

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

BRAAMFONTEIN CHAMBERS

10

16 MARCH 2020

DAY 224

FINAL

20

PROCEEDINGS COMMENCE ON 16 MARCH 2020

CHAIRPERSON: Good morning Mr Soni, good morning everybody.

ADV VAS SONI SC: Morning DCJ.

CHAIRPERSON: It looks like ...(intervenes).

ADV VAS SONI SC: The lighting.

CHAIRPERSON: The lighting is still quite bad but I have been told that they are attending to it.

ADV VAS SONI SC: Yes.

CHAIRPERSON: To try and improve but there was some improvements
10 at some stage on Friday particularly around here but I think it has gone
back to what it was at some stage. Interestingly the areas right there
appear to have good lighting maybe because of the lighting on the
ceiling boards.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay alright let us continue.

ADV VAS SONI SC: Chairperson just for the sake of context you will
recall that Mr Molefe had not finalised his evidence yesterday that will
continue as was agreed on Wednesday.

CHAIRPERSON: Yes. You might have to raise your voice again.

20 **ADV VAS SONI SC:** Oh sorry.

CHAIRPERSON: Ja. Yes.

ADV VAS SONI SC: I was saying Mr Chairperson just to put things in
context and for the record Mr Molefe had not finished his evidence on
Wednesday and we – sorry on Friday and we agreed that he will
continue his evidence on Monday – on Wednesday on account of

certain commitments he has already have. In the meantime then we will ask for the evidence of Ms Onica Martha Ngoye to be tendered today.

CHAIRPERSON: Yes Ngoye is ...(intervenes).

MS NGOYE: Ngoye.

CHAIRPERSON: I see it written here it is written correctly.

ADV VAS SONI SC: They have it wrong on – if you look at the affidavit itself it is Ngoye Mr Chairman.

CHAIRPERSON: It is Ngoye.

10 **ADV VAS SONI SC:** Ngoye.

CHAIRPERSON: *Ja* they seem to get this wrong I do not know why they sort off – get the people's names wrong on the outside cover it was the same thing with Minister Yunus Cariem the other week. I picked this up. Okay alright.

ADV VAS SONI SC: May the ...(intervenes).

CHAIRPERSON: Would you like – okay please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record?

MS NGOYE: Onica Martha Ngoye.

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

MS NGOYE: No I do not.

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

MS NGOYE: Yes I do.

REGISTRAR: Do you swear that the evidence you will give will be the

truth; the whole truth and nothing else but the truth if so please raise your right hand and say, so help me God.

MS NGOYE: So help me God.

CHAIRPERSON: But on a lighter note Ms Ngoye do your people have nothing to do with the University of Zululand?

MS NGOYE: No Chair.

CHAIRPERSON: I thought maybe they started the University.

MS NGOYE: No, no.

CHAIRPERSON: Because it is known as Ngoye.

10 **MS NGOYE**: Ngoye.

CHAIRPERSON: The University of Zululand so I thought maybe your people started it. Okay alright. Yes. Ms Soni – Mr Soni.

ADV VAS SONI SC: Ms Ngoye just to place in context your evidence your – the affidavits you have made are contained in Bundle E and your affidavits is marked SS7. Exhibit SS7.

MS NGOYE: Yes.

ADV VAS SONI SC: Now how many affidavits have you made in all?

MS NGOYE: I have made three affidavits.

CHAIRPERSON: I am sorry.

20 **ADV VAS SONI SC**: Yes.

CHAIRPERSON: Ja okay Mr Soni continue I am sorry.

MS NGOYE: I have made three affidavits altogether Chairperson.

ADV VAS SONI SC: Okay. So again just so that we can reach them easily Ms Ngoye if you look at the index you will see that the first affidavit which is dated the 16th of September 2019 is marked A and it

appears from page 1 to page 276 together with the annexures. Would that be correct?

MS NGOYE: That is correct Chairperson.

CHAIRPERSON: I am sorry Mr Soni. I think I was right. We have not identified this bundle where these affidavits are, is it not? And – so that when you talk about an affidavit then whoever reads knows in which bundle that affidavit is that you are referring to.

ADV VAS SONI SC: Ms Ngoye is it correct that the three affidavits are in what is marked PRASA Bundle E?

10 **MS NGOYE**: Yes Chairperson.

ADV VAS SONI SC: Well when we are referring to the affidavits we will refer to Bundle E and the affidavit – affidavits as Exhibit SS7.

MS NGOYE: That is correct.

CHAIRPERSON: Mr Soni is – are all the affidavits in here? I know about two.

ADV VAS SONI SC: The third one has been inserted this morning.

CHAIRPERSON: Has been inserted.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON**: The annexures – are they annexures to the first affidavit? Are they annexures to the second affidavit? Are they annexures to the third affidavit?

ADV VAS SONI SC: They – Chairperson you will see in the index the first affidavit has 15 annexures marked OMN1 to 15.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And then second affidavit which is marked B in the

index is from page 277 to 385 together with the annexures and that has 10 annexures marked from OMN1 to OMN10.

CHAIRPERSON: H'mm.

ADV VAS SONI SC: And then the third affidavit which is called a supplementary affidavit it is dated yesterday the 15th of March. It has no annexures and it appears at page 386 to 398.

CHAIRPERSON: Yes. Is each affidavit a separate Exhibit?

ADV VAS SONI SC: It has not been marked as a separate Exhibit Chairperson. It is all marked Exhibit SS7.

10 **CHAIRPERSON:** I think they should be separate. I think the one that has got – the two that have got annexures each should be a separate exhibit contained in the same bundle.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And then with its annexures so that there is no confusion.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Because if you say Exhibit SS7 and you go to the first affidavit you will think that that is all that SS7 is.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** And – so it will cause confusion.

ADV VAS SONI SC: Mr Chairperson.

CHAIRPERSON: I think should then have SS7A, SS7B, SS7C.

ADV VAS SONI SC: Well this is what I was going to ask?

CHAIRPERSON: I think I will then say the affidavit of Ms Onica Martha Ngoye deposed to on the 16th of September 2019 and its annexures will

be marked – will be admitted and marked as Exhibit SS7A.

ADV VAS SONI SC: SS7A.

CHAIRPERSON: The next one is on what page?

ADV VAS SONI SC: Page 277 Chairperson.

CHAIRPERSON: 277?

ADV VAS SONI SC: Yes. It is separated by the divider which is marked ...(intervenes).

CHAIRPERSON: Yes I have found it. The affidavit of Ms Onica Martha Ngoye deposed to on the 17th of February 2020.

10 **ADV VAS SONI SC:** That is the one Chairperson.

CHAIRPERSON: And that is the one that also has annexures hey?

ADV VAS SONI SC: That is so.

CHAIRPERSON: And its annexure will be admitted and will be marked as Exhibit SS7B.

ADV VAS SONI SC: B yes.

CHAIRPERSON: And then where is the third one?

ADV VAS SONI SC: The other – the C is at 386 Chairperson of Bundle E.

CHAIRPERSON: Is it the one at 386?

20 **ADV VAS SONI SC:** That is so Chairperson.

CHAIRPERSON: Okay. The affidavit of Ms Onica Martha Ngoye deposed to on the 15th of March 2020 will be admitted and marked as Exhibit SS7C. Have we covered all of them?

ADV VAS SONI SC: Yes. Yes Mr Chairperson.

CHAIRPERSON: But your index did seem to indicate that there four

affidavits if I am not mistaken. At the end I – let me check what I saw?

ADV VAS SONI SC: Sorry what the index seems to ...(intervenes).

CHAIRPERSON: *Ja* that is what is shows.

ADV VAS SONI SC: Yes.

CHAIRPERSON: It says there is a supplementary affidavit at page 386 to 398 and there is a supplementary affidavit at – same – and then gives same pages.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Is that duplication?

10 **ADV VAS SONI SC:** It is yes.

CHAIRPERSON: H'mm. Why can people not see these things and eliminate them? *Ja* okay alright.

ADV VAS SONI SC: As it pleases you.

CHAIRPERSON: You can continue.

ADV VAS SONI SC: Ms Ngoye you have read each of the affidavits here this morning?

MS NGOYE: That is correct.

ADV VAS SONI SC: And the annexures to those affidavits?

MS NGOYE: That is correct Chairperson.

20 **ADV VAS SONI SC:** Do you confirm in respect of each of the affidavits that is SS7A, SS7B and SS7C that what is contained in the affidavits is true and correct to the best of your knowledge?

MS NGOYE: Yes Chairperson I confirm that.

ADV VAS SONI SC: And to the extent that you refer to affidavits – to annexures, the annexures you refer to are those that are annexed to

the document – to your affidavit?

MS NGOYE: That is correct.

ADV VAS SONI SC: Yes. Now Ms Ngoye I just again for the purposes of putting things in context your affidavits together with the annexures deal with a whole range of matters?

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: I just want to say to you following consultations we have had in relation to the evidence that you will give now we have agreed that much of the details contained in the affidavits and the
10 annexures might not be strictly relevant to the thrust of what the Commission is investigation – investigating namely State Capture.

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: And therefore we will concentrate in your evidence on those matters directly implicated in State Capture.

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: Now if I stray please bring me in line and if you stray you will forgive me if I bring you in line. And I am sure if both of us stray the Chairperson is going to bring us both in line. Okay well we can carry now. Now Ms Ngoye can I just again to put things in context
20 the affidavit marked SS7A is an affidavit that deals with one specific matter namely a motley contract between PRASA and the DBSA worth about R4.7 billion?

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: And that is just one specific topic. The second affidavit deals with a range of matters and I am going with the – into

that in a moment but they all deal with the extent to which in your experience PRASA's processes where – were followed so as to – or implemented so as to benefit certain beneficiaries.

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: And the third affidavit that is SS7C deals specifically with the Siyangena court papers in which you made the founding affidavit that is before court now?

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: Is it in order if we start with affidavit 77 – SS7B?

10 **MS NGOYE**: That is correct Chairperson.

ADV VAS SONI SC: Chairperson that is SS7 page 277 – SS7B page 277. Now in this affidavit you sketch out in the first few paragraphs your position at PRASA and the type of work you do and in particular the extent to which you are a safeguard to ensuring that PRASA remains within or acts strictly within the law?

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: Right so let us start off with your position at PRASA.

20 **MS NGOYE**: Chairperson currently I am the Group Executive for Legal Risk and Compliance. So there is obviously quite a lot of work that one does primarily advising the organisation on legal matters. You know running litigations on behalf of the organisation with the attorneys, drafting contracts as well for the organisation, giving opinions where required and in certain instances we give those opinions where we believe they need to be given so that we can redirect the organisation

to make sure that we are compliant with what we do. So it is – and I am also responsible for the Risk Portfolio looking at governance related issues and compliance and in a nutshell you know that is basically what I do as a Group Executive leading a team of other lawyers in the organisation.

ADV VAS SONI SC: Now one of the things that has come up before the Commission is the amount of litigation that PRASA has been involved in relating to different contracts that are signed. I am sure there are other areas of litigation. You are aware of that?

10 **MS NGOYE:** I am aware Chairperson.

ADV VAS SONI SC: Can I ask how, when you look at it now, did that come about?

CHAIRPERSON: Just hang on there. I am going to adjourn so that all this movements that happen here can be attended to without interrupting me.

ADV VAS SONI SC: As you please Chairperson.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: Let us continue.

ADV VAS SONI SC: As you please, Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Miss Ngoye we were – I had asked you about the amount of litigations, especially relating to procurement matters. You

were going to explain to the Chairperson how you think this came about.

MISS NGOYE: Chairperson, there is a lot of litigation within PRASA and mainly the litigation, you know, focuses around the contracts that PRASA would have concluded with a whole lot of suppliers and when one looks at the issues at hand one finds that, you know, there is lack of compliance with processes within PRASA in many of these contracts and we find that, I mean, you know, we have to review some of the contracts and take them to court so that the decisions to enter into those contracts can be, you know, set aside.

10 So, in terms of the number of contracts that we have, I think PRASA is sued on, on a daily basis and there is a lot of litigation that, that goes on and Chairperson, perhaps it is also important for me to say while we deal with this litigation, you know, some, some people find that the assistance of the Legal Department is crucial and they welcome it and other regard us as a nuisance in the process. So, you know, this is where we find ourselves and we have to obviously rely on the business in defending the matters where PRASA is concerned.

ADV VAS SONI SC: Now, in regard to the major litigation that we have led evidence on or have brought to the notice of the Chairperson, for
20 example the Swifambo contract, the Siyangena contract, the Siyaya contracts, what role did legal play in drafting the contracts advising how PRASA should deal with these matters?

MISS NGOYE: Chairperson, in respect of the Swifambo agreement that has been set aside by the Concor and the Supreme court of Appeal, the legal function was not involved at all. This is a contract that was worth

3.5 billion Rand. The organization felt it necessary to appoint somebody else outside and not involve the Internal Legal Team in assisting with that contract.

In fact, as far as Swifambo is concerned, what transpired was that there was a point where there was an intention to increase the value of the contract to 5 billion and this is where, you know, the Legal Department was approached and on looking at the initial contract we were obviously concerned as the Department because we found the number of provisions which were not necessarily complied with, for instance, you
10 know, compliance with national Treasury requirements.

Some of the conditions precedent were not followed, were not met and when we raised these issues as far as the Swifambo contract was concerned, you know, we were found to be in peoples' bad books and what we said as the legal function as far as that is concerned is that we will not participate in a contract that we believe is untoward and also, where we make suggestions for changes to be made those changes not being welcomed. So we have made it very clear, rather do not involve the Legal Department because it is – it was a late stage already for our involvement and that is how it was. The Siyangena contract as well,
20 Chairperson. I guess I must start by saying I had come to the Legal Department in September 2014 so these contracts had already been concluded and my understanding is that even in those contracts legal – participation was very minimal, you know, we get called in when there is problems with the contract but in terms of drafting of those contracts and advising the organization, we have been excluded.

The Prodigy contract as well that, that is also, you know, being spoken of here, what we found is that, yes, again, we were not involved and when we raised issues around the amendments that were required as far as the contract is concerned one could say hell broke loose within the organization and the advice that we had given, also, at the time, considering the fact that processes were not followed, we looked at that and said, you know, obviously we cannot perpetuate this type of behaviour and I remember that the memo that we drafted for the Group CEO at the time was to say, look, this process was not necessarily
 10 followed properly and that we do not believe that the amendment should be made, but, you know, that decision was seen as legal, being contrary to what people want to do as far as the organization was concerned and it really did not sit well within the organization.

ADV VAS SONI SC: In fact, as you detail late in your affidavit, your refusal or reluctance to involve yourself in the Swifambo and Prodigy matters is what led to Mr Dingiswayo's dismissal and in the day after, your dismissal.

MISS NGOYE: That is correct, Chairperson.

CHAIRPERSON: Well, it is going to be important to mention people's
 20 names as to who did what, who ignored what so that we have a complete picture as opposed to just generalizations. If a memo was addressed to a specific person saying, this is the advice and that person ignored it, let me know who that person is, who the memo was from, who was it to and what did the memo say and what was their response, okay?

MISS NGOYE: Yes, Chairperson.

ADV VAS SONI SC: Now we will come to those details in a moment, Miss Ngoye. You, in paragraph 9 of your affidavit talk about the period when Mr Lucky Montana was the CEO and you say that PRASA was wrapped with maladministration and corruption. That is – would that be correct, is that what you are saying?

MISS NGOYE: Yes, that is correct, Chairperson.

ADV VAS SONI SC: What is the position now?

MISS NGOYE: Chairperson, the more things change at PRASA, the more they stay the same. Mr Montana left in 2015 and what we found is that
10 from that period onwards, you know, things have not necessarily changed to what we would have wanted them to be and I do reflect on that in my affidavit because it is very clear that issues around maladministration within PRASA continue.

CHAIRPERSON: Mr Soni, I prefer that we start where we should start and go up to the end, for example this part obviously belongs to the end, so for me, it does not – I do not need it to be told about it now, only in general terms and later on the details. I want to get it all in one place in the story so I would prefer that we start somewhere, we go up to the end and where we deal with an issue, I get all the details that I need to get at
20 that time because otherwise when I read the transcript, I hear about these generalities. I want details and then I do not know that I will get the details later.

ADV VAS SONI SC: Yes.

CHAIRPERSON: So I suggest we just start from beginning and we deal with issues as a whole and complete and then move on to the others up to

the end. So, in other words, I will want to know if there has been no change, but I want that at the end. At this stage I want to talk you, to talk to me about 2014, 2015 bla, bla, bla okay?

ADV VAS SONI SC: Yes, as you please, Chair. Now, the first substantive matter you deal with in your affidavit, Miss Ngoye is the influence of Mr Roy Moodley at PRASA.

MISS NGOYE: That is correct, Chairperson.

ADV VAS SONI SC: And you start that issue at paragraph 14 of your affidavit.

10 **MISS NGOYE:** That is correct, Chairperson.

ADV VAS SONI SC: So, would you tell the Chairperson how it came about that you became aware of Mr Moodley's influence and as the Chairperson has pointed out, one wants particulars about who the individuals were, who the entities were and to whose notice were certain matters brought in relation to concerns that you raise.

MISS NGOYE: Chairperson, my first encounter, effectively with the name Roy Moodley was in relation to a contract, an advertising contract, with a party called Strawberry Worx. Now I had no knowledge of who Mr Moodley was at the time and this contract was concluded at the time that

20 I was the CEO of Intersite so, in terms of PRASA's mandate, Intersite is responsible for leveraging on, on PRASA's property portfolio so that it can support the rail business.

This contract was entered into around about 2011 – 20 – yes, 2011/2012 and the gist of the contract, really, was the provision of advertising for PRASA in relation to our various stations. Now, I had

come to know of Mr Moodley when I was summoned to a meeting. What I understood from Mr Tiro Holele was that the group CEO at the time, Mr Lucky Montana had requested that Mr Holele call this meeting with the parties from Siyangena – I mean, Strawberry Worx so that a whole lot of issues can be ironed out.

I welcomed the meeting because we at Intersite were running with the transaction and I did not see anything untoward and at the end of the day I think one can safely say that we did not, you know, benefit one supplier to the other, there were quite a number of players within the, the
 10 advertising portfolio. So, for me it was, Strawberry Worx you have got your part of the contract. You will deal with your part of the contract and and obviously account accordingly where PRASA is concerned but I guess it was not to be because in this particular meeting where I was called, Mr Holele came with Mr Maharaj who, later on I do say Mr Chairperson, Mr Maharaj is the attorney for Strawberry Worx. There was Mr Selvan Moodley who I later understood to be Mr Roy Moodley's son and there was a Mr Ashveer, I just did not know how to pronounce his surname, Chairperson ...(intervenes).

CHAIRPERSON: I think it is Vally.

20 **ADV VAS SONI SC:** It is there. If you look at paragraph 15.4, Miss Ngoye you will see there.

MISS NGOYE: It is Dwarikapersadh.

CHAIRPERSON: Okay.

MISS NGOYE: It is ...(intervenes).

CHAIRPERSON: Dwarikapersadh.

MISS NGOYE: Yes.

CHAIRPERSON: Is that the one?

MISS NGOYE: That one.

CHAIRPERSON: Okay. Dwarikapersadh. I could be completely mispronouncing it.

ADV VAS SONI SC: Dwarikapersadh.

CHAIRPERSON: Hey?

ADV VAS SONI SC: Dwarikapersadh.

CHAIRPERSON: Dwarikapersadh. Okay. We must try and pronounce it
10 the way it should be pronounced. Okay.

MISS NGOYE: Chair.

ADV VAS SONI SC: Sorry, I just saw that we have the timelines. You, at that time, were at the CEO of Intersite. Could you tell the Chairperson between what period and what period you were the Chairperson of Intersite?

MISS NGOYE: Chairperson, I was the CEO of Intersite from August of 2011 till August of 2014 so I occupied that role during that period.

ADV VAS SONI SC: And as the CEO, what would your powers and your duties be in relation to contracts that Intersite had concluded with
20 different contracts?

