and they said it is for legal services.

MR WHITE: It wasn't Chair.

20 **CHAIRPERSON:** So they admit that no legal services had been provided?

MR WHITE: Correct Chair. Chair that is why that invoice can't be processed through their business account otherwise they are going to pay tax on it.

CHAIRPERSON: Yes, *ja*.

MR WHITE: So that's why it stayed in the trust account and never transferred across.

CHAIRPERSON: Yes, yes, okay, thank you.

ADV SUSAN WENTZEL: Did you discover whether the ...[intervenes]

CHAIRPERSON: But is there an explanation why they allowed themselves to do something that was clearly wrong?

MR WHITE: Chair there was no explanation, but the one thing that I do know is that they did significant work for the Provincial Government, as a firm.

10 **CHAIRPERSON:** Yes.

MR WHITE: So they only inference I could draw is that ...[intervenes]

CHAIRPERSON: They did not want to disappoint him?

MR WHITE: They were now keeping Mr Tshabalala happy.

CHAIRPERSON: Ja. So if their version is correct Mr Tshabalala said to them send an invoice to Intaka Investments for this amount, say that you have provided legal services, knowing that they had not provided any legal services and they did exactly that, also knowing that they had not provided any legal services.

MR WHITE: Correct Chair.

20 **CHAIRPERSON:** Okay.

ADV SUSAN WENTZEL: And Chair it doesn't stop there. Did you determine whether the million Rand donation was ever paid to the ANC?

MR WHITE: So Chair there was, because that was where we understood from the affidavit it was ultimately ...[intervenes]

CHAIRPERSON: Switch on your microphone again. Thank you.

MR WHITE: So Chair inquiries were made because that is where the money was ultimately according to Doctor Savoi intended to get to and in that regard the prosecutor, one of the prosecutors involved in the process early on the prosecutors changed a number of times received a letter from Ngobani Wills Incorporated a firm of attorneys in Pietermaritzburg and Chair that – a copy of that letter is at TSW29 which is the last two pages in RR4d Chair.

CHAIRPERSON: Yes I am there.

MR WHITE: So Chair that letter which is dated the 2 February 2010 it
10 reads:

“We refer to our previous correspondence regarding the above and advise that we have consulted with a senior member of our client the ANC MEC Michael Mabuyakhulu who at the material time was the Provincial Treasurer of the ANC in KwaZulu Natal. We are instructed to convey to you the following.

1. That in his capacity as the Provincial Treasurer at the time Mabuyakhulu authorised the receipt of the R1 million donation from ANC member Mr Sipho Shabalala.
20
2. That he wishes to place on record that such a donation was received in cash and was verified to be R1 million.
3. That he Mabuyakhulu further authorised the funds to be utilised for various purposes related to the

KwaZulu Natal ANC Provincial Conference that was held between 20th and 22nd June 2008.”

Chair so effectively Mr Mabuyakhulu says we received the money. It is not quite the R1 053 000.00 but it is now been rounded to a R1 million and he says it was received and it was received in cash.

ADV SUSAN WENTZEL: Now he also deposed to an affidavit dealing with this and that is at page 1854. If we could deal with that first?

CHAIRPERSON: I am sorry I missed that I was still looking at this letter from Ngobani Wills.

10 **ADV SUSAN WENTZEL:** Sorry I just want to check I have the reference right I think it is SW16.

MR WHITE: Chair it was correct it – 1854 page.

ADV SUSAN WENTZEL: At page 1854.

CHAIRPERSON: Same Exhibit?

ADV SUSAN WENTZEL: It is Exhibit D.

CHAIRPERSON: D?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: What page?

ADV SUSAN WENTZEL: 1854.

20 **CHAIRPERSON:** 1854.

ADV SUSAN WENTZEL: Yes. And if you could deal with 1855 from paragraph 5 so that the Chair can see what it is that was said?

MR WHITE: Paragraph 5 Mr Mabuyukhulu’s affidavit reads as follows:

CHAIRPERSON: I am sorry. Oh no I am looking at 1984. You said 1854?

ADV SUSAN WENTZEL: 1854 and then at 1855 Chair.

CHAIRPERSON: Hm. Yes this is Mr Mabuyekhulu's affidavit. Yes.

ADV SUSAN WENTZEL: So if you could...

CHAIRPERSON: What paragraph at 1855?

ADV SUSAN WENTZEL: Paragraph 5 at 6 and 7 first.