MISS NGOYE: Chair, I think at the time Intersite had the benefit of me being an attorney as well that I could look at the contracts that were entered into and advise accordingly on what needs to happen as far as those contracts were concerned so even though I was the CEO, you know, I did manage really and work together with the commercial unit within,

within Intersite in making sure that, as an example, this particular contract is managed properly and we account properly where PRASA is concerned. So over and above all the other work that I had to do from a strategic perspective, you know, I played a huge role as far as legal matters were concerned within Intersite.

ADV VAS SONI SC: Sorry ...(intervenes).

CHAIRPERSON: Just again, Intersite was one of two subsidiaries of PRASA. Is that right?

MISS NGOYE: That is correct, Chairperson.

10 **CHAIRPERSON:** Yes and the contract that you were talking about for advertising was a contract between PRASA or involving PRASA or involving Intersite.

MISS NGOYE: No, Chair. The contract was with Intersite. What had transpired was that part of the mandate of Intersite coming from PRASA was that PRASA – Intersite would enter into certain contracts on behalf of PRASA and this was, you know, for revenue generation purposes where Intersite was concerned and also in line with the mandate that PRASA had given Intersite of leveraging, you know, PRASA's Property portfolio and making money because at the end of the day we would account to the
20 group in terms of the revenue that we were making.

CHAIRPERSON: I was told last week of advertising on PRASA Property. Is that what you are talking about?

MISS NGOYE: That is correct, Chairperson.

CHAIRPERSON: Ja. Okay.

ADV VAS SONI SC: Now, in relation to the Strawberry Worx contract, it

was between whom and whom?

MISS NGOYE: The Strawberry Worx contract, Chairperson was between Intersite and Strawberry Worx.

ADV VAS SONI SC: And was the contract in existence at the time you were appointed CEO of Intersite?

MISS NGOYE: No, the contract was not yet in existence. The, in fact, as far as the advertising portfolio was concerned, Chairperson, we had the contract being awarded to a company called Umjanji Consortium and what had been agreed at the time was that some portions of the contract
10 would be seeded to other suppliers. So a portion of that particular contract was then seeded to Strawberry Worx and the Strawberry Worx contract really was finalized around about 2012.

ADV VAS SONI SC: And you were part of that process which Strawberry Worx became involved in what Umjanji had seeded?

MISS NGOYE: That is correct, Chairperson.

ADV VAS SONI SC: And there was – from your understanding, there was nothing improper about that.

MISS NGOYE: Well, Chair, I – you know, I suppose being a legal person, you look at the procurement procedure, you know and you become
20 concerned with when somebody speaks about sessions of a procurement process and the concern that one had was that we could be challenged out there because clearly that was not the aim. You could not just enter into an agreement with a party and then seed off portions of it to other people who had not necessarily been successful in the tender, but this is what transpired in this case and the decision for the session

...(intervenes).

CHAIRPERSON: The session would defeat the whole purpose for procurement.

MISS NGOYE: That is correct, Chairperson. So in this regard, you know, when the instruction came to say we need to seed this contract, the instruction came from the Board of Intersite at the time and the Chairperson of the Board of Intersite at the time was Mr Lucky Montana so effectively, you know, that instruction was carried through, but the concerns were raised around, you know, seeding contracts following a
10 procurement process.

CHAIRPERSON: The instruction was to do what? To seed?

MISS NGOYE: To seed. Yes.

CHAIRPERSON: The, the rights to seed whose rights to whom?

MISS NGOYE: Well, because Umjanji, Chairperson, Consortium had been the successful bidder, so it was basically taken away from Umjanji and given to Strawberry Worx, so that had to be a consent coming from Umjanji to say, yes, I consent to the session of – at portion of the advertising portfolio to Strawberry Worx.

CHAIRPERSON: So, there was in existence a contract between Intersite
20 and Umjanji.

MISS NGOYE: That is correct, Chair.

CHAIRPERSON: And that was for advertisements to be done on PRASA Properties.

MISS NGOYE: That is correct, Chairperson.

CHAIRPERSON: And that had been in existence from when, that

contract?

MISS NGOYE: From 2011.

CHAIRPERSON: From 2011.

MISS NGOYE: That is correct, Chairperson.

CHAIRPERSON: And as far as you know, it too had been implemented over the years.

MISS NGOYE: Yes, Chairperson.

CHAIRPERSON: And then this is now 2014, 2015?

MISS NGOYE: This is now 2012, 2013.

10 **MISS NGOYE:** No, when, when the instruction comes to say there should be a session from Umjanji to Strawberry Worx. When is that – when was that instruction?

MISS NGOYE: It was around 2012.

CHAIRPERSON: Around 2012? Oh, okay. Alright. And basically it sought to – the instruction sought to make sure that whatever benefits would have been given to, would have been obtained by Umjanji would now go to Strawberry Worx.

MISS NGOYE: That is correct, Chairperson.

CHAIRPERSON: So, this instruction came about a year or so after the
20 contract had been concluded between Umjanji and Intersite.

MISS NGOYE: That is correct, Chairperson.

CHAIRPERSON: Yes. Okay. Alright. Thank you.

ADV VAS SONI SC: Now, when the instruction came from the Intersite Board and you say Mr Montana was, Chairperson I do not think there was any dispute that the CEO of PRASA was the Chairperson of the Boards of

Intersite and Autopax. When that instruction came where any concerns raised by you or by your Legal Team at Intersite?

MISS NGOYE: Chairperson, as I indicated, the concerns were raised, I mean, I remember being one of the people that raised the concern of the session between, you know, parties in light of the procurement process that I understood had been, you know, undertaken so I definitely raised the issues around the session as a concern but, you know, I guess one is overruled and this is basically what happened. The session proceeded and we entered into a contract with Strawberry Worx.

10 **CHAIRPERSON**: Now, this instruction, did it come to you in a Board meeting of Intersite or was it given to you outside of the Board meeting, so when it was given for the first time?

MISS NGOYE: It was given by the Board.

CHAIRPERSON: It was given by the Board?

MISS NGOYE: Yes, it was given by the Board because from an authority perspective they had to authorise me to then sign that contract so it came from the Board of Intersite at the time.

CHAIRPERSON: Yes. Now the advertisement agreement. Did they not entail that whoever had a contract with Intersite in this regard would
20 obtain clients who want advertisements to be placed on certain properties of PRASA and that that entity would put those advertisements and then the clients would pay that entity and that entity would then pay some money to Intersite or PRASA. Is that not what was involved?

MISS NGOYE: That is correct, Chairperson. In fact, in terms of the contract, there was a 60/40 split of the revenue so where PRASA, for

instance, you know, gave Capex, for instance, in relation to particular structures which would be used for advertising purposes, then PRASA would get 60% of the revenue coming back and vice versa, Chairperson, where for instance any of the other, you know, advertising companies invested their monies in respect of the advertising portfolio the reverse would apply where 60% of the revenue would then go to them and the 40% would then be accounted for where Intersite was concerned.

CHAIRPERSON: Okay. Thank you.

ADV VAS SONI SC: Now one, when you raised your concerns about the
10 session I take it one of your concerns was that this could – the award could be challenged on the basis as you said that that is not what the purpose of awarding a tender is.

ADV VAS SONI SC: That is correct, Chairperson. In fact, that whole advertising contract was a subject of litigation. We were challenged you know, primarily by Prime Media who believed that the process that was followed was not proper. So, you know, it was inevitable that doing the session as well, you know, would compound the issues where we are concerned.

CHAIRPERSON: So is the position that, in 2011 when that contract was
20 concluded between Intersite and Umjanji procurement processing had not been complied with there as well and that when an instruction to effect a session was given that too, you pointed out to the Board, would defeat the purpose of procurement?

MISS NGOYE: That is correct, Chairperson.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Now, in regard to the Prime Media matter, Miss Ngoye, you referred to it in paragraph 15.5 of your affidavit, that is SS7B. Is that correct?

MISS NGOYE: That is correct, Chairperson.

ADV VAS SONI SC: Now, what was Prime Media's, if you can recall, what were their main complaints when they challenged this award?

MISS NGOYE: Chairperson, at the time of the tender process, there was a company by the name of Provantage that was part of, you know, the companies that had bid for the advertising portfolio. Now what transpired
10 after the completion of the tender process was that Provantage then, you know, entered into an agreement with another company and they formed the Consortium of Umjanji. Now, clearly, you know, that as well, you know, from a procurement perspective cannot be correct because I do recall that when the approval was sought from the group CEO, Mr Montana, that Provantage was the successful winner. He indicated that he is not happy about the BEE component of Provantage and then the, Consortium was then formed which was then called Umjanji. Now when Prime Media challenges this whole tender process, it also challenges it on the basis that the party that had tendered was Provantage and not
20 Umjanji Consortium as had been the case after the award of the contract and so those were some of the issues that Provantage had raised as a concern for them to say this process was flawed because the parties that participated in the tender process were really at the end of the day disregarded if one could just simply form separate entities outside the procurement process.

ADV VAS SONI SC: Now when you say that Prime Media challenged the award was it through a court application?

MISS NGOYE: That is correct, Chairperson. In fact the matter has still not been finalized.

CHAIRPERSON: Why after so long?

MISS NGOYE: It is a complex issue, Chairperson, I mean it has been an issue where, for instance with the involvement also of Strawberry Worx fighting for their rights. There were quite a number of companies in fact there were three companies where Umjanji had to seed their rights to. So
10 we had Umjanji, we had a company called Siyathembana and then we had a company called Strawberry Worx so in dealing with this matter we found that each party then wanted to be represented, wanted to take part in the litigation and that is why it prolonged, but also, Chairperson, one must mention that we had a challenge internally with the lawyers that were assisting us at the time. We had briefed Hogan Lovells, for instance, to assist us with this particular matter, but you know, during the running of the matter it was felt that Hogan Lovells was not doing its work and it was criticized extensively and we were instructed rather to appoint another law firm to deal with the matter. So, you know, the stop and start is what
20 frustrated the process.

CHAIRPERSON: Yes. When you say it was felt, who felt that way?

MISS NGOYE: Mr Montana, for instance. I received a call from Mr Montana to say, hey, Martha, you need to change lawyers you know and I was like, but why, because the lawyers are doing what they are supposed to be doing. No, no, no, no. They are not defending the interests of

PRASA properly I did not agree with it, you know, Chairperson, because I was instrumentally involved in the running of that matter so I knew what was at stake and and when that instruction came I refused to carry it out. I said to Mr Montana in any event the company that you want us to brief is not even on our Panel, you know that's an issue for me and also what is going to happen to all the costs that we have already incorrect in the work that Hogan Lovells had done, we're briefing a new firm, so I just wasn't comfortable with doing that and I just decided not to heed the call and I left it at that.

- 10 **ADV VAS SONI SC:** If you look at paragraph 15.6 of your affidavit Ms Ngoye you raise another matter concerning expenditure or the nature of the expenditure that changing lawyers would entail, the first sentence of paragraph 15.6

MS NGOYE: That's correct Chairperson.

ADV VAS SONI SC: And would you tell the Chairperson what that was?

MS NGOYE: Chairperson it was precisely around you know the changing of lawyers midstream and ...(intervenes).

- CHAIRPERSON:** Maybe before you proceed you should tell me
20 because I see in your affidavit at paragraph 15.5, what firm Mr Montana wanted to be instructed?

MS NGOYE: There was a firm called BBM Attorneys, I don't know what the acronym stands for Chairperson, but they call themselves BBM Attorneys and we were supposed to state the matter to BBM for them to run with it.

CHAIRPERSON: And were they on PRASA's Panel of Attorneys?

MS NGOYE: No Chairperson they were not.

CHAIRPERSON: What was the position about law firms that were on PRASA's Panel of Attorneys, was the position that when PRASA instructs attorneys it had to confine itself to those attorneys who were on the Panel all the time or was the position that in certain circumstances attorneys who were not on the Panel could be briefed by PRASA and if so what would be those circumstances?

MS NGOYE: Chairperson it was very clear within PRASA that if a law
10 firm is not on the Panel it cannot be briefed, I mean this was also making sure that you know when the AG comes, the Auditor General, comes and audits the organisation we can then produce a list of attorneys and they can obviously look at who we have briefed, so it was a known fact a known fact within PRASA that unless a law firm is on the Panel of PRASA it cannot be briefed and that was the position, you know the reality was that we did not want to fall foul of those processes as well in our policies internally when we made sure that we only spec with those companies that are on the Panel.

CHAIRPERSON: Well was this position part of PRASA policy that is
20 written down and existed somewhere?

MS NGOYE: That's correct Chairperson

CHAIRPERSON: And it was clear?

MS NGOYE: Yes it was very clear Chair.

CHAIRPERSON: Yes, okay, alright. Yes you may continue.

ADV VAS SONI SC: In fact just to move to the related but different

point when Werksmans was appointed to do the investigation the AG raised the question that that was an irregular appointment because they were not on the list of PRASA's attorneys is that not correct?

MS NGOYE: Well I guess the AG raised it, Werksmans was on our Panel, let me start by saying that, so they were on our Panel but the issues that the AG had raised were primarily around the type of work that Werksmans was undertaking for the organisation and they felt that at the time PRASA ought to have gone out on tender because this was an investigation really at the end of the day and that's where the
10 challenge was, but at the end of the day Werksmans had been on PRASA's Panel when the decision was taken to work with Werksmans, so there as different appreciation or understanding Chairperson between what was really required and what had been done by the Board in the appointment of Werksmans.

CHAIRPERSON: And before any law firm could be placed on PRASA's Panel I take it that there was some accreditation process that would be undertaken by PRASA, is that correct?

MS NGOYE: That's correct Chairperson, the Panel comprised of those firms that had participated ...(intervenes).

20 **CHAIRPERSON:** That meet certain criteria.

MS NGOYE: That's it.

CHAIRPERSON: Is that right?

MS NGOYE: That's correct Chairperson.

CHAIRPERSON: Okay.

ADV VAS SONI SC: And they would bid to be on the Panel?

MS NGOYE: Yes, yes Chairperson.

ADV VAS SONI SC: Now just so that we are not at cross-purposes at some later stage you talk about a PRASA Panel of Attorneys, you indicated that this was a contract the Strawberry Worx contract was between Intersite and Strawberry Worx.

MS NGOYE: H'mm.

ADV VAS SONI SC: Was the Panel that Intersite used the same as PRASA's Panel?

MS NGOYE: Yes Chair in fact how it works within PRASA the Group is
10 that the legal function is central so the legal function sits at Head Office as a support function so all the subsidiaries of PRASA would then go to the legal function to ask for assistance there, the budgets of that work would sit in the corporate function with the Legal Department, so none of the subsidiaries had a budget for legal work.

ADV VAS SONI SC: Can we turn to the instruction that you must dis-
appointment Hogan Lovells and appoint BBM, what happened to that instruction?

MS NGOYE: Well Chair as I indicated I didn't understand the rationale
for the instruction from Mr Montana but it was a serious issue and we –
20 one can safely say that we were really under strain to justify why we should not be using BBM, you know one would have thought that it is what it is at the end of the day when you have a law firm that is not even on the Panel and there's an insistence that we give it work and at the end of the day we were also looking at the monies that the organisation had spent with Hogan Lovell so it just didn't make sense

to us that we just move this on instruction because somebody there says Hogan Lovell is not representing and looking out for the interests of PRASA accordingly so you know it was just one of those things that we just – we were just not comfortable doing.

CHAIRPERSON: Is Mr Montana a lawyer?

MS NGOYE: Not that I know of Chair.

CHAIRPERSON: Yes.

ADV VAS SONI SC: No, no your answer is either yes or no.

MS NGOYE: Okay he is not a lawyer Chairman.

10 **CHAIRPERSON:** But of course if you don't know you can't say he is not.

MS NGOYE: Well that is the other thing.

CHAIRPERSON: If you don't know whether he is or he is not then you can tell me you don't know whether he is or not.

MS NGOYE: Well I don't know if he is Chair *ja*.

CHAIRPERSON: *Ja, ja*, okay, alright. Did you say to him but Mr Montana how can you say we must instruct a law firm that is not on our Panel, you know what the policy position is and if you did what did he say to that?

20 **MS NGOYE:** Yes Chair Mr Montana was aware you know that it is just not possible, one wanted – I wanted to find out really what the rationale is for this request from him.

CHAIRPERSON: What did he say?

MS NGOYE: And his explanation was no, Hogan & Lovell is not looking after the interests of PRASA, we need to move this to another

law firm.

CHAIRPERSON: So that might explain moving the work from Hogan Lovell but it can't be explained why a firm that is not on the Panel should be the one to which the work must be moved, so did he give you an answer as to why a firm that is not – that was not on the Panel of PRASA should be used?

MS NGOYE: There was no explanation Chair, we were just told move, move it to this law firm.

CHAIRPERSON: Yes.

10 **MS NGOYE:** And that's it.

CHAIRPERSON: Now with regard to Hogan Lovells with regard to them did he say, did he give you details as to what it is that he said they had not done well.

MS NGOYE: It was a general statement Chairperson, it was very general, about protecting ...(intervenes).

CHAIRPERSON: That they were not protecting PRASA/

MS NGOYE: Ja, in the interests of PRASA they are not doing well and that was not sufficient.

CHAIRPERSON: But you as the Head of the Legal Department you
20 were satisfied with the work of that firm?

MS NGOYE: Yes that is correct Chairperson.

CHAIRPERSON: You had no problems?

MS NGOYE: No.

CHAIRPERSON: Okay, thank you.

ADV VAS SONI SC: As it pleases. Now eventually though what was

the solution devised by Mr Montana to ensure that Hogan Lovells was removed? You wouldn't act on that instruction as I understand it ... (intervenes).

CHAIRPERSON: Mr Soni I think you should put the question differently, we haven't heard from the witness whether any scheme was devised. What did Mr Montana do when you refused to remove the work from Hogan Lovells to BBM?

MS NGOYE: Well Chair I can safely say that Mr Montana was not happy and I spoke earlier of a meeting that I was summonsed to with
10 the representatives of Strawberry Worx. Now for me it was very clear because really at that meeting those representatives of Strawberry Worx that were there had come to tell me as well to move Hogan Lovells as the attorneys for PRASA and in fact what I was told was that they would make sure that the advertising portfolio is moved from Intersite and is going to be run at Corporate, so you know at the end of the day what also transpired was that Mr Montana he had not communicated to me really what he was going to do but I just saw you know it would unfold, for instance I was you now at Intersite and the next thing I knew Chairperson was that Mr Montana's special legal
20 advisor, he had a special legal advisor by the name of Malini Naidoo, came to the offices of Intersite and started removing the files.

CHAIRPERSON: Started?

MS NGOYE: Removing the files.

CHAIRPERSON: Removing the files.

MS NGOYE: The files in relation to the advertising portfolio.

CHAIRPERSON: Yes.

MS NGOYE: Obviously I found that very strange and when I enquired as to you know where the instructions come from I received a very hostile response from Ms Naidoo who you know for instance told me that she was an officer of the court, she was here to remove the files, she was instructed by Mr Lucky Montana to do so and found it you know rather amazing that I was refusing to release the file and started accusing me of corruption, right there, you know her words were what is it that you are hiding, that you don't want these files to be removed.

10 Remember at the time there was no instructions from Mr Montana to say look I am going to remove these files from Intersite, it just happened like that, that people just came in, led by Ms Malini Naidoo, who was Mr Montana's special advisor, she just came and removed the files.

CHAIRPERSON: Did she say she was doing so on Mr Montana's instructions?

MS NGOYE: Yes Chair, she told me that, in fact she – her attitude was you can ask whoever you want, but Mr Montana is the one that said we must come and remove these files.

20 **CHAIRPERSON:** How long did – how long after your discussion with Mr Montana did this happen?

MS NGOYE: It was about two/three months after Chair.

CHAIRPERSON: Yes.

MS NGOYE: That you know there was this rash move.

CHAIRPERSON: And in the interim during that three or so months you

he had not come back to you to say look I heard what you said but I am going to instruct people to come and remove the file?

MS NGOYE: No he hadn't Chair, in fact when that happened I phoned Mr Montana to want to know what is going on, but I didn't find him, so I then phoned – we had a Lead Independent Director because Mr Montana was the Group CEO and Chairperson as well of Intersite and when I phoned Mr Bennie Butshelo and I said Mr Butshelo what is going on, I am not advised of this instruction, the mandate of advertising from the PRASA Board sits with Intersite and there is no resolution that I
 10 know of that removes that portfolio from Intersite back to Corporate, what is going on and Mr Butshelo was puzzled, he didn't know what was going on and he indicated to me that he will find out from Mr Montana, but effectively Chair that's what transpired and when I met Mr Montana the following day I basically said to him but Mr Montana how can you send people to come and attack me, I remember that's exactly what I said, to come and attack me and I report directly to you, you know in terms of the structure, why is it that you did not tell me that you are sending people to Intersite to come and remove the files. You could have told me, I even said to him so I must just be aware because
 20 maybe people will come in and attack me and I wouldn't know about it.

Mr Montana said well he didn't know anything about it, he didn't know anything about the removals of those files, he didn't instruct anybody and then I requested that we then schedule a meeting you know with the individuals that had come and represented that he was the one that instructed them, but that meeting took a different form

Chairperson

CHAIRPERSON: Well maybe you need to tell us that difference because that's part of the removal of the files and what happened to them.

MS NGOYE: Sure.

CHAIRPERSON: Yes.

MS NGOYE: You know Chair we met in that meeting with Mr Montana, myself, Mr Tiro Holele, Mr Tiro Holele was the strategy officer in the office of the Group CEO, then we had Ms Malini Naidoo, the advisor,
10 Special Advisor to Mr Montana, then we had the late ...(indistinct) Mzingo who was responsible for the Corporate Affairs portfolio within the organisation.

Now I went there wanting really to find out how Mr Montana could then have given this instruction and then come back and say he didn't and I thought that you know Mr Montana would reprimand the people that just basically came to Intersite and removed the file. It didn't happen like that. In fact within minutes of that meeting Mr Montana's words were you see if you guys had listened to what I had said to you we would not be sitting here and ...(intervenes).

20 **CHAIRPERSON:** If you guys had listened to who?

MS NGOYE: To what he had said to us, about the advertising portfolio ...(intervenes).

CHAIRPERSON: The guys here, the reference to the guys here being a reference to who?

MS NGOYE: Mr Holele and myself.

CHAIRPERSON: Okay.

MS NGOYE: Mr Lindikaya Zede, who was the company secretary at the time, also you know knew about the instruction to remove the files, so Mr Montana effectively said to us we wouldn't be sitting here if you people, referring to the three of us, had listened to what I said and therefore he wants these files to be removed, so we didn't deal in that meeting with the fact that he had said he didn't authorise the removal of those files. In fact there were lots of accusations that were levelled against me by Ms Malini Naidoo in the presence of Mr Montana you
10 know accusing me of corruption, accusing me of maladministration and you know at the end I said to Mr Montana well if that's the case then suspend me, so that you can conduct your investigations but I don't agree with what is being said and the issue here was about the removal of the files and the instruction that you had given, so clearly now you are going against the word that you had told me that you had no knowledge of this instruction and now it appears that you are actually supporting what was done.

You know the meeting was a horrible meeting Chairperson. In fact in that meeting what Mr Montana decided was there was a Martin
20 Chauke, who was responsible for running the advertising portfolio within Intersite, an instruction was given to say call Mr Chauke and suspend him and tell him to bring you now PRASA's equipment. This was around 22:00 at night Chairperson and we had to do that and I was very clear I wasn't going to suspend Mr Chauke because I just didn't agree with how you know things were done and Ms Holtzinger together

with Ms Malini Naidoo then decided to draft the letter and to suspend Mr Martin Chauke, so we had to call Mr Chauke into the office and he arrived roundabout 23:00 at night to be told that he is being suspended and that the portfolio in any event has moved to the Corporate function and I must state Chairperson that the issue around the governance processes of that removal were also a concern because what we had said is then give us then a resolution from the PRASA Board that directs that we need to do this. It never came you know so that's how things worked.

- 10 **CHAIRPERSON:** So you didn't get – Mr Montana didn't say at that meeting I never – I had not given instructions in the past that the files be removed as such but his utterances at the meeting suggested to you that he had actually given the instruction is that right?

MS NGOYE: That's correct Chairperson.

CHAIRPERSON: Yes.

MS NGOYE: In fact what ...(intervenes).

CHAIRPERSON: Certainly at the meeting he was fully in support of the removal of the files?

MS NGOYE: That is correct Chairperson.

- 20 **CHAIRPERSON:** Yes, okay.

ADV VAS SONI SC: Chairperson I see it is 11:15 and at the risk of ...(intervenes).

CHAIRPERSON: Yes.

ADV VAS SONI SC: There are a number of issues that arises and I want to just tie up things so that I could tell you in the affidavit where

these matters appear.

CHAIRPERSON: No that's fine let us deal with them after the tea break, let us take the tea break, we will resume at half past. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, let us proceed. Your mic and your voice.

ADV VAS SONI SC: Yes. Ms Ngoye, the evidence you have given just
10 before we broke, would I be correct that it is all set out in paragraph 15 which has 17 subparagraphs to it?

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: This is off your affidavit called SS7B.

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: Now just to tie up a few small points. Re effect of – what was the effect of that meeting in regard to where the portfolio – the advertising portfolio, concerning Strawberry Worx was?

MS NGOYE: It had moved to the corporate function of PRASA.

CHAIRPERSON: Did that mean that Intersite would have nothing to do
20 with it or did it mean that Intersite would still have something to do with it but you as CEO maybe and your team at Intersite would not have anything to do with it?

MS NGOYE: No Chair, it was very clear. It was removed all together form Intersite so effectively all of us at Intersite would have nothing to do with that portfolio.

CHAIRPERSON: But Intersite would remain a party to that agreement.

MS NGOYE: That is correct Chairperson.

CHAIRPERSON: But the management at Intersite would have no role to play.

MS NGOYE: That is right Chairperson.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Thank you. The next question is ...(intervenes).

CHAIRPERSON: I am sorry Mr Soni. I am terribly sorry. Did that mean that different people would be the people to instruct attorneys?

10 **MS NGOYE:** That is correct Chairperson.

CHAIRPERSON: Yes.

MS NGOYE: In fact, that is what happened.

CHAIRPERSON: That is what happened?

MS NGOYE: H'mm yes.

CHAIRPERSON: Okay alright. At that time, you were at Intersite and not in the Legal Department of PRASA. But once it was – these files were at corporate services, did that mean they would fall under the Legal Department of PRASA or not necessarily?

MS NGOYE: Not necessarily Chairperson.

20 **CHAIRPERSON:** Okay.

MS NGOYE: In fact, they were run from the office of Mr Lucky Montana the Group CEO.

CHAIRPERSON: Yes.

MS NGOYE: His special advisor Ms Malini Naidoo.

CHAIRPERSON: Yes.

MS NGOYE: Became the person that ran with the process.

CHAIRPERSON: Yes. This might just be something as an aside, did you say Ms Naidoo was a legal advisor to Mr Montana?

MS NGOYE: That is correct Chairperson, special legal advisor.

CHAIRPERSON: Special legal advisor.

MS NGOYE: That is correct Chairperson.

CHAIRPERSON: You may or may not be able to answer this. Would there have been a need for a special legal advisor to the Group CEO in – for PRASA in circumstances where PRASA had a Legal Department which
10 was supposed to provide legal advice to PRASA? And I would imagine including the Group CEO.

MS NGOYE: Well I did not think so Chairperson because as the Group Executive responsible for legal one would have thought that there is no need for a special legal advisor for Mr Montana. But you know these things I suppose ...(intervenes).

CHAIRPERSON: Do you know whether there was provision in the instruments of PRASA, policies or organogram or whatever that made space for the appointment of a special legal advisor to the Group CEO?

MS NGOYE: No Chair, there was not any.

20 **CHAIRPERSON:** There was not any?

MS NGOYE: No.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Now in regard to – well if I could just follow up from what the Chairperson has asked. You are the Head of Legal now at PRASA, you have been since 2014 – August 2014.

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: How many lawyers including yourself work in your Department?

MS NGOYE: Well now the number has dwindled Chairperson. I think now there is four legal advisors left but we were at one point seven legal advisors that were part of the team.

ADV VAS SONI SC: And at the time of the – this incident when the portfolio was taken from you, from Intersite, how many legal advisors were there at PRASA head office?

10 **MS NGOYE:** There were roughly 5/6 Chairperson.

ADV VAS SONI SC: And in your view they had the necessary experience to deal with all matters concerning PRASA and perhaps CEO?

MS NGOYE: Yes Chairperson. I believe that all of them in fact are admitted attorneys so.

CHAIRPERSON: When these files were at Intersite when you were still the CEO of Intersite, were they being handled with the guidance of the Legal Department of PRASA?

MS NGOYE: No Chair, they were in the office of the Group CEO Mr Montana and because ...(intervenes).

20 **CHAIRPERSON:** I mean before they were removed from Intersite. That is what I am talking about.

MS NGOYE: Yes, yes Chair.

CHAIRPERSON: Where – before they were removed from Intersite ...(intervenes).

MS NGOYE: Yes.

CHAIRPERSON: Were they being handled with the guidance of the Legal Department of PRASA?

MS NGOYE: That is correct Chair.

CHAIRPERSON: Yes.

MS NGOYE: Yes.

CHAIRPERSON: Okay but you say after they were removed from Intersite that changed.

MS NGOYE: Yes, that is correct Chair.

CHAIRPERSON: Okay.

- 10 **ADV VAS SONI SC:** Now in your affidavit SS7B at paragraph 15.4 you refer – this is a meeting to which you referred earlier. One of the people whom you name as being at the meeting is Mr Maraj. Do you see that?

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: And then if you look at 15.6 you say the last attorneys who handled the matter was Maraj Attorneys. Is there a relationship between Maraj Attorneys and Mr Maraj?

MS NGOYE: It was one and the same person Chairperson.

ADV VAS SONI SC: And besides now acting for PRASA whom were Maraj Attorneys acting for in the dispute with Prime Media?

- 20 **MS NGOYE:** Chairperson, effectively they were acting for both PRASA and Strawberry Worx.

CHAIRPERSON: So, let us get this right. As at the time when the files were removed from PRASA – from Intersite the attorneys being used by Intersite/PRASA were Hogan Lovells.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Once the files were removed and place at corporate services at PRASA where the attorneys dealing with the matter on behalf of Intersite/PRASA changed.

MS NGOYE: Yes Chair, in fact Hogan Lovells was removed from the brief.

CHAIRPERSON: Yes.

MS NGOYE: Yes.

CHAIRPERSON: And who was instructed to handle the matter on behalf of Intersite/PRASA?

10 **MS NGOYE:** Mr Maraj.

CHAIRPERSON: Mr Maraj – Maraj Attorneys.

MS NGOYE: Maraj Attorneys, yes.

CHAIRPERSON: And you say Maraj Attorneys was also acting for Strawberry Worx.

MS NGOYE: That is correct Chair.

CHAIRPERSON: And at the time that the matter was still being handled by Intersite before the removal of the files, was Maraj during that time acting for Strawberry Worx?

MS NGOYE: That is correct Chair.

20 **CHAIRPERSON:** Strawberry Worx alone in this dispute but later on, he acted for both Strawberry Worx and Intersite/PRASA?

MS NGOYE: That is correct Chairperson.

CHAIRPERSON: Okay alright.

ADV VAS SONI SC: Now much earlier Ms Ngoye you said that this dispute is still ongoing.

MS NGOYE: H'mm.

ADV VAS SONI SC: You recall Ms Ngoye?

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: Who acts for PRASA at present in that dispute?

MS NGOYE: Hogan Lovells acts for PRASA Chairperson.

ADV VAS SONI SC: And for Strawberry Worx?

MS NGOYE: I think it is still Mr Maraj. I could be wrong Chairperson but we removed the instructions from Mr Maraj because of the conflict obviously that was there and we took the matters back to Hogan Lovells
10 and they continue to run.

ADV VAS SONI SC: We have not gotten there. So, at the time you are at Intersite, Maraj Attorneys are acting for both PRASA and Strawberry Worx.

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: When did you put an end to Maraj Attorneys – or when did Maraj Attorneys instructions to appear to represent PRASA end?

MS NGOYE: I think it was two months within my arrival within the legal function where myself together with the General Manager Mr Dingiswayo agreed that we could not have a situation where an attorney for a supplier
20 is also acting for PRASA. And also, we were not seeing traction as far as this matter was concerned and we believed that we needed to give them notice to say they accumulated – and also Chairperson I must state that Maraj was also not on PRASA's Panel at the time that they were instructed. So, we had to deal with all those issues just to bring some semblance of order within the legal function.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Just to complete that part of the picture. As I understand it, when the matter was taken from Intersite Ms Malini Naidoo was effectively the legal advisor for PRASA in relation to that matter?

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: When you got to PRASA Head Office in August 2014, you then removed Maraj Attorneys as PRASA's instructed attorneys.

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: At that stage where was the file – the Strawberry
10 Worx file in terms of the legal part?

MS NGOYE: The files had been at the corporate function. The files were also with Mr Maraj so we naturally had to pay Mr Maraj to get our files back because obviously he would not release the files until his fees were paid. So that is what we needed to do and that is what we did.

ADV VAS SONI SC: Is that the condition he put to returning the files to you?

MS NGOYE: Yes.

ADV VAS SONI SC: Now in regard to Mr Chauke he is suddenly
20 suspended, was any reason given to him to your knowledge for why he was suspended?

MS NGOYE: His letter said it was insubordination Chairperson so ...(intervenes).

CHAIRPERSON: What were the details of the alleged insubordination?

MS NGOYE: The fact ...(intervenes).

CHAIRPERSON: As you understood them.

MS NGOYE: Yes. The fact that he was- what Mr Martin Chauke was actually accused of was working with a supplier at the detriment of PRASA and effectively what had happened at the time Chairperson was that both Ms Malini Naidoo as well as the late Ms Hope Zinde had not understood because they had just come into that process not long. They had misunderstood the communication between Mr Chauke and one of the service providers where he insisted that certain things was supposed to be done in a particular way as far as the contract was concerned because he was managing that contract. So, they took that correspondence to
10 mean that Mr Chauke was working against PRASA and conniving with Prime – Provantage.

So, it just did not make sense and when I in that meeting with Mr Montana tried to explain that, it became an issue of saying, no, well that is not how things work. And because the meeting was so tense you then could not even find a way of saying let us step back and really understand what it is that we are talking about. But they had created this impression that, no, Mr Martin Chauke is working with the opposition and therefore he must be removed.

ADV VAS SONI SC: How long was he suspended for?

20 **MS NGOYE:** Mr Chauke was suspended for a period of about 2 years Chairperson without being charged.

ADV VAS SONI SC: And was he ...(intervenes).

CHAIRPERSON: That would have been from when to when in terms of years 2015, 2014?

MS NGOYE: No, it was 2014 so he came back in 2016.

CHAIRPERSON: H'mm.

MS NGOYE: H'mm.

CHAIRPERSON: You do not remember the month or when the suspension started?

MS NGOYE: No.

CHAIRPERSON: Was it the end of the year?

MS NGOYE: No, it was not the end of the year Chair. It was around June, I think.

CHAIRPERSON: Okay.

10 **MS NGOYE:** Of 2013.

CHAIRPERSON: Yes.

MS NGOYE: Yes.

CHAIRPERSON: Oh 2013?

MS NGOYE: Yes. It was 2013.

CHAIRPERSON: Ja.

MS NGOYE: When Mr Martin Chauke was asked to leave. So, the whole of 2014, 2015 he was not at work. He only came back in 2016.

CHAIRPERSON: Yes.

MS NGOYE: Ja. So, it was over 2 years effectively.

20 **CHAIRPERSON:** Yes. And do you know why no charging's were brought for so long?

MS NGOYE: Well Chairperson I mean I guess for me it was very clear that there were no charges. People could not put the charges together to – in fact he was like a forgotten soul. He is out there and therefore it does not matter anymore.

CHAIRPERSON: H'mm.

MS NGOYE: Because the expectation that one would have had is that I mean if you are accusing somebody of that, you would immediately prepare the charges but it was not done.

CHAIRPERSON: Yes, thank you.

ADV VAS SONI SC: Now at paragraph 15.17 of SSAB, that is this affidavit that we are dealing with, you say that what you have narrated is being done to show the power of mister or the influence of Mr Roy Moodley at PRASA.

10 **MS NGOYE:** That is correct Chair. Chair you will recall I had indicated that I did not know Mr Moodley. So, but when I then got to understand what was happening within Intersite with this advertising portfolio and the instructions that were given, it really became clear to me that Mr Moodley was very powerful. Because what I was told at the meeting was, we are going to remove these files, we are going to remove this portfolio from Intersite. And it happened. So, to me it was very clear that, wow, we have got somebody who is clearly very powerful who can give those instructions and they carried out.

ADV VAS SONI SC: Now why do you connect Mr Moodley, Roy Moodley,
20 with Strawberry Worx?

MS NGOYE: His son Chairperson Selvan Moodley was really instrumental in running that portfolio. So, he managed that portfolio and that relationship obviously father and son for me was very clear that even though Mr Moodley was not involved, the son was involved.

CHAIRPERSON: Was Strawberry Worx Mr Roy Moodley son's company at

it were?

MS NGOYE: Yes. Yes Chairperson.

CHAIRPERSON: Okay.

ADV VAS SONI SC: And you say that on the basis of what?

MS NGOYE: Well Chairperson this the – I was made to understand that that is the case where Strawberry Worx was really – I think it was one of the Directors at Strawberry Worx and so it followed.

ADV VAS SONI SC: And in your view ...(intervenes).

CHAIRPERSON: Did you ever – I am sorry. Did you ever see
10 correspondence from Strawberry Worx that maybe was signed by him or anything like that?

MS NGOYE: In most instances the correspondence from Strawberry Worx was signed by Mr Ashveer. So, he would be the one that does a lot of the letters to PRASA/Intersite. But the company document has Mr Selvan Moodley.

CHAIRPERSON: Yes.

MS NGOYE: As a Director in the company.

CHAIRPERSON: So, Mr Roy Moodley's son was reflected as one of the Directors in the correspondence.

20 **MS NGOYE:** Yes Chairperson.

CHAIRPERSON: Okay.

ADV VAS SONI SC: And just finally when on that issue. When you were managing the Strawberry Worx portfolio as the CEO of Intersite, did you have interactions with Mr Selvan Moodley?

MS NGOYE: Yes, I did Chair. It was in that meeting where I was

constantly told that I do not know what I am doing and I was told that I needed – in fact I was given instructions of how to run the portfolio and obviously I was not going to take that. And one thing I made perfectly clear to Mr Moodley and the team that had come to him – with him to the meeting with that, I do not report to you. I report to the Board of Intersite so I am not sure why it is that you can have so much confidence in the meeting to tell me how to run the function. I took exception to it Chairperson.

ADV VAS SONI SC: And what was his reaction to that?

- 10 **MS NGOYE:** Well Chairperson I guess for me the reaction was, well we will see what will happen what will prevail. Because immediately after that we left the meeting and this whole noise around Strawberry Worx and the lawyers intensified coming from Mr Montana. So, for me it became very clear that they clearly went back to report back to Mr Montana and insisted on how things should be done and finally their wishes were met.

- ADV VAS SONI SC:** The next issues that you deal with in your affidavit Ms Ngoye is your interactions and perhaps relationship with Mr Lucky Montana and you deal with this from paragraph 16 of your affidavit. Will you tell the Chairperson please what is it that is relevant to the question
20 of State Capture in regard to the matters you write?

MS NGOYE: Well Chairperson Mr Montana was the – I first encountered Mr Montana in fact at Intersite, he was the Chairperson of the Board of Intersite and he was also the Group CEO at Intersite so – I mean at PRASA. So effectively I mean when I joined, I got to meet Mr Montana and because he was the Chairperson of the Board of Intersite as well, I

interacted extensively with Mr Montana at the time.