MR WHITE: Chair paragraph 5 it reads as follows:

10 "During my tenure as Provincial Treasurer I was inter
alia responsible for fund raising for the ANC. During
2005 I made the call to the ANC leadership and
members to fundraise on behalf of the ANC. The
funds were required for the ANC's day to day
administration and for the ANC Provincial Conference
which was to take place at Ndumiso Training College
during June 2008. I recall that Mr Siphoshe Shabalala
was one of those who undertook to raise funds on
behalf of the ANC. Prior to the conference he
informed me he had fund raised and wished to pay
funds to the ANC. I do not recall the exact date that
he informed of this but I believe it was approximately
20 two months or so before the Provincial Conference.
Thereafter I received payment from Mr Shabalala in
the amount of R1 million. To the best of recollection
I received the funds from Shabalala on or about 11
June 2008. The funds were received shortly before
the Provincial Conference. I was still the ANC

Provincial Treasurer at the time. I confirm that it is not the ANC's policy to disclose where private donations are received from nor is it our policy to disclose how the funds were spent or dispersed. These are private matters and not in the public domain. I can however state that the funds were used by me to defray expenses arising from the then upcoming June 2008 conference. The funds were used by me in my capacity as Provincial Treasurer at the time."

10

ADV SUSAN WENTZEL: And then at paragraph 12 on page 1858 he refers to the letter from Ngobani Wills Incorporated dated the 2 February 2010 which you have already dealt with. What does he say about that?

MR WHITE: So Chair paragraph 12 at the bottom of page 1858 he states:

"All ANC leaders were requested to raise funds. I wish to clarify this statement. Mabuyakhulu authorised the receipt of the R1 million donation. Mr Shabalala informed me that he had received funds and he wished to pay these over as reported in paragraph 6 above. I do not know how and where Mr Shabalala raised funds. I only learnt of the funds when Mr Shabalala informed me that he had funds to pay over to the ANC. When he informed me of the

20

funds it was arranged that I would meet him to receive them from him and duly did so at the date set out above. I did not specifically authorise the receipt of specific funds but fund raising in general. I confirm that the funds were received in cash and were used by me to defray certain of the expenses of the conference as stated above”

ADV SUSAN WENTZEL: Now in the course of your of investigations did you have an opportunity to examine the books and records of the
10 ANC and determine whether these funds were recorded in their books and records?

MR WHITE: I did Chair. While we did not have the detail records behind the financial statements the financial manager of the ANC at the time while he initially provided a statement saying the money was received. He subsequently withdrew that statement and said there was no knowledge – he had no knowledge of the money being received, no invoice – sorry no receipt was issued and it was not accounted for in the ANC records.

ADV SUSAN WENTZEL: And Chair if I can refer you to those two
20 affidavits now. The one is dated the 4 May 2009 and appears at page 1843.

CHAIRPERSON: 18?

ADV SUSAN WENTZEL: 43 in the same bundle Chair.

CHAIRPERSON: 43. Yes.

ADV SUSAN WENTZEL: So this is the 4 May 2009 and what did he say

in that affidavit?

MR WHITE: Chair in the second paragraph he says:

“In the course of my duties I confirm that a donation of R1 million was received by the African National Congress from a donor who I am advised was a certain Doctor Savoi.”

Then in paragraph 3:

10 “Mr Siphon Shabalala had advised the organisation that such a donation had been made and when the money was requested Mr Shabalala brought the money to our offices in cash.”

ADV SUSAN WENTZEL: Now if we can look at page 1845 and just more than a year later ...

CHAIRPERSON: Well he does also say in paragraph 4 he was aware that the money was utilised to pay for various service provider – to pay various service providers for items related to the Provincial Congress held in August 2008. Yes.

ADV SUSAN WENTZEL: Yes Chair I apologise for ...

CHAIRPERSON: Yes.

20 **ADV SUSAN WENTZEL:** For [indistinct] that. Okay now a little more than a year later on the 30 August 2010 on page...

CHAIRPERSON: So this was – I am sorry this was 2009 when?

ADV SUSAN WENTZEL: 4 May 2009.

CHAIRPERSON: He deposed to this affidavit?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: And now we have a year later the 30 August 2010 on page 1845 what did he then say?

MR WHITE: So Chair effectively what he now says is that – that statement that he signed was prepared by Ngobani Wills Attorneys. He was – it was just brought to him, he signed it and he did not have knowledge of it. He then goes on to say that and if I can refer to page 1846 at paragraph 7.2 where it states:

10 “A few weeks later I received a call from Ms S
Ngobani Wills Incorporated advising me that there is
a matter under investigation by the South African
Police Services Commercial Crime relating to
donations received by the ANC KZN. She had further
advised that she is acting for ANC KZN in the matter
and she asked me to sign an affidavit that she had
prepared giving the circumstances of the donation.”