And in fact when I was asked to leave Intersite to go to PRASA, Mr Montana said to me, Martha we have a need for a strong Legal Department for PRASA so therefore because of your background I would like- suggest that you move – we move you External Group Executive position, we move you from the CEO of Intersite to go and build the legal function at corporate. Which I did not see anything wrong with. I just knew that as an executive you could be asked to do any work anywhere and it was fine with me.

10 **ADV VAS SONI SC:** One key including issues is that you moved from Intersite to PRASA at Mr Montana's request.

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: But you had this ugly encounter with Mr Montana relating to Strawberry Worx. I am just saying – explain how we sitting outside should understand that?

MS NGOYE: That is how it happened Chair. I mean I – some of the things I am afraid I cannot explain but yes, the encounter with Strawberry Worx with Mr Montana was a very unpleasant one. And then yes indeed he then asked me to go and lead the legal function, I could not refuse
20 Chairperson. So, I agreed to then go across to the Legal Department. So as to – I guess one also as far as Mr Montana was concerned my approach is, we are working together. And I do not bare grudges and would not have taken that as an issue that I needed to carry with me all the time. I accepted what happened and I moved on.

CHAIRPERSON: Now would this move on your part act as a request have

been a promotion or not necessarily?

MS NGOYE: It was a lateral move.

CHAIRPERSON: It was a lateral move.

MS NGOYE: It was a lateral move Chairperson.

CHAIRPERSON: Your salary and other benefits remained the same?

MS NGOYE: That stayed the same.

CHAIRPERSON: Okay.

ADV VAS SONI SC: And I suppose this professional level it was within the field for which you had been trained and studied.

10 **MS NGOYE**: That is correct Chairperson.

ADV VAS SONI SC: Now you then go to ...(intervenes).

CHAIRPERSON: Well it may be necessary – Mr Soni, I am sorry.

ADV VAS SONI SC: H'mm.

CHAIRPERSON: Would it be fair to look at his request to you to move to Head of the Legal Department, would it be fair to look at that against the background of your what appears to have been a serious disagreement about removal of the files? Would it be fair to look at it as two professionals who accepted that they did not agree on certain issue but otherwise their working relationship just continued on other matters?

20 **MS NGOYE**: Yes, correct Chair. I just believed that we – that a lot of instances did not agree with Mr Montana. But at the end of the day it was a task – a fact that I was required to do because the Board of Intersite also had to agree to releasing me to go and work for PRASA's legal function.

CHAIRPERSON: H'mm.

MS NGOYE: So, it was just one of those things where you say, we are professionals and we just need to do what is in the best interest of the organisation.

CHAIRPERSON: Okay.

ADV VAS SONI SC: And soon after you moved to the – to Head in the legal at PRASA Mr Montana asks you to do an important job. Would you tell the Chairperson what that was?

MS NGOYE: Chairperson in December – January – 2014 December, 2015 January, Mr Montana took leave for two months and he then approached
10 me and requested me to act in his stead during that period of two months. So, I was then able to take over the role of the Action Group CEO whilst he was away and that is what happened.

CHAIRPERSON: Well I guess that following up on the question I asked earlier on, credit should be given both to you and him that at least at that stage whatever disagreements the two of you may have had, you were not – both of you were not allowing that to affect your working relationship.

MS NGOYE: That is correct Chairperson.

CHAIRPERSON: Because now he was asking you to stand in for him in to be Acting Group CEO.

20 **MS NGOYE:** That is correct Chair.

CHAIRPERSON: He would not – I would imagine he would not want to do that to with somebody that he did not trust or with somebody he did not think would be up to the job and so on.

MS NGOYE: That is correct Chairperson.

CHAIRPERSON: Yes okay.

ADV VAS SONI SC: Ms Ngoye you might remember much earlier in your evidence you were talking about or you were relating your role as Head of Legal in contracts that PRASA concludes and what advise you were given and so on. You mentioned two matters at that stage, a Swifambo matter and the Prodigy matter.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Now how did they become relevant to what happened soon after you assumed duties in around May 2015?

MS NGOYE: Chairperson as I have indicated, the issue around Swifambo
10 was just not working where the legal function was concerned. We believed that the contract had forgone and the advises that we were given were not really being listened to. When we asked the question to say we cannot continue with this contract if these things have not been met. The conditions precedent have not been met. Anybody would know that unless you meet the conditions precedent the contract does not come into be. So, when we asked these questions and we interrogated the contract, we received a lot of push back. We then wrote Mr Dingiswayo and myself then we wrote to Mr Montana effectively indicating that we will not be able to participate in the issue of Swifambo.

20 When it came to Prodigy, Mr Dingiswayo is the one that dealt with the Prodigy contract and I worked very closely with Mr Dingiswayo, him being my direct report and he had indicated to me that, look this is the scenario and this is the e-mail that I am going to send to Mr Montana and the team that had instructed us on the matter. Because we did not agree that there was proper process that will follow so we think that –

that e-mail to Mr Montana and the team that had instructed us and you know we thought that we would be engaged accordingly about the advices that we had given but we were not.

ADV VAS SONI SC: Let us just start off with the Swifambo matter.

MS NGOYE: H'mm.

ADV VAS SONI SC: When you become a Head of Legal at PRASA that is now one of the matters on your table I think.

MS NGOYE: Yes it came to my table. It was the amendment – the intended amendment of the Swifambo contract. Because the contract
10 had already been concluded so we were looking at amending the contract with the possibility of also increasing the value of the contract to R5 billion.

ADV VAS SONI SC: When you say we who initiated that process of increasing the value of the contract?

MS NGOYE: It was a discussion that was happening within the organisation Chair. I understood that the instruction was coming from you know Mr Lucky Montana and obviously he would need to have taken that instruction back to the Board. So we understood as the legal function that that was the intention – that is where the organisation was
20 going and the necessary approvals would be obtained to increase the value from R3.5 billion to R5 billion. So it is something that we understood.

ADV VAS SONI SC: And from the perspective of legal was that going to create hurdles for PRASA or problems for PRASA?

MS NGOYE: Well it would have Chair. Having considered the contract

and the issues that we had raised you know with the contract itself we were not comfortable. I mean this – this matter was huge. R3.5 billion for instance the approval of National Treasury. We asked those questions. And the fact that those things were not being attended to you know created a very serious problem for us you know from a compliance perspectives and we just did not see this contract you know being beneficial to PRASA. And when we raised our concerns it was not received favourable.

ADV VAS SONI SC: So – but let us just have some detail. When you
 10 say we raised our concerns what – who specifically and with whom and thereafter what were the nature of the concerns you raised?

MS NGOYE: Chairperson Mr Montana as far as this particular contract was concerned had sought the legal advice of a Ms Brenda Malongete who was a consultant at the time. And she had been the one that had you know been running with the drafting of the contract. So Mr Dingiswayo and myself had had a number of meetings with Ms Malongete who was effectively the legal advice for PRASA and when we raised the concerns because the issues – when we read the contract we wanted to know – we saw gaps in the contract as an example R3.5
 20 billion is above the materiality you know of PRASA and in terms of Legislation we knew what needed to be done. And we asked whether the – for instance the necessary approvals were in place she was not able to give us. We asked about the necessary approvals you know in terms of Treasury, in terms of the DLT and we wanted to see all those and we also wanted to understand exactly what the Board of PRASA

had approved. Because it was not clear at the time whether the Board had approved the stay or the lease of the locomotives and the number that was you know branded at the time was between 70 and 80 so we needed clarity in terms of you know those issues in the contract and the material ones obviously being compliance.

ADV VAS SONI SC: And you have read the judgment of Justice Francis and then Justice Lewis in the SCA.

MS NGOYE: H'mm.

ADV VAS SONI SC: Some of – though the issues that they decided in
10 their respective judgments matters that you had raised.

MS NGOYE: Yes Chair. I mean the issues around the conditions precedent yes we did. And I guess at the time Chair when we were instructed to assist with the Swifambo contract you know we did not have a lot of information. I mean some of the work that was picked up through the investigation was not things that were at our disposal. For instance in terms of really pulling out the fact that you know out of the number of guarantees that were required we did not even get all the number of guarantees that were there. But we saw this at face value – we were just asking questions you know just to make sure that
20 everything has been complied with.

ADV VAS SONI SC: Then can I just say you talk about an investigation you must please tell the Chairperson what investigation you are talking about?

MS NGOYE: Chairperson this is the forensic investigation that was conducted by the firm of attorneys Werksmans from the instructions of

the Board. So when they did their investigations and looked at these contracts they were then able to find out that a lot more had been amiss.

ADV VAS SONI SC: So this is after Mr Molefe's Board had taken office?

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: And who was – what was Mr Montana's position at PRASA at that time?

MS NGOYE: Well Mr Montana left in 2015 so the – so he was no longer
10 there at the time that really this investigation process commenced.

ADV VAS SONI SC: But at the time you were raising in 2015 now you were raising questions the investigation had not started or had it started?

MS NGOYE: That is correct Chair it had not started.

ADV VAS SONI SC: So even before the investigations you were raising questions in relation to the possible extension of the contract from R3.5 billion to R5 billion?

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: Now the other contract that you mention in
20 paragraph 19 is a contract relating to Prodigy.

CHAIRPERSON: H'mm.

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: Now why would Prodigy be such an important player in PRASA?

MS NGOYE: Chairperson we knew that – in fact it was spoken of

internally that whoever touches Prodigy you know is not – will not receive a favourable you know response from Mr Montana. We had been communicating with a lot of people internally and they had indicated to us that this was Mr Moodley's contract and therefore we needed to do you know what we have been instructed to do.

ADV VAS SONI SC: The Mr Moodley you talking about is?

ADV VAS SONI SC: Mr Wayne Moodley.

ADV VAS SONI SC: Then you refer then to an annexure which is NN2 at page 317 of that bundle.

10 **MS NGOYE:** Yes Chair.

ADV VAS SONI SC: If you could just summarise for the Chairperson what the issue is that is raised near ...(indistinct).

CHAIRPERSON: Before that tell us who the e-mail came from and to whom it was addressed and what the subject was that it was dealing with and the date and then you summarise the issues that way.

ADV VAS SONI SC: Sorry Mr Chairperson I understand my learned friend wants to raise a matter.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: Thank you Chair and my learned friend for the
20 indulgence.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: Chair I just want to bring to the attention of yourself that we have not received these annexures and this – these – this part of the affidavit Chair.

CHAIRPERSON: Oh is that so.

UNKNOWN COUNSEL: We have limited information to work with.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: May I ask for a short stand down and if my learned friend can oblige me with a few copies we can then proceed. It will be a very short.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: I cannot follow because I do not have copies.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: If I am indulged with a set I could follow along.

10 **CHAIRPERSON:** Yes. No that is fine.

UNKNOWN COUNSEL: Thank you Chair.

CHAIRPERSON: Let – Mr Soni.

ADV VAS SONI SC: Mr Chairperson firstly if that has happened I am must accept responsibility for that and I apologise. It is as you well know done by a different Department. I obviously would okay it and I am sorry. But we will make available to my learned friend the relevant annexures that he wants now Chairperson.

CHAIRPERSON: What should happen is before anybody sends anything to anybody the Evidence Leaders must okay that to say, is this
20 the right thing to send? Is everything that should be sent included?

ADV VAS SONI SC: Yes.

CHAIRPERSON: And so the Evidence Leaders must make sure that other people do not decide for them.

ADV VAS SONI SC: Yes.

CHAIRPERSON: What is to be sent? The Evidence Leaders must

identify what is to be sent and other people can then collect and bring to the Evidence Leaders to say these are the things we have identified. You check that they are fine and then they do not get sent until you say this is okay it can go.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay how much time should – five minutes?

ADV VAS SONI SC: We will not need more than five minutes.

CHAIRPERSON: Five minutes?

ADV VAS SONI SC: Yes.

10 **CHAIRPERSON:** H'mm.

ADV VAS SONI SC: About five minutes please.

CHAIRPERSON: About five minutes. Okay we will adjourn for five minutes. Adjourned.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, let's proceed. Your mic is not on.

ADV VAS SONI SC: Sorry Chairperson. There has been made available to my learned friend the annexure in concern – in issue.

20 **CHAIRPERSON:** Yes, okay, okay, thank you.

ADV VAS SONI SC: Ms Ngoye can you please tell the Chairperson what the gist of this document – well as ...(indistinct) who sent it, what the gist is and so on?

MS NGOYE: Chairperson this e-mail was from Mr Lucky Montana, it was addressed to Ms Nhlanhla Kondowe who was, effectively running

with the prodigy contract at the time, Mr Fani Dingiswayo and Mr Sidney Khuzwayo who is in the SEM Portfolio, I was copied, one of the people that was copied on the e-mail.

CHAIRPERSON: And this e-mail is marked MM2, is that right?

MS NGOYE: That's correct Chairperson.

CHAIRPERSON: Yes, okay what was the subject of the e-mail?

MS NGOYE: Chair the complaint – I saw this as a complaint from Mr Montana.

CHAIRPERSON: Ah yes.

10 **MS NGOYE:** You know, effectively it's about the My Station Programme which involves Prodigy and Chair this was done, obviously, after as the legal function we had given that advise to say, we believe that this contract is irregular and should not be continued with. He then writes this memo to us, effectively saying that there is nothing wrong with the appointment of Prodigy nor the extension of their contract. You know in a nutshell, this e-mail, Chairperson effectively, is Mr Montana being outraged and believing that there are forces within PRASA that are working against him, you know when you read the e-mail he says:

20 "This is well co-ordinated strategy that started in November 2014 when I went on leave."

Now this is a time when I was acting, you know at the time, so I effectively thought, okay this has got to do with me somehow, you know, in what work I did in his absence and you know, he says, the extent of opportunism by some of our managers really amazes me. So

you can see from the language that Mr Montana has used in the e-mail that he was ready to go to war with whoever was standing in his way as far as these matters are concerned because he raises that there's a couple of contracts which are seen to be irregular and so on and I understood, at the time, that he was referring to the work that we had done around Swifambo as well as now around Prodigy that he believed that we were working against him ...(intervenes).

CHAIRPERSON: Maybe the e-mail might be sufficiently important just by reading it, just read it, before that Ms Nhlanhla Kondowe was part of
10 the Legal Team or Legal Department?

MS NGOYE: No Chair, she's within HR and this is where the contract was placed within the organisation.

CHAIRPERSON: Oh Alright, just read the e-mail in then you can comment.

MS NGOYE: Okay.

CHAIRPERSON: *Ja.*

MS NGOYE: So he says – he addresses the e-mail to Nhlanhla, he says:

20 "There is nothing wrong with the appointment of Prodigy nor the extension of their contract. I'm not surprised because this is part of a much bigger agenda which has targeted certain contracts and appointments and projects these as being irregular. Some of the contracts had already been leaked to external auditors and the media as part of a strategy to discredit the Group CEO and

create a cloud before he steps down at the end of the year.”

It then goes on to say:

This is a well co-ordinated strategy that started in November 2014 when I went on leave. I will, at the most appropriate time, act against all those who are involved in this dirty campaign. The investigation they are starting is unlawful and part of a plot I am well aware of. The extent of opportunism by some of our managers really amazes me. A manager like Sidney Khuzwayo should start first by cleaning the many irregular appointments he has party to within SEM which I have been trying to address and even explaining some of these to the office of the Public Protector. Some of the managers are excited by the new Board and are feeding all sorts of wrong information so that they could carry favour with the Board, they will be the biggest losers at the end of this process. The decision to partner with Prodigy on the training of customer services remains sounds and the extension of the contract is still in order. Please allow them to continue with this strategy which is bound to fail, kind regards, Lucky Montana.”

CHAIRPERSON: Yes in the second paragraph he refers to the investigation that he said – that he says is unlawful, what investigation was he talking about there?

MS NGOYE: I don't know Chairperson, I wouldn't be able to say because I'm not aware of any investigation that was ...(intervenes).

CHAIRPERSON: Yes and he says that this, well co-ordinated strategy started in November 2014 when he was on leave, that is when you were standing in for him, is that right?

MS NGOYE: That's correct Chairperson.

CHAIRPERSON: Okay now with regard to the Prodigy contract there has been much evidence about it, just remind me again what it was about and to the extent that he talks about its extension, what actually
10 the extension was?

MS NGOYE: Chairperson the Prodigy contract was about – it is a training contract effectively where Prodigy would provide, you know, training to the customer services unit within PRASA so a number of employees within PRASA would be trained by Prodigy. So the contract had come to an end ...(intervenes).

CHAIRPERSON: They would be trained to do what or to be what?

MS NGOYE: In relation to customer services whatever was, you know, within customer services space, I don't have the details of the contract here, I just surmise to say certain things but what I know is that it was
20 around training within customer services.

CHAIRPERSON: Yes.

MS NGOYE: And various employees of PRASA would then be able to go there and then Prodigy would then be able to charge PRASA for services rendered in relation to that training. So it needed to be amended because we were increasing scope further.

CHAIRPERSON: And the – when you say, needed to be amended, is that the extension?

MS NGOYE: Yes, the contract itself we needed to then obviously include more scope of what Prodigy was supposed to do.

CHAIRPERSON: So the extension that he's talking about refers to an amendment of the contract to give it more a wider scope?

MS NGOYE: That's correct Chairperson.

CHAIRPERSON: Okay, alright.

MS NGOYE: Chairperson just for your reassurance Mr Dingiswayo is
10 going to be the next witness who will deal with this contract in more detail.

CHAIRPERSON: Yes, no that's fine.

ADV VAS SONI SC: Now this is sent to you, among others you and Mr Dingiswayo?

MS NGOYE: That's correct Chairperson.

ADV VAS SONI SC: And in regard to the complaint that there's nothing wrong with the contract, this is Montana's complaint, what prompted him to raise that issue?

MS NGOYE: Well I don't know Chair, I think for me because it was a
20 known fact within the organisation that you don't mess with the Prodigy contract, we knew, I mean we spoke as colleagues ...(intervenes).

CHAIRPERSON: You don't what?

MS NGOYE: Mess or you don't interfere with it, you know and we knew of colleagues that had tried to raise their objections to the Prodigy contract and how they were dealt with by Mr Montana. So,

effectively, we knew that, you know, what we were doing was probably going to land us into trouble but it's our job, we had to do it.

ADV VAS SONI SC: Now if you look at what you say was the tail end of paragraph 19 you talk about the advice that Mr ...(intervenes).

CHAIRPERSON: Paragraph 19 of her affidavit.

ADV VAS SONI SC: Of SS7A, 7B sorry Chairperson.

CHAIRPERSON: *Ja* SS7B?

ADV VAS SONI SC: Yes, you say that Mr Dingiswayo's advice did not accord?

10 **MS NGOYE:** That's correct Chair.

ADV VAS SONI SC: Just explain to the Chair what the circumstances were, Mr Dingiswayo will obviously come and give more details?

MS NGOYE: The instruction Chair, was review the contract, the amendment and okay it from a legal perspective because there was nothing wrong with it, as far as Mr Montana was concerned but because we went – after Mr Dingiswayo looked at the agreement and after discussing it with me, we both believed that we could not support the extension of the contract and advise accordingly. So when one says it did not accord with his instructions, it clearly means that, you know, he
20 was hoping that he would get the go-ahead from PRASA Legal Team which did not happen.

CHAIRPERSON: Just to go back to Mr Montana's e-mail that we dealt with one minute ago, when he says in that e-mail that there was nothing wrong with the Prodigy contract as at that time, did you, yourself know what the position was and if so was it your position that there was

something wrong with that contract?

MS NGOYE: Chairperson on reading the contract, you know – because this issue of Prodigy once again was not a matter that went past the Legal Department and these are some of the things that happened quite frequently within the organisation you know, some things come to us after they have been entered into. So it was one of those where at the end of the day, when it came to us now for amendment we ask for the entire file, we ask for the process that was followed you know, so those are the things we requested Ms Nhlanhla Kondowe to give to us so that

10 we can then see whether there's regularity in the contract itself and when those things were not forthcoming you know, we realised this must be a problem and we didn't want to be party to something, condoning something within the organisation that did not follow process.

CHAIRPERSON: So is the answer that, at the time of that e-mail, your attitude was that there seemed to be something wrong with it but you may not have been definite, you may not have been certain because you had not been given the contract or the whole file?

MS NGOYE: That's correct Chairperson.

20 **CHAIRPERSON:** Yes, okay.

ADV VAS SONI SC: Now as a result of – or after the e-mail was sent what dramatic event happened?

MS NGOYE: Chairperson the e-mail was sent on the 18th of May 2015, the – I then received a call from Mr Dingiswayo to say, look, I've been called back to the office, this is around 7 o'clock on the eve of the 18th

– yes it was the 18th and when – that Mr Montana wanted to see him. So Mr Dingiswayo left home and went back to the office in Pretoria to have this meeting with Mr Montana. What I then understood from Mr Dingiswayo was that when he gave me the call after the meeting, he said to me, listen I have been fired by Mr Lucky Montana and I found it very strange and I asked, what was the reason, what did he say to you was the reason for dismissing you and one of the allegations that Mr Montana had made against – this is what Mr Dingiswayo tells me and he'll speak to that Chair, he said to me that Mr Montana thought that he
10 was leaking information to the Board and he just didn't understand what that meant because if anybody could possibly leak – and I don't know how you'd leak information to the Board, would have been me because I am the person that would then sit in some of the Board Committee meetings because of the role that I play within the organisation and you know, it was just a very quick meeting as I understand it from Mr Dingiswayo that Mr Montana said to him, look he's clearly not working with him and he's working against him and therefore he's fired.

ADV VAS SONI SC: And this followed the evening after the day he sent the e-mail ...(intervenues).

20 **MS NGOYE:** That's correct Chairperson, yes.

ADV VAS SONI SC: Yes, when Mr Dingiswayo told you this, what did you do?

CHAIRPERSON: I'm sorry Mr Soni can I take you back Ms Ngoye to that e-mail, what page was it again?

ADV VAS SONI SC: Page 317 Chair.

CHAIRPERSON: Oh 317, look at the last few sentences of paragraph 3 of that e-mail, in those sentences Mr Montana says to Ms Kondowe:

“Some of the managers are excited by the new Board and are feeding all sorts of wrong information so that they could carry favour with the Board. They will be the biggest losers at the end of this process.”

How did you understand those two sentences?

MS NGOYE: Chairperson ...(intervenes).

CHAIRPERSON: Or did they not attract your attention at the time.

10 **MS NGOYE:** No they did.

CHAIRPERSON: Ja how did you understand them?

MS NGOYE: I understood it, because, you know, when Mr Montana went on leave there was an issue around the Prodigy report that needed to have been presented to the Board, now I was acting at the time and obviously it would have been me who then communicated to the Board, to say, we do not have this Prodigy report that Mr Montana had promised the Board and I think he took exception to that, I mean, the way I understood it was, he felt that he was the trade at the time but for me it was an issue of saying, you know, do we have this thing or
20 do we not have it and I know definitely, I am the one that then went back to the Board to say, we don't have it I had enquired. So when I read this statement – and also in relation to the Board, I knew very well that he was talking about me because there were issues that were raised in his absence that the Board had raised with me and that I had to report on which obviously, I guess, he didn't like what I had to then

tell the Board in his absence.

CHAIRPERSON: And did you know of any other managers that you think he was talking about in that sentence when he said some of the managers are excited by the new Board and they are feeding all sorts of information, one, I understand you to be saying you thought you were one of the people he was talking about, is that right?

MS NGOYE: Yes Chair.

CHAIRPERSON: Were there other managers that you thought he was talking about there?

10 **MS NGOYE:** I knew definitely that he was talking about Mr Dingiswayo because ...(intervenes).

CHAIRPERSON: Yes and why did you think he was talking about Mr Dingiswayo?

MS NGOYE: Because the subject matter of this e-mail, talks to Prodigy and Mr Dingiswayo was the one that was dealing with the Prodigy matter in the organisation.

CHAIRPERSON: Okay.

MS NGOYE: So I definitely knew that somehow there was an attack on the legal function as far as the work we've been doing.

20 **CHAIRPERSON:** Did you attach any meaning to the last sentence in that paragraph:

“They will be the biggest losers at the end of this process.”

MS NGOYE: Yes I did.

CHAIRPERSON: What did you understand that to mean?

MS NGOYE: I understood either that we were going to be disciplined, you know, for advice that we had given but I understood it to mean that we were at the wrong end of the stick where Mr Montana was concerned and I guess Chair, within PRASA you did not want to be on the wrong end of the stick where Mr Montana was concerned and I knew we were in trouble.

CHAIRPERSON: What happened if you did?

MS NGOYE: Well he took exception to it Chairperson, I mean the behaviour within PRASA was that, not a lot of people would challenge
10 Mr Montana on the things that he would say and if anything I think I was probably one of those people within the organisation that would challenge Mr Montana if I didn't agree with things and I found that, you know, for me it was a working relationship that we needed to have but there was a sense of fear, I mean I had some of my colleagues come to me to say, you have to be on the right side of Mr Montana, you mustn't challenge Mr Montana in the Exco meetings that we have and I just thought, but why are we here, you know, because we need to do things that are proper and – so that culture within the organisation was there to say, you don't challenge Mr Montana.

20 **CHAIRPERSON:** Then there was there's the second sentence in the second paragraph:

“I will at the most appropriate time act against all those who are involved in this dirty campaign.”

Did you have an idea of who he may have been talking about there?

MS NGOYE: I believe it was the Legal Department, I believe it was between Mr Dingiswayo and myself and Mr Sidney Khuzwayo within the procurement space.

CHAIRPERSON: Yes and why did you think, even in that paragraph he's still talking about you and Mr Dingiswayo?

MS NGOYE: Because Chairperson it was immediately after the advice that we had given which obviously just annoyed Mr Montana it was just immediately after that that he wrote this and I knew – I mean I even said to Mr Dingiswayo I said, you're not going to respond to this e-mail,
10 leave it because we are really being attacked here and let's just see what is going to happen but to me, at the time, it was very clear that this e-mail was intended for the Legal Department.

CHAIRPERSON: Okay thank you, Mr Soni I interrupted you.

ADV VAS SONI SC: Ms Ngoye may I take up a point that – as relating to the e-mail, if you look at the second paragraph of that e-mail it has three sentences. The Chairperson has dealt with the first two, may I ask you to look again at the third sentence, it says:

“The investigation they are starting is unlawful.”

What did you understand by that, firstly what investigation was
20 he talking about?

MS NGOYE: I – Chair I didn't know what he was talking to because clearly at the end of the day I knew I wasn't part of any investigations you know that was involved or investigating Mr Montana at the time. So I really didn't know what he was talking about.

CHAIRPERSON: But as you sit there now, after the lapse of time that

has happened, are you able to relate to any investigation that you later found out was happening at that time that he may have been talking about or not really?

MS NGOYE: Not really Chair, I couldn't.

CHAIRPERSON: Okay thank you.

ADV VAS SONI SC: And at that stage, just for the sake of timelines, the appointment of ...(indistinct) had not come into being?

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: And in regard to what you earlier called the
10 investigations that had been started by the new Board, those too had not started?

MS NGOYE: They had not started Chair.

ADV VAS SONI SC: Then you say that – sorry we're going back to now, Mr Dingiswayo being dismissed and that's SS7B paragraph 20, what did you do when Mr Dingiswayo told you that he'd been dismissed?

MS NGOYE: Chairperson immediately after speaking to Mr Dingiswayo I phoned Mr Montana because I didn't understand why he would – at least not speak to me as somebody that reports to him directly about
20 somebody that reports to me. So I phoned him, Mr Montana and I said, look I understand that you have just fired Mr Dingiswayo, do you care to tell me why and his response to me was look, I can fire Mr Dingiswayo it's within my powers to do that. I said to him, look I would rather preferred that you speak to me about it because in any event whatever Mr Dingiswayo give to you from a strategic perspective would

have been something that is sanctioned by me. I did not understand why it is that you felt the need to fire Mr Dingiswayo.

So I had that exchange with Mr Montana on the phone and one thing I did also say to Mr Montana is that, you know what Mr Montana, you're taking me back to the times of Intersite where you basically did the same thing with Martin Chauke why are you doing these things, you know and he was rushing on the phone you know and I said to him, look I'm the person that reports to you why is it that you cannot tell me what it is that you've got issues with because I would have thought that I
10 would have been the one that takes the rap if things go pear-shaped within the legal function. He wasn't willing to have that discussion and he felt that I was challenging his authority and at that time, I then said to him, well can I have a meeting with you to discuss this thing because I clearly do not understand how it is that you can summarily dismiss an employee and a key employee at that, within the organisation and we agreed to a meeting for the following day.

ADV VAS SONI SC: Before you get to that meeting Ms Ngoye, may I ask you ...(intervenes).

CHAIRPERSON: Your voice has been lowered again.

20 **ADV VAS SONI SC:** I apologise Chairperson. May I ask you this, you received the e-mail – you and the others receive the e-mail and then you are told by Mr Dingiswayo, I've been fired, did you see a connection between the two?

MS NGOYE: Yes I definitely did Chair, I did, I saw the connection between that e-mail and effectively what had just happened to Mr

Dingiswayo.

CHAIRPERSON: And you said, actually, Mr Dingiswayo's dismissal was on the same day as the e-mail, is that right?

MS NGOYE: Effectively yes.

CHAIRPERSON: Ja but it was in the night, later in the night?

MS NGOYE: It was at night he had to come back from home Chairperson and when he asked, is it really necessary can it not wait for the following day, he was told no Mr Montana wants to see you now.

CHAIRPERSON: Yes let's go back, in terms of what Mr Dingiswayo
10 told you as the reason that was given to him or by Mr Montana, did he say that Mr Montana has said it was because he had leaked information or what reason did he say Mr Montana had given?

MS NGOYE: He said to me the meeting did not even last five minutes, he said to me the one thing that Mr Montana said was that, yes he was leaking information to the Board and he was puzzled you know, he doesn't know how that comes about because he doesn't even deal with the Board you know.

CHAIRPERSON: Yes.

MS NGOYE: So that's what effectively he told me, the meeting didn't
20 last long and he just told me that I'm working against him.

CHAIRPERSON: And when you had that telephone conversation with Mr Montana, apart from saying that it was within his power to fire Mr Dingiswayo did he tell you the actual reason?

MS NGOYE: No he didn't Chair.

CHAIRPERSON: He did not at that stage but you agreed to meet the

following day?

MS NGOYE: That's correct Chairperson.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Yes let's go to that meeting, what happened the following day?

MS NGOYE: Chairperson I had agreed to meet with Mr Montana early in the morning but the meeting only took place round about 18:00 in the evening, so I waited the whole day. I must also say that our meeting did not even last five minutes. As I walked in, you know, into his office
10 – and in fact he was standing up at the time that he was talking to me, he said to me in the ...(indistinct, African Language) meaning, you know, mother you are insolent.

CHAIRPERSON: You what?

MS NGOYE: Insolent, so – and he said that to me, he said you are fired. So I then said, okay Mr Montana I then ...(intervenes).

CHAIRPERSON: Is that – was that the first thing he basically said at the start of the meeting?

MS NGOYE: Yes Chair he didn't even sit down, he was standing up and then that's what he said to me and what I found is that perhaps he
20 wanted to humiliate me also you know, at the time because he had his PA there, his door was open and he's legal advisor Ms Naidoo was hanging around there and Ms Kondowe was also there but, effectively, I was called in to be told that I'm insolent and I'm fired and I basically said, no that's fine I'll leave and he said to me, wait for your letter, I said to him, no I'm not going to wait for my letter, in fact I'll get my

letter tomorrow when I come to pick up my things and I left.

CHAIRPERSON: So after the telephone discussion that you had, had with him the previous evening when you had phoned him to ask about Mr Dingiswayo's dismissal and the commencement of this meeting the following day at 18:00 pm had there been any discussion between the two of you on anything?

MS NGOYE: No Chairperson we hadn't spoken that day.

CHAIRPERSON: And the only thing that you had spoken to him about, the previous evening when you called about Mr Dingiswayo was why he
10 had fired Mr Dingiswayo?

MS NGOYE: That's correct Chairperson.

CHAIRPERSON: Yes, okay.

ADV VAS SONI SC: So this meeting, you say, didn't even last five minutes?

MS NGOYE: That's correct Chairperson.

ADV VAS SONI SC: Now he then gave you the dismissal letter which you didn't wait for but you picked up the next day, that appears as Annexure NN3 at page 319.

CHAIRPERSON: Maybe before we get to the letter you can go to it and –
20 but I want to asks you this question before you – Mr Soni, ask you the question about the letter, but get to the letter so that you have got the page.

MISS NGOYE: Yes.

CHAIRPERSON: Okay. As at the time when Mr Montana was telling you that you were fired and that you were insolent, what was your

understanding of why you were being fired?

MISS NGOYE: Chair, the fact that I questioned his decision. The fact that I challenged him about a decision that he made as the group's CEO which is something that, you know, was never done, really, at PRASA as I indicated earlier, he felt that I really undermined the position that he was holding and that he was not going to have it.

CHAIRPERSON: So that is what was in your mind in terms of why you were being fired?

MISS NGOYE: Yes.

10 **CHAIRPERSON:** Okay. Continue, Mr Soni.

ADV VAS SONI SC: Thank you, speaker. Chairperson, but you have raised something that, may I pursue that as well?

CHAIRPERSON: Yes.

ADV VAS SONI SC: You had spoken to him the night before after you had been told that Mr Dingiswayo had been fired?

MISS NGOYE: That is correct, Chair.

ADV VAS SONI SC: Did he at that meeting indicate that the same fate probably awaited you?

20 **MISS NGOYE:** No, he did not. I did not know that I was going to be fired the following day.

ADV VAS SONI SC: And when you agreed or when he agreed to the meeting on, on that evening, what did you understand would happen at the meeting?

MISS NGOYE: Chair, I really – I thought that Mr Montana would sit and thrash this issue out. I really believed that I could make some sense of

what he had done. I thought that we could sit and discuss it because my, my intention really at the time was to say to him, no, look. Do not act so rushy because this is what Mr Dingiswayo did. We were trying to protect you as the group CEO, you know and that was what was in the opinion of Mr Dingiswayo to say, I believe that the group CEO is misled because processes were not followed. We are advising you. We are not working against you.

That was the basis on which I thought I would engage Mr, Mr Montana and also say to him, no, man, you know, retract this dismissal.

10 It was not intended and also deal with this, the e-mail to say, what is it that you meant. Why did you mean these things because I believe that they are attributed to us. I wanted to talk to him so that I could understand where his mind was but he had decided, I guess, that he was going to fire me.

ADV VAS SONI SC: And at the time he informed you that you had been dismissed, he did not give you any reason except to say you were insolent?

MISS NGOYE: Correct, Chair.

ADV VAS SONI SC: Can we, on that note then, turn to annexure MN(3)

20 SSA page 319. Will you summarize for the Chairperson what is contained in that letter?

MISS NGOYE: Chair, the letter effectively contains the telephone call – he refers to the telephone call that, that I made to him the previous night and he was saying that I insisted on speaking to him even after he had said to me that he was in a meeting and he said effectively in that letter

that because I had dared him to fire me, I was really insolent and challenged his decision.

ADV VAS SONI SC: Now, sorry. Is that correct?

MISS NGOYE: Well, I did not dare him. I did not dare him I spoke to him. I spoke to him and I said to him, I am the person that you are supposed to be dealing with. Why do you not talk to me, you know, about resources within my area. What is so difficult?

You know and I guess he just did not like it. He did not like the fact that I could question his, his decision.

- 10 **ADV VAS SONI SC:** In the last sentence of the first page of MN3, if you could read that into the record and then I will just raise some of the issues I want in relation to what he says there. The one that is starting

“Be that as it may.”

MISS NGOYE: It says:

“Be that as it may, in light of you daring me to request you to fire you, I in my capacity as the group CEO of you, your daring as an act of repudiation of your employment which I elect to accept.”

- ADV VAS SONI SC:** Miss sorry. If you could stop there. He is
20 suggesting that the question of your dismissal was raised in the conversation the night before. Did that happen?

MISS NGOYE: No, it did not happen, Chairperson.

ADV VAS SONI SC: And then in the following page, he then asked you to put grievances in writing. Did you raise grievances with him?

MISS NGOYE: No, I did not, Chairperson. I guess for me, when I

received this letter it was a day, you know, apart and if you say he said that I should put my grievances in writing. He had not said that to me and, you know, I was just thinking, I am not sure, when I would have put these grievances to him so it just did not make sense to me that he put that in writing in his letter.

CHAIRPERSON: Of course you did say that when you spoke to him on the evening on which Mr Dingiswayo was fired, you did refer to what had happened to Mr Chauke when you were at Intersite.

MISS NGOYE: That is correct, Chair.

10 **CHAIRPERSON**: In the context of saying, in effect, as I understand your evidence, Mr Montana you are now repeating what you had done before. Is that right?

MISS NGOYE: That is correct, Chairperson.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Then he says in the second last, or the third last paragraph:

“The level of insolence.”

So that is what he had said to you at the start of the meeting?

MISS NGOYE: That is correct, Chair.

20 **ADV VAS SONI SC**: And then he says:

“You have repeatedly remind me to terminate your employment which you repeated at our brief meeting this evening.”

Did that happen firstly in the conversation and then that evening?

MISS NGOYE: No, it did not happen, Chair. As I say, I had sat down, he

stood up and said, grand, grand. Martha Ngoye, you are fired and that was it so I am not sure when I would have, you know, insisted that he fires me. I could barely say two words in that meeting with him.

ADV VAS SONI SC: Then he says the trust relationship has irretrievably broken down.

MISS NGOYE: That is correct.

ADV VAS SONI SC: Then he says your dismissal is effective immediately.

MISS NGOYE: Yes, Chair.

10 **ADV VAS SONI SC:** Now, first you went to that you were – you and Mr Dingiswayo were dismissed on successive days.

MISS NGOYE: Yes, in fact we received our letters on the same day so Mr Dingiswayo was dismissed on the 18th and I was dismissed on the 19th. On the 20th when we came to collect our stuff, we received the letters which were dated the 20th.

CHAIRPERSON: That date is 20th May. You know, on page 320, below Mr Montana's signature, in my eyes that looks like 20/08 but it can't be eight because he had left...(intervenes).

MISS NGOYE: Yes.

20 **CHAIRPERSON:** By then so it is five.

MISS NGOYE: Yes. Yes, Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: If I can just point out, Chairperson, it clearly does look like eight but if you look at page 319 you can see the date it is received.

CHAIRPERSON: Yes. Yes, yes. Thank you.

ADV VAS SONI SC: Okay, so you were dismissed for what by Mr Montana? What happened next?

CHAIRPERSON: And maybe before that. He repeatedly says here in this letter of your dismissal that you – he said you asked to be dismissed.

MISS NGOYE: Yes, Chair.

CHAIRPERSON: Did you not in the course of some of the organizations you had been in, say anything that he could have interpreted as you asking to be dismissed like well if you want to dismiss me, go ahead or
10 something like that.

MISS NGOYE: No, Chair.

CHAIRPERSON: No.

MISS NGOYE: Nothing.

CHAIRPERSON: Are you sure about that?

MISS NGOYE: Yes, I am very sure, Chair.

CHAIRPERSON: Yes. Okay.

ADV VAS SONI SC: And again, if I may just ask for emphasis, on the night before you were dismissed in your telephone call, the question of your dismissal simply did not arise?

20 **MISS NGOYE**: It did not, Chair.

CHAIRPERSON: Of course, you appreciate that when you say you did not dare him to dismiss you or anything like that as he says in this letter. So, effectively, you are saying, well, he is fabricating that part of the letter?

MISS NGOYE: That is correct, Chair. He is saying that. *Ja*.

CHAIRPERSON: Okay.