So Chair he then in the following page at 1847 the affidavit is badly written because he effectively answers questions that had been sent to him Chair. But in B under paragraph 8 he then – he states:

20 “I have no personal knowledge of the answer
required. These questions must be directed to the
lawyer who prepared the affidavit for – on my
behalf.”

And then C.

“I was informed by Mr Mabuyakhulu I have no

personal knowledge and details of the donation used to pay for the items not paid for by the officers of the ANC KZN. The question can be directed to Mr Mabuyakhulu save for the last paragraph where I explain how the statement was commissioned on 29 August 2009. I received an email attached – attached an affidavit from Ms S Ngobani and she told me to have it signed and commissioned and I took it to the Broad Street Police Station.”

10 And then D.

“I have no idea I did not investigate this matter. I have no knowledge. My sources are Mr Mabuyakhulu and the lawyer.”

And the E on the next – last page:

“I therefore request to withdraw the initial affidavit which was provided to me to sign.”

Chair effectively he distances himself from the first affidavit which he did not prepare and he distances himself from the facts contained therein.

20 **CHAIRPERSON:** Ja but this is – this is somebody who has a B.Com degree, B.Com accounting. He is a financial manager. He is told that the affidavit he is going to – he is being asked to sign is connected with police investigation. Clearly he is going to have a look at that affidavit carefully before he takes an oath and signs it. Did he ever explain that part to you how he could have signed such an affidavit knowing that

this was connected with the police investigations? Even if it was not connected with police investigations how could they – how could he just sign such an affidavit without understanding that he was misrepresenting the position at least as far as he was concerned?

MR WHITE: Chair it is inexplicable. There is no...

CHAIRPERSON: Yes.

MR WHITE: Justification for what he did.

CHAIRPERSON: Yes.

MR WHITE: And it appears that many for want of a better word junior
10 people in these different organisations.

CHAIRPERSON: Yes.

MR WHITE: Just did what they were told.

CHAIRPERSON: Yes.

MR WHITE: Without thinking of the potential consequences.

CHAIRPERSON: Yes. But at least that is what he should be saying.
He should be saying in the second affidavit this is how it came about.
This is what I was told. I signed because of this and that and that but
to just say that it is an affidavit that was prepared by somebody else
and it was given to you and you signed. Because when he says that he
20 wants us to believe that when he signed that affidavit he did not know
what it was saying. Because if he knew what it was saying the question
is how did you take an oath and depose to it if what it was saying was
not true?

MR WHITE: Chair I agree and it is – it is not like it is a thick affidavit.

CHAIRPERSON: Ja.

MR WHITE: It is a few lines.

CHAIRPERSON: And it is possible that it was not true what was there and he knew it but maybe there was some pressure, he was scared, I do not know but he does not say that it seems in his second affidavit to say, look I did not think I had a choice and I have had time to reflect on this. Now I am changing my mind.

MR WHITE: I agree Chair.

CHAIRPERSON: Yes. Okay.

ADV SUSAN WENTZEL: Chair he also says in paragraph 3 on page
10 1845:

“That as a financial manager my duties and responsibilities involve financial management and bookkeeping and when we receive donations we follow ANC internal processes.”

But we know as a matter of fact from Mr White’s examination of the ANC’s books and records that there is no reference to this donation he previously said had been received. And surely it would have been the purvey of its duties he says himself he had that it should have been recorded.

20 **CHAIRPERSON:** Did Mr Savoi explain why in his company’s records he reflected that this payment to these attorneys was for legal services if his – if it was for a donation?

MR WHITE: Chair he just went to say it was wrong and it was corrected. In a review of his records I noted that initially it was accounted for as legal services and it was subsequently changed some

time later to reflect that it was a donation. So Chair it appears that the initial attempt was to hide what it actually was.

CHAIRPERSON: Yes. And the question is, why would – why would they hide – hide it if it was a donation?

MR WHITE: So Chair there would be no – if it was a donation that was not as a repayment for receiving work – so if it was just a donation there would be no need to hide it.

CHAIRPERSON: Yes.

MR WHITE: But the problem with this donation is it was actually linked
10 to irregularly being awarded a contract for some R50 million.

CHAIRPERSON: Yes. Ja but the point is if it was a genuine donation, a bona fide donation then there was nothing to hide. You hide it if you feel that it is wrong because it is connected with what you have just got.

MR WHITE: Chair I agree and also if it was a genuine donation you would expect it be recorded as such. But also pay it to the entity you donating to.

CHAIRPERSON: Yes.

MR WHITE: You would not pay via...