ADV VAS SONI SC: After, oh, sorry, again, just putting it in context, at this time in Mr Molefe's Board was the accounting authority at PRASA, would that be right?

MISS NGOYE: That is correct, Chair.

ADV VAS SONI SC: What did you do to protect your interests after you were dismissed? You and Mr Dingiswayo.

MISS NGOYE: Chairperson, the first thing that we did, we approached the CCMA and, you know obviously as an unfair labour practise to
10 summary dismissal no process. So we went to the CCMA to lodge a complaint and after that we then wrote to the Board, you know and basically advising the Board what had transpired and putting it to the attention of the Board to say we do not understand the basis of which we could be fired and also the fact that it was summary dismissal without any procedure.

And I think for me what baffled me was that we were the legal advisors of the organization and this is how we are dealt with, you know and we raised the risks that were associated with Mr Montana's approach in dealing with us and we flagged it with the Board and requested the
20 intervention.

ADV VAS SONI SC: And what happened pursuing to that?

MISS NGOYE: I understand Chair that Mr Montana was then advised by the Board. In fact, when he was asked to explain the reasons for dismissing us, he said we had committed gross misconduct. So, what I understood had happened was that then the Board said, no, that is fine.

You need to follow procedure. If they have committed gross misconduct, discipline them. We are not saying you should not, but at the end of the day proper processes must be followed and effectively what then happened was that he then retracted the dismissal letter and requested that we come back to work.

ADV VAS SONI SC: So, this is Mr Montana himself?

MISS NGOYE: That is correct, Chair.

CHAIRPERSON: How long after the dismissal did the retraction happen?

MISS NGOYE: It was about a week, Chair.

10 **CHAIRPERSON:** Yes.

MISS NGOYE: Yes, Chair.

CHAIRPERSON: Before the retraction happened had you had occasion to write to him to deny some of the things that you say he said in his letter of your dismissal that were not true?

MISS NGOYE: No, Chair. I did not do it. No.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Did you refer to it in your CCMA application that letter in which he alleged that you had dared him to dismiss you.

20 **MISS NGOYE:** I think I make reference to it too. I cannot actually recall if we attached it, but we did, we did say it was following.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Right, so he now – sorry, how does he communicate to you the retraction of your dismissal?

MISS NGOYE: We received a telephone call from one of the HR managers who then, you know, effectively said to us, look your dismissal

has been retracted. You need to come and report to work, you know and I guess we just did that.

ADV VAS SONI SC: Now when you were told that your dismissal has been retracted, what did you understand would happen next?

MISS NGOYE: Chair, I understood that because the dismissal had been retracted perhaps that Mr Montana had, you know, reconsidered the decisions that he had made and that we would be coming back to work for work.

ADV VAS SONI SC: In fact, that is what you had been told, you must
10 come back to work. What happened when you got back to work?

MISS NGOYE: We got back to work, Chairperson and we were denied access to the system. In fact, as we got back, we were told then to give reasons why we should not be suspended. And it was to happen within 12 to 24 hours, you know and I then requested an extension to say, you know, I do not have a laptop, I will need to go and find some place to work for and to put this thing together because I do not have access to my equipment.

It is rejected, so effectively we sat down and it was Mr Dingiswayo and I, he did his letter, I did mine and I guess the
20 approach that he took at the time was that Mr Montana did not have authority to suspend us because he was frivolous you know and we said you cannot, this is the same issue, you know, you have withdrawn the dismissal and now you want to suspend us and we said, you are ...(indistinct) and he took exception to that.

ADV VAS SONI SC: Chairperson, I see it is 13:00 o'clock, but I have

one more question, if I can, just related to this now ...(intervenes).

CHAIRPERSON: *Ja.*

ADV VAS SONI SC: The question that you – sorry, Mr Montana says to you the dismissals are – you are told your dismissals are retracted. Then you are saying Mr Montana suspended you. Why do you say it was he, how did that – how was that communication made to you?

MISS NGOYE: Again, he used a – he sent a manager within HR to come and give us the letters that said to us we must give reasons why we should not be suspended and he advised that that instruction comes from

10 Mr Montana.

ADV VAS SONI SC: And who signed those letters?

MISS NGOYE: Mr Montana signed the letters.

ADV VAS SONI SC: Chairperson, would this be an appropriate lunch?

CHAIRPERSON: Yes, okay. We will take the lunch adjournment. We will resume at 14:00 o'clock. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Let us continue. Switch on your mic.

20 **ADV VAS SONI SC:** Ms Ngoye we broke at the stage where you were saying you had now been suspended and the recalled. What happened – sorry, you have been dismissed and recalled. Then you were suspended?

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: And how long did that suspension last?

MS NGOYE: The suspension lasted for 3 months.

CHAIRPERSON: Did you – what were you told was the reason for your suspension?

MS NGOYE: The reason for the suspension was the insolence.

CHAIRPERSON: The same ...(intervenes).

MS NGOYE: Yes.

CHAIRPERSON: Issue.

MS NGOYE: As the letter, *ja*.

CHAIRPERSON: And that was stated in the letter of suspension?

CHAIRPERSON: Yes, it was stated in the letter so.

10 **CHAIRPERSON:** Okay.

ADV VAS SONI SC: And in – how is it that you came back to work?

MS NGOYE: Chairperson, Mr Montana left in July right at the end of July so we came back at about – in about August where the Board had appointed an Acting CEO Mr Nathi Khena. What I understand transpired was the Board had instructed Mr Nathi Khena to look into the matters that Mr Montana had been dealing with especially around the suspensions and to make sure that he deals with all those and finalises the suspensions.

20 What then transpired where I am concerned is that I received a call from Mr Nathi Khena wanting to talk to me about the issues that had been raised relating to my suspension. But what was interesting Chairperson, in my case, was that after Mr Montana had left there were charges that were brought forward against me. Those charges included me having authorised two contracts effectively during the tenure of my CEO role of about 10 million Rand in one respect and the other one was 50/58/59 million Rand. So as part of the investigations that Mr Khena

was inclusive of that. And I understood from him that when he sought evidence from the colleagues internally including people from HR, the CEO of PRASA Rail at the time because those contracts were impacting that business. They indicated to him that they were not sure of what Mr Montana had alluded to in the charges. So, I mean nobody could give evidence to the – what is the word I am looking for – the charges that was laid against me.

And after that Mr Nathi Khena questioned me around those particular contracts and obviously – the one I did not even know, the 10 million, I did not even know that I had even dealt with a 10 million and the other one I had an explanation to give to him as to what had transpired. It was not an authority that was given by me, it belonged to another business unit. So, on that basis he then decided to say, look I do not – I cannot find evidence that pinpoint to you having done any maladministration or wrong things as far as those contracts are concerned and he asked me to come back.

CHAIRPERSON: Mr Montana left on the 15th of July.

MS NGOYE: Yes.

CHAIRPERSON: Before he left you were already on suspension.

20 **MS NGOYE:** That is correct.

CHAIRPERSON: But had you been told before he left what charges you were going to face or were being – were to be brought against you?

MS NGOYE: I was not told Chairperson.

CHAIRPERSON: There have been no communication at all since your suspension other than the letter telling you about your suspension.

MS NGOYE: There had been none.

CHAIRPERSON: There had been nothing.

MS NGOYE: H'mm.

CHAIRPERSON: And nobody had phoned you to speak to you and tell you what was going on in terms of the – an investigation about your suspension?

MS NGOYE: Nothing Chairperson.

CHAIRPERSON: Yes. And the issue of the two contracts, you only became aware of it when?

10 **MS NGOYE:** When I saw the draft charges that were sent to me.

CHAIRPERSON: Were you ever given draft charges or were – did you simply see them when the Acting GCEO, is it Mr Khena?

MS NGOYE: Mr Khena, yes.

CHAIRPERSON: Mr Khena was talking to you investigating what happened.

MS NGOYE: Just before Mr Khena had been requested to act, I think it is a day or two before that, I then received these charges and he obviously did not know about them and that is why he needed to investigate those charges.

20 **CHAIRPERSON:** Who had signed the charges?

MS NGOYE: They were not signed Chair.

CHAIRPERSON: Were they in final form? Were they draft charges?

MS NGOYE: They looked final.

CHAIRPERSON: What were their status?

MS NGOYE: They looked final but they were not signed.

CHAIRPERSON: Who gave them to you? How did they reach you?

MS NGOYE: An ER manager within PRASA.

CHAIRPERSON: And what is an ER manager?

MS NGOYE: An Employee Relations manager.

CHAIRPERSON: Yes.

MS NGOYE: Within HR, his name is Mr Sello Maluleke.

CHAIRPERSON: Yes. He gave them to you.

MS NGOYE: He gave them to me. In fact, he sent them via my e-mail address.

10 **CHAIRPERSON:** And did he say anything about them to you?

MS NGOYE: No, nothing was communicated.

CHAIRPERSON: He just sent them to you?

MS NGOYE: Yes Chair.

CHAIRPERSON: And it did not indicate for what purpose they were being sent to you?

MS NGOYE: No, I just received them in my e-mail box.

CHAIRPERSON: Yes. Did they indicate a date by when – a date for the disciplinary hearing?

MS NGOYE: No, they had not. They had not indicated a date.

20 **CHAIRPERSON:** Yes. And after receiving them, did you speak to anybody about them or to the one who sent them to you?

MS NGOYE: The one thing that I said to Mr Maluleke is that I think I believe I will engage the services of an attorney of an external attorney should this matter proceed.

CHAIRPERSON: H'mm.

MS NGOYE: That is all I said.

CHAIRPERSON: Now did the charges relate only to the two contracts you are talking about or did they include the allegations of insolence?

MS NGOYE: No, they were only in respect of the two contracts. So, my suspension letter did not accord the charges that were levelled against me.

CHAIRPERSON: H'mm.

MS NGOYE: So, when I looked at the two I thought but this is not what I was suspended for if anything.

10 **CHAIRPERSON:** Okay, thank you.

ADV VAS SONI SC: Just to complete the picture, what happened to Mr Dingiswayo?

MS NGOYE: As far as Mr Dingiswayo was concerned because Mr Dingiswayo reports to me, what Mr Khena said to me is that, you are going to have to deal with these allegations that were levelled against Mr Dingiswayo. And Mr Dingiswayo's return to work was subject to him not being found wanting as far as the allegations is concerned. What Mr Khena also did is that he requested the- our internal auditor Mr Rashik Zhamad to look into the issues that were raised in Mr Dingiswayo's letters
20 and to advise accordingly.

And Mr Zhamad could not find anything untoward that Mr Dingiswayo had done because also Mr Dingiswayo's letter was very vague in terms of the issues that were raised there. That he is busy talking to the Board and leaking information to the Board. He did not know specificities of those issues so I guess it became very difficult to pinpoint

what exactly he was accused of.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Well it indeed would be strange and I am making a comment that if somebody passes information to the Board of Control of an Organ of State that person would be charged with misconduct.

MS NGOYE: That is correct Chair. I mean it was something we did not understand and we did not understand how you leak information to the Board. It just did not make sense.

ADV VAS SONI SC: And about when did he return to work?

10 **MS NGOYE:** Mr Dingiswayo returned at the same time that I did, which was August.

CHAIRPERSON: When was it?

MS NGOYE: In August 2015.

CHAIRPERSON: Okay. You remember the date by any chance?

MS NGOYE: I think roundabout the 15th of August 2015.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Now you will recall that Mr Dingiswayo's dismissal and then your dismissal on the following day followed the e-mail at SS7B page 317. That is the e-mail you read into the record. You recall that?

20 **MS NGOYE:** That is correct Chair.

ADV VAS SONI SC: And that you say that e-mail was prompted by advice you and Mr Dingiswayo had given in regard to the Swifambo and the Prodigy contracts.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Now just in relation to those contracts in this part of

your evidence, what is the status of those?

MS NGOYE: We are still in litigation with Prodigy Chairperson and Swifambo I guess has been dealt with by the courts and it has been finalised. But the Prodigy matter is still in litigation, it has not been finalised.

CHAIRPERSON: Is your evidence that Mr Montana rejected your advice that the two contracts were problematic?

MS NGOYE: Yes Chair.

CHAIRPERSON: Yes.

- 10 **MS NGOYE:** Chair, I started by saying there are some areas within the organisation that appreciated the work that the legal function was doing. But obviously those that were not interested in complying with the laws and so saw us as a nuisance to the organisation and to be treated as such.

CHAIRPERSON: Who are some of the people that you believed treated the Legal Department it was a nuisance?

MS NGOYE: Chair, Mr Montana obviously being one and I am talking about people in authority here.

CHAIRPERSON: Yes.

- 20 **MS NGOYE:** And I remember also during Dr Popo Molefe's tenure there was a Chairperson of the Audit Committee for instance – I forget her name now, who had also taken issue with the fact that we had challenged her decision to incorporate. In fact, she wanted to incorporate another party into a contract and we found it not to be proper. And when we raised the objections, they took serious issue toward us.

So, that is quite a number of people even after Mr Montana had left that you found that the people in authority did not appreciate the advice that we gave. Some old Chairperson they did not to the last Chairperson – to the last Board that was at PRASA, we gave merited advice and I they just did not like the advice that we were giving.

CHAIRPERSON: There people that you are talking about that you put under this category of people who thought the – who acted in a manner that made you think that they thought the Legal Department was a nuisance. Obviously, you do not think that where they disagreed with the
10 Legal Department's views or suggestions, you do not think that they were acting in good faith? Or were they acting in good faith but just did not agree with you?

MS NGOYE: Now the good faith was not their Chairperson. For me it is one thing to disagree with somebody and form an opinion perspective we can disagree about what the outcome of the opinion is. But in most instances really, we found that there was no – there was *mal fide* in fact where we gave advice and they just did not like the advice that we would have given.

CHAIRPERSON: H'mm.

20 **MS NGOYE:** And in fact, in many instances we were ostracised as the Legal Department and not engaged when we ought to be engaged. So, the people really internally that appreciated us were our colleagues in the business that would know, we need the Legal Team to assist us with certain matters and so on. But what we found is that the authorities in the organisation did not like it if we told them things that they did not

like.

CHAIRPERSON: A Department such as a Legal Department is supposed to be a helpful Department.

MS NGOYE: That is correct Chair.

CHAIRPERSON: To give advice and guidance to everybody to make sure that things are done legally.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Why would this category of people not have appreciated this important role of the Legal Department?

- 10 **MS NGOYE:** I do not know Chair and it was very frustrating to us because I think what we were trying to do as the Legal Department and what we continue to do as the Legal Department is to look out for the interest of PRASA. All we do is that and if there is a way of achieving a particular end, we advise the organisation accordingly. So, we do not just say, this cannot be done and that is it. We then advice of a manner in which we can achieve the same results. But we found at various instances, the Legal Department, would just be excluded because we complicate things. They would say we complicate things.

CHAIRPERSON: H'mm.

- 20 **MS NGOYE:** *Ja.*

CHAIRPERSON: When it was excluded was there an alternative base to which people went to get legal advice instead of the Legal Department of PRASA?

MS NGOYE: Well yes Chair, I can think of instances where in one of the instances where we were dealing with Chairperson Makubela. She was

going to another law firm which was also not on our Panel and got advice there to the exclusion of legal function. So, I guess they would do it as they pleased.

CHAIRPERSON: Is your answer that sometimes they did sometimes they did not...(intervenes).

MS NGOYE: That is correct Chair.

CHAIRPERSON: They would go elsewhere?

MS NGOYE: Yes Chair.

CHAIRPERSON: Okay.

10 **ADV VAS SONI SC:** Just on the question of good faith and disagreements or the difference between those two. In the Swifambo matter in which there were investigations done before the matter was taken to court. What was the position in regard to documents that were desist and determining what had happened and the validity of the different steps taken?

MS NGOYE: Chairperson the issue around information at PRASA is a minefield. Effectively there is not proper record keeping where PRASA's document management process are concerned. We do not have a document management system so effectively at the time that the
20 investigations were being conducted it was a real tall order to find information from people.

And I guess people were scared I guess for lack of a better word as to what would be found where they are concerned. Such that the part of the investigation process was to take all our computers and image the computer so that information can be retrieved in that manner. But

however, if one went out to ask for documents from a particular area within the organisation that you would have expected to be retaining that documentation, it was really difficult to find information.

ADV VAS SONI SC: And when for example in the Swifambo matter and we will come to that in regard to the Siyangena matter. Were you able to piece together what had happened, what decisions were taken, what they were based on, on the basis of proper records?

MS NGOYE: Yes Chair, eventually we were able to get information that allowed us as part of the investigation process as well because the legal
10 function was instrumental in trying to assist the investigators in getting information so we were able to then understand what had transpired and look for the documents in the right areas. Because before everything was everywhere and we did not know where to find them so.

ADV VAS SONI SC: That is in regard to Swifambo?

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: And with regard to Siyangena which we will get to in a moment.

MS NGOYE: Siyangena was very difficult. It was very difficult till the last affidavits that we had to do. People did not want – employees within
20 PRASA really did not want to be associated with assisting the organisation in dealing with the issues pertaining to Siyangena. In fact, there were very few of our colleagues that agreed to participate in giving affidavits and confirming what had transpired in relation to these contracts when they were involved. But it was really difficult. People I guess were just not wanting to assist and it has been difficult really.

And I think it continued to be difficult right until the last affidavits that we had to file. So, I guess Chairperson what I am trying to also say is that because these investigations had identified a lot of people in terms of maladministration and irregularity, people just did not want to participate at all.

ADV VAS SONI SC: So, we will come back to the Siyangena matter which you deal with in your third affidavit which is SS7C.

MS NGOYE: Yes Chair.

ADV VAS SONI SC: In the meantime, right can we return to the affidavit
10 that is SS7B and turn to the next topic you deal with and that is Mr Mabunda and the S or Siyaya Group of companies.

MS NGOYE: Yes Chair.

ADV VAS SONI SC: Firstly, could you tell the Chairperson very briefly why Mr Mabunda turns out to be such a significant figure in PRASA operations?

MS NGOYE: Chairperson Mr Mabunda had – there were a lot of contracts I must say that he managed to be involved in where PRASA was concerned especially in the engineering Department of PRASA. I mean he as far as I can remember there is a signal in contracts of PRASA the
20 dead pool design, issues of PRASA and all those critical contracts Mr Mabunda was the company that was involved. In fact, in this particular instance what one found is that when they sued us they sued us for six contracts separate where they had been doing different types of work within PRASA.

So, it is somebody that you knew at PRASA to have a lot of

attention actually where he – when he comes to PRASA. And he was very also influential at PRASA whenever he came people would talk about him that, that is Mr Mabunda, there he is coming. And he would be given the attention that he needed. So, it is somebody that we knew was obviously an important person within the organisation that was treated with that kind of respect.

CHAIRPERSON: Had you known of him even before you headed the Legal Department?

MS NGOYE: No, I did not know of him Chairperson.

10 **CHAIRPERSON:** Oh, you only got to know him when you got to the Legal Department?

MS NGOYE: Yes, that is correct Chair.

CHAIRPERSON: Okay. You say he had a lot of contracts.

MS NGOYE: Yes.

CHAIRPERSON: You want to give me an idea of more or less what – how many contracts even if you are not able to specify, give them names.

MS NGOYE: If I can say Chair it is more than 7 contracts and major contracts.

CHAIRPERSON: Yes.

20 **MS NGOYE:** That Mr Mabunda had. In fact, the investigations revealed that the amount of money that have been paid by PRASA to the S Group of companies where Mr Mabunda was concerned is close to a billion Rand at a particular point. So, there was a lot of work that he was doing.

CHAIRPERSON: Okay.

ADV VAS SONI SC: And do you know whether he played any role in the

Swifambo contract?

MS NGOYE: Yes. Yes, Chairperson in fact he did play a huge role in the Swifambo contract because what we understood was the company, he was a Director of the company, Swifambo.

CHAIRPERSON: H'mm.

MS NGOYE: Yes. So that too was one of the big contracts that he was involved in and we knew that even though at the end of the day Ms Mashaba, Oswald Mashaba, appears to be the person that was instrumental. But from the structure of the company Mr Mabunda was the
10 person that was the owner of Swifambo.

ADV VAS SONI SC: Now you say that in all the S Group of companies were paid nearly a billion Rand by PRASA.

MS NGOYE: Yes.

ADV VAS SONI SC: For different contracts.

MS NGOYE: Yes Chair.

ADV VAS SONI SC: But there is one small group of – or well there is one group of contracts that was the subject of litigation between PRASA and the S Group.

MS NGOYE: That is correct Chair.

20 **ADV VAS SONI SC**: What was the nature of the dispute?

MS NGOYE: The dispute revolved around work done and not paid for. So naturally the contract, the scope would be setup to say this is the scope of the contract and this is what you are limited to. But what we then found because remember as the Legal Department Chairperson, we get information for the business. What we had found is that the business was

saying the work that was done by the S Group of companies was not promised.

And in certain instances, part of the litigation that the cases that they were suing us for was there was a dispute as to the amounts that they were paid. So, there were various elements of these various contracts. And immediately after Mr Montana left the 6 summonses came from Siyaya in relation to these various contracts that they had been doing for PRASA.

CHAIRPERSON: I am sorry. I did not hear. The what came?

10 **MS NGOYE:** I beg your pardon Chair.

CHAIRPERSON: I did not hear the first part of your last sentence. You said as soon as Mr Montana had left, what happened?

MS NGOYE: The litigation, so the summoned us. We just received a barrage of summonses.

CHAIRPERSON: Yes.

MS NGOYE: After that and it was all coming from Siyaya.

CHAIRPERSON: Yes.

MS NGOYE: H'mm.

CHAIRPERSON: Why had the summons not been issued while Mr
20 Montana was there?

MS NGOYE: We do not know Chair because these issues obviously had existed at the time that Mr Montana was there.

CHAIRPERSON: Yes.

MS NGOYE: But immediately after he had left 6 summonses arrived at PRASA.

CHAIRPERSON: But who was going to issue instructions as to the issuing of the summons? Was it – did it have to be the GCEO?

MS NGOYE: Remember they are coming from Siyaya's side so Siyaya sued us.

CHAIRPERSON: So they were coming to ...(intervenes).

MS NGOYE: That is it, to PRASA.

CHAIRPERSON: They were against PRASA.

MS NGOYE: That is it.

CHAIRPERSON: Oh okay.

10 **MS NGOYE:** So Siyaya was suing us for payment of services they said they rendered and so on.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Now prior to the issue of these summonses on PRASA, had there been any legal disputes between Siyaya and – or any disputes that ended up in courts between Siyaya and PRASA?

MS NGOYE: There had not been any Chair.

ADV VAS SONI SC: Now what did the amounts involved in respectively of these 6 summonses?

20 **MS NGOYE:** It was various amounts Chair. The total I can – I mean I do not have specific details. The total would amount to about 56 million that Siyaya was suing us for.

ADV VAS SONI SC: Now if I ask you to look at NN4 which you referred to in ...(intervenes).

CHAIRPERSON: Is that at page 322?

ADV VAS SONI SC: As you please Chairperson.

CHAIRPERSON: Yes.

ADV VAS SONI SC: You refer to that at paragraph 35 of this affidavit SS7B.

MS NGOYE: Paragraph 35?

ADV VAS SONI SC: Yes.

MS NGOYE: Yes Chair.

ADV VAS SONI SC: You have read those documents?

MS NGOYE: Yes, I have Chair.

ADV VAS SONI SC: Is that clearly summarized what the nature of the
10 disputes between the Siyaya Group in respect of each of the contracts
was and PRASA?

MS NGOYE: That is correct Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Now ...(intervenes).

CHAIRPERSON: Well, let us get more details about M and O. If it is a
letter, from whom it was to whom was it addressed.

ADV VAS SONI SC: Yes Chairperson.

CHAIRPERSON: What was the date? What was the subject matter?

ADV VAS SONI SC: Yes, as you please sir.

20 **CHAIRPERSON:** H'mm. So we leave it.

ADV VAS SONI SC: What is NN4 Ms Ngoye?

MS NGOYE: Chair NN4 is the letter that we had received from our
attorneys who were acting for PRASA in relation to all those contracts.
DL Mogaswa Attorneys, we have the attorneys on a brief that had assisted
PRASA in relation to all those contracts.

ADV VAS SONI SC: And ...(intervenes).

CHAIRPERSON: DL – I am sorry. DL ...(intervenes).

MS NGOYE: Mogaswa.

CHAIRPERSON: Mogaswa, was that PRASA's attorneys?

MS NGOYE: It was PRASA's attorneys.

CHAIRPERSON: Oh okay.

MS NGOYE: So, when they prepared this document, they had prepared the document on the request of the Chairperson.

CHAIRPERSON: Yes.

10 **MS NGOYE:** Who wanted to know what had transpired in these matters.

CHAIRPERSON: Yes.

MS NGOYE: So, this was the summary to the Chairperson to say this is where the matters are and this is what possibly these are the chances of our success.

CHAIRPERSON: And what date is the letter

MS NGOYE: The letter is dated 21 November 2017.

CHAIRPERSON: Yes. It is addressed to PRASA House and an e-mail Fani Dingiswayo, is that right?

MS NGOYE: That is correct Chair. It is addressed to ...(intervenes).

20 **CHAIRPERSON:** Ja, for the attention of Mr Fani Dingiswayo and

MS NGOYE: Shumi.

CHAIRPERSON: Ms Shumi Magodi.

MS NGOYE: Magodi. That is correct Chair.

CHAIRPERSON: Yes. And the subject is; Report on Progress on Siyaya file. Is that right?

MS NGOYE: That is correct Chair.

CHAIRPERSON: Yes okay.

ADV VAS SONI SC: And in instance the attorneys summarized what the nature of the disputes is in respect of each of the cases that were now before court.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: And may I ask you were the matters to be eventually the matter is to be resolved by the courts or were they to be resolved by some other tribunal?

- 10 **MS NGOYE:** Chairperson, the parties agreed between us and Siyaya we agreed to refer the matters to arbitration and that was one process that we had agreed to because after the summonses we came together and agreed that we rather deal with these matters through an arbitration process. The agreements provide for that dispute resolution mechanism and in the matter were then referred to arbitration.

ADV VAS SONI SC: Now in regard to for example the Swifambo matter.

MS NGOYE: H'mm.

ADV VAS SONI SC: PRASA had challenged the validity of the contract and therefore asked the court to review and set aside the contract?

- 20 **MS NGOYE:** That is correct Chair.

ADV VAS SONI SC: In regard to the Siyaya disputes was it simply a matter of disputing the amounts claimed or did it go to the heart of the contracts?

MS NGOYE: Well it was just around the monies claimed and the services rendered Chair.

ADV VAS SONI SC: And that is why it was possible or it was acceptable that the dispute – the arbitration?

MS NGOYE: That is correct Chair.

CHAIRPERSON: The dispute about the amount claimed was PRASA's contention that there was not work that had been done which justified that claim?

MS NGOYE: Yes in some of the cases Chair.

CHAIRPERSON: In some of the cases.

MS NGOYE: The instruction that we received was that no these monies
10 have been paid.

CHAIRPERSON: *Ja.*

MS NGOYE: You know we do not owe ...(intervenes).

CHAIRPERSON: *Ja.*

MS NGOYE: Siyaya any.

CHAIRPERSON: Yes.

MS NGOYE: And in others that we were told that no they did work that they were not authorised to do and obviously the colleagues were feeling that it was – because it was beyond and there was no variations.

20 **CHAIRPERSON:** H'mm.

MS NGOYE: To the contract.

CHAIRPERSON: H'mm.

MS NGOYE: They just felt that it was not proper to just you know pay Siyaya in relation to those matters.

CHAIRPERSON: Okay.

ADV VAS SONI SC: The dispute with Siyaya started while Mr Molefe's Board was still in office.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: And at the time of this letter a NN4 the 21 November what was the status of Mr Molefe's Board?

MS NGOYE: Mr Molefe had left the Board of Mr Molefe had you know finished their term and so there was a new Board that was present at that time. So it was – this matter was – this letter was effectively to deal with the enquiry that was coming from the Chairperson of the new
10 Board, Ms Makubela.

ADV VAS SONI SC: Now you deal with that at paragraph 32 of SS7B and you set out the date of the new Board and so on. Are those all correct?

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Yes. Now after this dispute it came around to what – soon after she was appointed to the Board what was the interaction between you and Ms Makubela?

MS NGOYE: Chairperson my first interaction with Ms Makubela was around you know my Portfolio as legal and it was also around
20 understanding what had transpired in relation to the Werksmans contract who had appointed Werksmans and how it was appointed and so on because what she indicated to us what that she was required and also in relation to Parliament to have to go and explain to Parliament how Werksmans was appointed at PRASA. So that was the first really meeting that I had where I explained to her the structure of the legal

function and I advised her that we are not acting at the time and so you know that really it was a short meeting with Ms Makubela.

ADV VAS SONI SC: And in relation to the Siyaya contracts?

MS NGOYE: Well in relation to the Siyaya contracts Chairperson I was called in again by the Chairperson and because I operate at a strategic level I then called Mr Dingiswayo who would have more detail on the matters to come with me to the meeting so that we can explain these contracts accordingly to the Chairperson and you know what became alarming for me in that meeting was you know when the Chairperson
10 said, at this time perhaps I must say Chairperson the Siyaya contracts they had applied for liquidation. Right and the liquidation process was – it was voluntary liquidation of this Siyaya Consulting Engineering Company which was one of the companies that had sued us. So she said that she had received information from a colleague of hers Ms ...(indistinct) and that you know you have PRASA had made concessions in the liquidation proceedings that warranted Siyaya to be paid and she said she had a particular report as well that was talking to that fact. So when we asked for the report she did not share it you know with us. She said no she was not supposed to share that report
20 with us it was for her information and so therefore she wanted to see how she could best deal with these matters.

ADV VAS SONI SC: Now what was your reaction I mean here is the Chairperson of the Board dealing with legal matters? How did you react to that and what was perception of her receiving information from outside sources?

MS NGOYE: Chairperson it is obviously – it is unheard of. You know for me it really was unheard of and I would have thought my first impression was you know try and understand exactly what is happening with the organisation. A Chairperson can ask questions and can ask for you know explanations that was not a problem. But to have already made a decision that says yes I have got this report and PRASA people had conceded in the litigation – in the liquidation proceedings and therefore we need to see how we settle these matters. That for me was a concern. You know because I thought I am not sure how far this goes

10 because as far as I am concerned these matters were matters that as PRASA we knew we had defences. And so I do not quite understand why it is now that we would be now put into a position to settle these matters and this was driven by the Chairperson. So it took me – you know it took me back and I thought to myself okay we will have to see how this thing pans out. Because I had thought also that the Chairperson would work with us as the Legal Department to make sure that we are all alike. That that not – that was not to be Chairperson because she excluded us altogether from the deliberations of this matter. In fact she preferred to deal with the external attorneys of

20 PRASA in this matter and not the legal – the internal legal function within PRASA.

CHAIRPERSON: Would this have been 2016?

MS NGOYE: 2017 Chair.

CHAIRPERSON: 2017.

MS NGOYE: That is correct.

CHAIRPERSON: *Ja* okay.

ADV VAS SONI SC: Now the – she will say and there is an issue that comes up. Mr Montana as understand it did not have legal qualifications but Ms Makubela?

MS NGOYE: Yes. I understood Ms Makubela to be SC – senior counsel and *ja*. So she definitely had the legal background. And in fact we were quite excited that we have got a Chairperson who is a lawyer you know and would help us deal with all these matters.

ADV VAS SONI SC: And so when she asked – sorry – we dealt with
10 NN4 and you will see that that is dated the 21st of November 2017. That is the report back which the attorneys had given. Am I correct?

MS NGOYE: That is correct.

ADV VAS SONI SC: And which you said clearly reflected what the nature of the disputes were and what PRASA's defences were to each of the cases?

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: What happened next in relation to that dispute?

MS NGOYE: Well Chair as I eluded you know the Chairperson decided to deal with our attorneys, the external attorneys as well as the
20 attorneys of Siyaya and a form of a settlement agreement you know was entered into. I am summarising Chairperson. At the end of the day what we understood was that you know she had given instructions as to how the matters must be settled. You know and those instructions now needed to be effected and the next thing we knew as the Legal Department was that there was going to be an application to make that

the settlement agreements you know an order of court so that PRASA can pay. But before that Chair what transpired is that we then engaged our attorneys, the external attorneys that we had briefed and we said, look you said ...(intervenes).

CHAIRPERSON: And who were these attorneys?

MS NGOYE: Diale Mogale.

CHAIRPERSON: Oh same as ...(intervenes).

MS NGOYE: Mogashoa yes.

CHAIRPERSON: *Ja* okay.

10 **MS NGOYE:** We said – because our – all our attorneys know Chairperson that we do not deal with the business without the legal function being present and we stressed that upon all our attorneys. So you know we expressed that concern with the attorneys and the response we got was something else. And the attorney Mr Diale – Mogashoa said to us that he was barred by the Chairperson of the Board from speaking to the Legal Department.

CHAIRPERSON: And the Chairperson of the Board at that time was Ms Makubela.

MS NGOYE: Ms Makubela yes.

20 **CHAIRPERSON:** Okay.

MS NGOYE: So we left it at that. So we said okay that is fine but already one could see that there is something amiss with what was happening and we were very concerned about it.

CHAIRPERSON: H'mm.

ADV VAS SONI SC: Ms Ngoye before you go on after she received or

PRASA received NN4 if you look at your affidavit you refer to a document prepared by the Chairperson.

MS NGOYE: Yes.

ADV VAS SONI SC: And you will find that at paragraph 35 and the document you talk about ...(intervenes).

CHAIRPERSON: What page?

ADV VAS SONI SC: Oh sorry Mr Chairperson.

CHAIRPERSON: What page?

ADV VAS SONI SC: At page 294 of the affidavit at paragraph 35 and
10 the annexure is at page ...(intervenes).

CHAIRPERSON: Hang on one second. 235?

ADV VAS SONI SC: That is right Chair. Sorry 294.

MS NGOYE: 294.

CHAIRPERSON: 294.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Yes paragraph 35?

ADV VAS SONI SC: That is so Chairperson.

CHAIRPERSON: Okay.

ADV VAS SONI SC: And then you refer to NN5 which Chairperson
20 appears at page 338 of SS7.

CHAIRPERSON: 338?

ADV VAS SONI SC: 338 Chairperson yes.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Now did you regard this as an important document relating to ...(intervenes).

CHAIRPERSON: Just identify it once again in what document it is, from whom it was?

ADV VAS SONI SC: As it pleases Chairperson yes.

CHAIRPERSON: To whom it was sent and what was the subject matter?

ADV VAS SONI SC: Well first of all who is the document addressed to?

MS NGOYE: The document is addressed to Mr Zede, Mr Lindikaya Zede who was the acting Chief Executive Officer at the time.

ADV VAS SONI SC: And from whom is it?

10 **MS NGOYE:** It is from the Chairperson of the PRASA Board at the time Advocate Tan Makubela SC.

ADV VAS SONI SC: And what is the date of the document?

MS NGOYE: The date is 28 November 2017.

ADV VAS SONI SC: And what is the subject matter of this document?

MS NGOYE: Siyaya Consulting Engineers PTY LTD in liquidation. Enquiry in terms of Section 417(1) and 418(2) of The Companies Act 61 of 1973.

ADV VAS SONI SC: Right. Now in paragraph 36 you refer to a number of concerns that that document prompted.

20 **MS NGOYE:** H'mm.

ADV VAS SONI SC: Could you ...(intervenes).

CHAIRPERSON: Well I am sorry.

ADV VAS SONI SC: Yes Chair.

CHAIRPERSON: Before we go to what it prompted let us have the gist of what the ...(intervenes).

ADV VAS SONI SC: Yes.

CHAIRPERSON: Letter says.

ADV VAS SONI SC: As it pleases Mr Chairperson.

CHAIRPERSON: Yes.

MS NGOYE: Chairperson ...(intervenes).

CHAIRPERSON: *Ja* what was the gist of what that letter was talking about?

MS NGOYE: The gist Chairperson was around the settlement of the Siyaya contract.

10 **CHAIRPERSON:** Yes.

MS NGOYE: I think what the Chairperson in this memorandum advises is that you know she had been in contact with the liquidators of Siyaya who gave her a report you know that was subject to the liquidation proceedings. And also in the memorandum you know she then indicates that she is not sure why our attorneys say that they did not have that report because as far as she was concerned the report was available. So – and also in terms of the memorandum she speaks to the letter that Diale Mogashoa had made available to her. Because remember she asked for information. We gave her information
20 requesting Diale Mogashoa to summarise the matters. So she refers to that report and refers to the subpoenas that our colleagues had received in relation to the litigation. In fact it speaks to the liquidation processes Chairperson.

CHAIRPERSON: H'mm.

MS NGOYE: And then she talks to the report you know the interim

report of the Commissioner that the witnesses that testified in this – in the hearing and the inquiry you know acknowledged that PRASA owed Siyaya money.

CHAIRPERSON: H'mm.

MS NGOYE: So this is in a nutshell what she talks to. She talks to that report.

CHAIRPERSON: H'mm.

MS NGOYE: She said witnesses made major concessions in regards to the liability of PRASA.

10 **CHAIRPERSON:** H'mm.

MS NGOYE: So she writes this because she said she needed to have this report ready for the Board.

CHAIRPERSON: H'mm.

MS NGOYE: And also she was preparing also to go to the Portfolio Committee

CHAIRPERSON: H'mm.

ADV VAS SONI SC: Before we go on can I just ask you to look at paragraph 5 of NN5 which appears at page 339 and will you read into the record what she says that the circumstances in which she acquired
20 this liquidation report?

MS NGOYE: She says:

“You are aware that attorneys acting for Siyaya Consulting Engineers in liquidation approached on or about 14 November and that they provided me with a copy of an interim report of the inquiry into the

Companies Act that was prepared by the Commissioner and dated 15 September 2017. They also attached copies of e-mail communications between Mr Madimpe Mogashoa and Mogashoa Diale and Advocate Francois Botes SC. The e-mail communication is also attached in Mogashoa Diale Attorneys Report.”

ADV VAS SONI SC: Now who is Advocate Francois Botes?

MS NGOYE: Advocate Botes was acting for the – was in the liquidation proceedings. So she – he was the one that got ...(intervenes).

10 **ADV VAS SONI SC:** For whom was a he acting for?

MS NGOYE: He was acting for Siyaya.

ADV VAS SONI SC: So in relation to how Ms Makubela says she got the information what was your understanding?

MS NGOYE: Chair I was taken aback because I – the little I understand at least about liquidation proceedings is this – things like this do not – you do not just give reports out without necessarily following procedure. But also when she said at the time she said because of collegiality you know I was able to get – they gave me this report. So from that onwards I knew that this was obviously not
20 something that was done properly. Especially after enquiring from our attorneys in clauses that they did not have the report. So you know it became surprising how she could then have that report and as our attorneys could not have it.

ADV VAS SONI SC: But in terms of communications between her in looking at what she says and the fact that she refers to the report from

whom did she get the report?

MS NGOYE: Sorry Chair which report are we ...(intervenes).

ADV VAS SONI SC: The report she was talking about. The interim report of the liquidator at paragraph 5.

MS NGOYE: Well to me she said it was collegiality. You know a colleague of hers who seems to be with a – deals with this type of matters in the Pretoria Bar that had been the person that had given her the report. I did not quite ask you know who that was but she referred to collegiality and I just accepted it for what it is.

10 **ADV VAS SONI SC:** Well if you look at paragraph 5 it seems that between the word approached and on in the second line the word me appears to be missing if one wants to read things into that?

MS NGOYE: Yes. That is correct Chair.

ADV VAS SONI SC: So where would – I mean based on what she is saying in paragraph 5 where would she have got the report from?