20 **CHAIRPERSON**: Yes attorneys who sent you...

MR WHITE: Trust accounts.

CHAIRPERSON: Who send you an invoice that says it is for legal services. Well maybe he will be able to explain or some of the implicated persons will be able to explain some of things that do not seem to make sense at this stage. Thank you.

ADV SUSAN WENTZEL: And Mr White if you can just remind the Chair at this stage what was Mr Mabuyakhulu's position in the ANC?

CHAIRPERSON: Why – why is it difficult to say Mabuyakhulu? It is so simple.

ADV SUSAN WENTZEL: Chair I know Chair you know unfortunately and it is a mark of our past.

CHAIRPERSON: Ja but because I am sure all of you if I say Honolulu you will say Honolulu. So why can you not say Mabuyakhulu?

ADV SUSAN WENTZEL: My – very, very sadly it is – there – it is
10 inexplicable but I find it terribly difficult to get my – myself around a lot of the words and even the spelling because I never learnt an African language and it is a – it is a travesty and I am terribly embarrassed by it and every time I have to say a name I am blushing inside and feeling terribly shy.

CHAIRPERSON: No, no I can – I can understand – I can understand when it comes to certain words but I just see Mabuyakhulu as so easy. And also the only – the only alphabet you seem to have a problem pronouncing is U. This is not like certain names and surnames that could really be seen as difficult. It is U – U – Honolulu, Mabuyakhulu.

20 **ADV SUSAN WENTZEL:** I know. That is a cause of huge embarrassment to me Chair.

CHAIRPERSON: Okay alright.

ADV SUSAN WENTZEL: It really is.

CHAIRPERSON: Thank you.

ADV SUSAN WENTZEL: And actually humiliation more than

embarrassment.

CHAIRPERSON: Well I can tell you I – I have names that I struggle that are not my – in my language – my language myself you know but I – all – the only point I am making here is I was trying to understand because it seems to me that it should be easy.

ADV SUSAN WENTZEL: It should be.

CHAIRPERSON: Otherwise I do accept that when it is not your language there could be names that you cannot – you can struggle to pronounce. You know it happens with me in regard to languages that I
10 – I do not – are not my own. Yes but that is fine. Let us continue.

ADV SUSAN WENTZEL: What was Mr Mabuyakhulu's – I hope it was slightly better?

CHAIRPERSON: I give up.

ADV SUSAN WENTZEL: What was his position in the ANC?

MR WHITE: Chair Mr Mabuyakhulu's position...

CHAIRPERSON: That was much better.

MR WHITE: Position – he was the Provincial Treasury in KwaZulu Natal.

ADV SUSAN WENTZEL: And what was his position in the Department?

20 **MR WHITE:** So Chair his political position was – he was not in the administration but he was the MEC of Traditional Affairs and Local Government.

CHAIRPERSON: He was the political head of the department.

MR WHITE: Correct Chair.

ADV SUSAN WENTZEL: And what was his involvement in this

contract?

MR WHITE: So Chair he was – a number of the documents passed his desk for want of a better word in the lead up. So I have referred to documents relating to the transfer of the money from the Poverty Alleviation Fund. That there were memoranda prepared that amongst others came to him. So he knew that the project was happening. He was also – he opened it when the first one was installed. So it is not that he did not know about Intaka and what it was about. So ja.

CHAIRPERSON: Yes.

10 **ADV SUSAN WENTZEL:** Chair I have now if we have regard to the diagram at Annexure TSW19 dealt with the one side of the investigation and that is into the procurement of the water purification plants by the Department of Traditional Affairs and Local Government. The other side of the investigation involved the procurement by the Department of Health in KwaZulu Natal for both water purification plants. I find difficulties with some English words and also with oxygen self-generating oxygen plants and some dialysis machines. Chair it is four o'clock and I am going to need some time to also explain those transactions. Would it be an appropriate time to take an adjournment?

20 **CHAIRPERSON:** How long do you think – do you estimate we might need to finish with Mr White?

ADV SUSAN WENTZEL: Chair I am hoping to finish his evidence by lunch time tomorrow and then the afternoon the two remaining witnesses should be short.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: I do not believe they should be more than an hour each.

CHAIRPERSON: Hm. Okay alright. Mr White I take it that you were warned that you could be in that seat for two and a half days?

MR WHITE: I was Chair.

CHAIRPERSON: Ja. Alright. We are going to adjourn for the day and we will start at ten o'clock tomorrow.

ADV SUSAN WENTZEL: Thank you Chair.

CHAIRPERSON: We adjourn.

10 **INQUIRY ADJOURNS TO 22 JANUARY 2020**