MS NGOYE: She would have gotten it from the attorneys acting for Siyaya Consulting Engineers. Perhaps may I also say she is writing to the Group CEO at the time ...(indistinct) and perhaps she had had this discussion with Mr Zede and that is why she is saying you are aware
20 because it is referencing you know her discussions perhaps with Mr Zede. That when I engaged with her you know she did not tell me she just said collegiality.

ADV VAS SONI SC: Well if you look at paragraph 36 you suggest something else.

CHAIRPERSON: That is going back to her affidavit.

MS NGOYE: Oh sorry Mr Chairperson.

CHAIRPERSON: Ja.

ADV VAS SONI SC: To her affidavit.

CHAIRPERSON: Yes.

ADV VAS SONI SC: At page 294 Ms Ngoye.

MS NGOYE: Yes Chair.

ADV VAS SONI SC: You are saying exactly what that letter says that she was approached by the attorneys.

MS NGOYE: Well yes Chair. That – because that was what was
10 startling for me you know as I indicate in the paragraph. That she had
been approached by the attorneys of Siyangena. That I get from
obviously the memorandum that she had prepared.

ADV VAS SONI SC: Yes. And what after that approach what had they
done?

MS NGOYE: They gave her this interim report.

ADV VAS SONI SC: Right.

MS NGOYE: Of the insolvency enquiry.

ADV VAS SONI SC: And what did she say about PRASA's attorneys in
the memorandum which you summarise.

20 **MS NGOYE:** Let me just ...(intervenes).

ADV VAS SONI SC: Summarise at paragraph 36.

MS NGOYE: 36. Oh she says that she was – she did not necessarily
believe that the PRASA attorneys would not have the report. You know
some of the things that she alleges in that memorandum.

ADV VAS SONI SC: Yes. And then she made the point that she had

made previously that she was told that PRASA employees had made major concessions.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Now what was your reaction to the communication between her as Chairperson and the opposing attorney?

MS NGOYE: Chairperson it is unheard of. You know I mean I for as long as I think I have been an attorney one knows what the boundaries are. You know when you have attorneys on Board each side the attorneys are the ones that speak on behalf of their clients. You know
10 you do not do it like that. So for me it was alarming you know that here we have a Chairperson of the Board who is a senior counsel for that matter you know who would conduct herself in that manner. You know it was just something that we frowned upon. But we left it Chairperson because we were not wanted in that whole sphere but we recognised what was happening.

ADV VAS SONI SC: Sorry did you say you were?

CHAIRPERSON: When you say you recognised what was happening what was happening?

MS NGOYE: Well the fact that now she is communicating directly to
20 attorneys of the other side. You know to the exclusion of the Legal Department.

CHAIRPERSON: H'mm.

MS NGOYE: She was running with the matter herself.

CHAIRPERSON: H'mm.

MS NGOYE: You know and for us in the Legal Department that is not –

the Chairperson does not have that authority.

CHAIRPERSON: H'mm.

MS NGOYE: First and foremost you know. And if anything we would have thought that she would rely on the internal team to advise us to what is happening. But she ran with the matter herself.

CHAIRPERSON: H'mm.

ADV VAS SONI SC: Now did you protest you or the Legal Department?

MS NGOYE: Protest we did Chairperson but we did not protest to her because we did not have access to her.

10 **CHAIRPERSON:** H'mm.

MS NGOYE: We went to the acting Group CEO at the time Mr Lindikaya Zede and we said to him, what is this that is happening as far as this matter is concerned? That the Chairperson is now engaging the other side and as a legal function we are excluded from the matter. We even said to Mr Zede. We said but you know how it works within the organisation why is it that you are not advising the Chairperson accordingly? And his response was simple you know the Chairperson is doing what he wants – she wants and wanting to approach this matter in this way. So we left it Chair. And I think we got to a point within

20 PRASA where we understood that in this case we were a nuisance and therefore we needed to be side-lined.

ADV VAS SONI SC: Now there are a few developments and we can either go into them or Mr Chairperson the submission I make is they just deal with the same matter. It simply is a continuation of that process which leads to what I want to raise with the witness. I do not

know if you want me to deal with annexure NN6 and NN7? My submission is they are not required.

CHAIRPERSON: No just go ahead as you see fit.

ADV VAS SONI SC: Yes.

CHAIRPERSON: I think it is fine *ja*.

ADV VAS SONI SC: Now in regard to the communication with your Department and the Board or the Chairperson of the Board what was the nature of the communication in relation to Siyaya?

MS NGOYE: We advised the Chairperson about the matters and how
10 we believed that PRASA had you know high prospects of succeeding in the matters. And we basically told her what Diale Mogashoa had also indicated and it was basically to say well we do not believe that these matters should be settled because we can win them. And that was in a nutshell effectively what our report was saying and also she had wanted to know who we had advised and so on. So we gave her that feedback.

ADV VAS SONI SC: Now the next development is that you find out that you have been excluded and when I say you the Department, the Legal Department has been excluded from the litigation process.

20 **MS NGOYE:** That is correct Chair.

ADV VAS SONI SC: Now did that come about?

MS NGOYE: Well you know I think Chair when you were – the environment we knew what we were rather as the Legal Department that matters would eventually come to us. So when the settlement agreement was going to be made at order of court we knew that the

papers would have to be served on us as the legal function.

CHAIRPERSON: I am sorry to interrupt you. Let us go back a little bit.

There was a time when you felt the need to go to the acting Group CEO Mr Zede.

MS NGOYE: That is correct Chair.

CHAIRPERSON: And you raised your concerns with regard to the role that was being played by the then Chairperson Ms Makubela?

MS NGOYE: That is correct Chair.

CHAIRPERSON: Now you recall more or less when that was when you
10 went to raise this issue with the acting Group CEO or are you not able to remember?

MS NGOYE: It was around you know November. It was at the time that ... (intervenes).

CHAIRPERSON: Yes.

MS NGOYE: That the Chairperson was making inquiries.

CHAIRPERSON: Yes.

MS NGOYE: You know into this matter. And – because there were a number of meetings that were held in fact.

CHAIRPERSON: Yes.

20 **MS NGOYE**: Diale Mogashoa.

CHAIRPERSON: Yes.

MS NGOYE: We bumped into him in the corridors of PRASA and we would ask him, what are you doing here?

CHAIRPERSON: Yes.

MS NGOYE: You know and it would be the number of meetings that he

was holding with the Chairperson.

CHAIRPERSON: Yes.

MS NGOYE: So it was around that time Chair November/December.

CHAIRPERSON: As I recall what is in the documentation the Chairperson had just been appointed is it not?

MS NGOYE: That is correct Chair.

CHAIRPERSON: At that time.

MS NGOYE: She was appointed I think in October.

CHAIRPERSON: Yes.

10 **MS NGOYE:** *Ja*. So this was the first matter that she dealt with.

CHAIRPERSON: Okay. At the time you went to speak to the acting Group CEO had you come to the conclusion that you – the Legal Department was being excluded from any dealings with this matter or not yet?

MS NGOYE: No Chair.

CHAIRPERSON: Not yet.

MS NGOYE: Everything was fine before the intervention of the Chairperson.

CHAIRPERSON: Everything was still fine?

20 **MS NGOYE:** Yes. The Legal Department was left to run with the matters and to report accordingly.

CHAIRPERSON: Yes.

MS NGOYE: Yes.

CHAIRPERSON: Okay. Then continue and tell me at what stage you felt that the Legal Department was being excluded?

MS NGOYE: At the time – sorry.

CHAIRPERSON: Or did you speak at cross purposes?

MS NGOYE: No, no we did not.

CHAIRPERSON: Okay. Let me ask again. Or Mr Soni.

ADV VAS SONI SC: May I beg – because there is an issue that does arise relating to that issue Mr Chairperson.

CHAIRPERSON: Yes okay alright.

ADV VAS SONI SC: Another question of your feeling what happened on the 15th of December if you look at paragraph 40 of your affidavit?

10 **MS NGOYE:** On the 15th Chair Mr Dingiswayo phoned. I was with Mr Dingiswayo because we were concerned about the dealings of Diale Mogashoa with the Chairperson and them not coming to talk to us. Because the least we expected was that even after they engaged with the Chairperson they would say, look this is where we are with this matter, this is what we have discussed with the Chairperson. And when we realised that that was not happening we then suggested to call – this is Mr Dingiswayo and myself – to call Mr Diale – I mean Mogashoa and he frankly said to us, look I had been barred from speaking to the Legal Department by the Chairperson of the Board. And we left it at
20 that because we did not want to put him in trouble.

CHAIRPERSON: Yes.

MS NGOYE: So we just said okay and we left it.

CHAIRPERSON: Okay.

ADV VAS SONI SC: But was that not I mean really well I mean from your point of view how would PRASA benefit if the Legal Department

would be excluded in this fashion?

MS NGOYE: It just complicates things Chairperson. I think as an internal legal function we have a role to play as well and you know in terms of briefing attorneys as well. We understand the business and we would know what is happening better than the attorneys themselves. So you know it was obviously inadvisable that we would be left out and our attorneys proceed with the matters. In fact they took instructions from us you know for them to be able to deal with the matters on behalf of PRASA as the legal function. And we obviously having you know
10 being in the field we understood what issues were important and what not. So when that did not happen it was a concern for us.

ADV VAS SONI SC: Then on the 15th of December a letter was written to Ms Mogashoa?

MS NGOYE: No.

ADV VAS SONI SC: What was that letter but if you look at paragraph 42 of your affidavit.

MS NGOYE: Ja. This letter Chairperson effectively was a letter advising Mr Mogashoa about the settlement – what you call it agreement that would have to be made in relation to each case.

20 **CHAIRPERSON:** Do we have this letter somewhere, because if it is there let's go to it.

MS NGOYE: I don't have the letter.

ADV VAS SONI SC: It isn't in the documents

CHAIRPERSON: It is not in the document, is there no access to it, so that we have some complete picture?

MS NGOYE: I can find the letter Chair.

CHAIRPERSON: You can find a copy?

MS NGOYE: Yes I can find the letter and make it available.

CHAIRPERSON: *Ja* okay, okay but tell me what the letter was saying and who it was from, who it was to.

MS NGOYE: Chairperson Mr Zede was advised, obviously Mr Zede was the Acting CEO at the time and he had been very close to the Chairperson. So Mr Zede was advising Diale Mogashoa, our attorneys on the instructions of the Chairperson, how the Chairperson would have
10 wanted these matters to be settled in respect of each case. So – and basically speaks to Ms Makubela's instructions where she then lists the respective cases and the amounts that the cases need to be settled for. So she deals with all those in that letter.

ADV VAS SONI SC: *Ja* are those details in paragraph 42?

MS NGOYE: That's correct Chair. So you can see there Chairperson, at the top of page 21 the matter was to be settled for the amount of ...*(intervenes)*.

CHAIRPERSON: At page?

MS NGOYE: 297 the matter is to be claimed for – settled for an
20 amount of R7 million the other one – so these were the instructions that were coming from the Chairperson in relation to all those matters that ...*(intervenes)*.

CHAIRPERSON: Yes do you want to just read that into the record, those amounts how they were to be settled and the case numbers?

MS NGOYE: Yes.

CHAIRPERSON: Well if that's the previous – ja the letter goes on to confirm, I think start from there and read up to the end of the paragraph.

MS NGOYE: The letter goes on to confirm Ms Makubela's instructions as follows:

10 “Case 74281/2015 was to be pended until further instructions. In respect of case DB2 the matter was to be settled for the amount claimed, namely R7 098 481.66. Case DD1 the matter was to be settled for the amount claimed, namely R8 095 950.00. case DB3, the matter was to be settled for the amount claimed, R50 371 739.87, the Siyaya case the amount claimed was R21 million but it was to be settled at R19 583 778.42 in respect of interest this should be reckoned from the date of the summons. The letter concluded as follows, DM Attorneys were to make the following offers to pay the liquidators of CIA Rail R30 566 171.53 plus interest and to pay the attorneys representing CIA Rail R90 583 788.42 plus interest.”

20 **CHAIRPERSON:** Now the – what you have read there, according to your affidavit, was how Ms Makubela had said, according to the letter the various claims by CI against PRASA should be settled, is that correct?

MS NGOYE: That's correct Chair.

CHAIRPERSON: Okay am I right to say that those that she said

should be settled actually, it wasn't a matter of them being settled, it was a matter of the instructions to pay whatever amount was claimed, that seems to be what it says, is that correct?

MS NGOYE: That's correct Chair.

CHAIRPERSON: It was not a compromise or a settlement agreement, it was, pay the amount demanded?

MS NGOYE: That's correct Chair.

CHAIRPERSON: In respect of all those where she said, settle the amount as claimed.

10 **MS NGOYE:** That's correct Chair.

CHAIRPERSON: And then the last sentence of paragraph 42 of your affidavit says:

"The letter concluded as follows, DM Attorneys were to make the following offers, that is now PRASA's attorneys were being instructed."

MS NGOYE: That's right.

CHAIRPERSON: "To offer to pay the liquidators of Siyaya R30 566 171.53 plus interest."

20 Do you know whether that amount – where that amount came from?

MS NGOYE: I think it was part of ...(intervenes).

CHAIRPERSON: Was it – maybe let's start with this, what was the total of the amounts – the total amount that she was saying PRASA's lawyers should agree to pay in regard to all the claims mentioned there?

MS NGOYE: It was over – just over R56 million.

CHAIRPERSON: Just over R56 million?

MS NGOYE: That's correct.

CHAIRPERSON: Okay and then there is that amount of R30 566 171.53 in respect of what was that do you know, because your paragraph here doesn't say what that was for.

MS NGOYE: I guess it was the amount that was claimed also by Siyaya so she wanted us to pay the liquidators that amount of money to settle that.

10 **CHAIRPERSON:** Yes, but weren't all these claims were – the claimant was Siyaya isn't it?

MS NGOYE: That's correct Chair.

CHAIRPERSON: So why would some amount be paid to the liquidators and not the whole amount?

MS NGOYE: Chair this is what was confusing, you know, with this whole matter ...(intervenes).

CHAIRPERSON: Because if a company is in liquidation then whatever the company was owed must be paid to the liquidators.

MS NGOYE: That's correct Chair.

20 **CHAIRPERSON:** Yes is this one of the things that puzzled you?

MS NGOYE: It did Chair, because I mean, Chair, liquidation we understand that the liquidator is the one that takes over and you deal with the liquidator and not the party itself but in this particular case, you know, that was not the case.

CHAIRPERSON: Now – so this R30 million in the last sentence of

your paragraph, you say was part of the R56 million or so?

MS NGOYE: Yes.

CHAIRPERSON: Yes?

MS NGOYE: Yes.

CHAIRPERSON: So the total amount was just over R56 million.

MS NGOYE: That's correct Chair.

CHAIRPERSON: And out of that R56 million plus she was saying R30 million must be paid to the liquidators.

MS NGOYE: That's correct Chair.

10 **CHAIRPERSON:** And then to pay the attorneys representing Siyaya, one would have thought that such attorneys as they would have been to pursue these claims would be attorneys of the liquidators.

MS NGOYE: That's correct.

CHAIRPERSON: And not Siyaya.

MS NGOYE: That is correct.

CHAIRPERSON: Yes, so do you know whether, as at this time there were attorneys instructed by the liquidators and there were attorneys who had previously been instructed by Siyaya or was it the same attorneys?

20 **MS NGOYE:** It was not the same attorneys Chair.

CHAIRPERSON: It was not the same attorneys?

MS NGOYE: No it was not the same attorneys, the liquidator had its own attorneys and Siyaya had its own but in this case we were not dealing with the liquidators' attorneys we were dealing with Siyaya's attorneys.

CHAIRPERSON: By this time, how long had Siyaya been under liquidation, do you remember?

MS NGOYE: They actually applied for their liquidation in 2016 so the process, I think, had started at that time.

CHAIRPERSON: But is the position that through the Chairperson of the Board of PRASA, PRASA was effectively dealing with the attorneys – the previous attorneys of Siyaya, I'm saying previous because I don't think they should have been representing Siyaya once they were liquidators, is that the position?

10 **MS NGOYE:** Yes, I mean, so effectively what we understood was then, because the interactions were with the attorneys of Siyaya, you know, the issues around liquidation were basically you know, put aside in terms of having to comply with the manner in which you would run this type of case where a liquidator is involved. So she calls the attorneys of Siyaya and started talking to them.

CHAIRPERSON: Do you remember whether at the time that she and her Board were appointed the liquidators attorneys were in correspondence with PRASA or PRASA's attorneys?

MS NGOYE: They were Chair

20 **CHAIRPERSON:** They were.

MS NGOYE: So the liquidators would speak to Diale Mogashoa.

CHAIRPERSON: Yes, do you know whether, prior to her appointment and the appointment of her Board, the so-called Siyaya's attorneys were continuing to be in correspondence with PRASA?

MS NGOYE: Yes Chair, in terms of the Arbitration proceedings, yes we

were in communications.

CHAIRPERSON: Yes, in respect of that.

MS NGOYE: That's correct Chair.

CHAIRPERSON: Yes, but why was that necessary once Siyaya was in liquidation because I would have imagined even with regard to that, that should have been under the liquidators' control.

MS NGOYE: In terms of the Siyaya S Group had a number of companies so Engineering – Consulting Engineering is what they had put under liquidation and the others remained as part of that group.

10 **CHAIRPERSON:** So the arbitration related to other entities.

MS NGOYE: The other as part of the S Group yes.

CHAIRPERSON: Not the one under liquidation?

MS NGOYE: That's correct Chair.

CHAIRPERSON: So is it possible, therefore, that some of these amounts that she was giving instructions on did not relate to the entity that was under liquidation?

MS NGOYE: That's to the ones that were in arbitration with us, that's correct Chair.

CHAIRPERSON: That's correct?

20 **MS NGOYE:** Yes.

CHAIRPERSON: So in that case, then except for the fact that she being Chairperson of the Board was getting involved in these matters, there would be no problem with dealing with Siyaya, Siyaya's attorneys insofar as they represented entities that were not under liquidation?

MS NGOYE: That's correct Chair.

CHAIRPERSON: Yes, so do you know whether the amount that she said should be paid to Siyaya's liquidators whether that would have related to the only claim or claims that related to the entity that was under liquidation?

MS NGOYE: It would have been to the claim that related to the company that was in liquidation.

CHAIRPERSON: Yes, okay so insofar as she talks about amounts that related to entities that were not under liquidation, somebody at PRASA would have been entitled to deal with those attorneys?

10 **MS NGOYE:** That's correct Chair.

CHAIRPERSON: Insofar as she talks about amounts that related to the entity that was under liquidation, somebody at PRASA would have been entitled to speak to the liquidators' attorneys?

MS NGOYE: That's correct Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Mr Chairperson, if I could be helpful in regard to the figure of R30 566 171.53, you'll see Mr Chairperson that, that is the sum total of the first three amounts reflected on page 297.

CHAIRPERSON: Okay.

20 **ADV VAS SONI SC:** Then you add R7 million, R8 million and R15 million, you'll get the R30.56 million.

CHAIRPERSON: Okay.

ADV VAS SONI SC: And then of course the R19 million is the one that was the fourth figure, that's how it's divided.

CHAIRPERSON: Okay thank you.

ADV VAS SONI SC: Now, the Chairperson instructs – give instructions of how the matters are to be settled but what happens next and you deal with that at paragraph 43 of your affidavit Mr Ngoye?

MS NGOYE: In paragraph 43 I talk about a letter that Siyaya's attorneys wrote to our attorney.

ADV VAS SONI SC: Yes.

MS NGOYE: Right, in fact in that letter Chairperson Siyaya's attorneys complained about the proposal that was made by our attorneys reflecting, effectively that that's not what they understood to
10 be the instruction coming from the Chairperson.

CHAIRPERSON: Okay I'm sorry I'm just going to ask you to start afresh on that.

MS NGOYE: No problem Chair, this letter that Siyaya's attorneys wrote to our attorneys, right, they complained about the fact that what our attorneys had represented as an offer of settlement was not a true reflection of what they understood to be the case.

CHAIRPERSON: Okay now we skipped something. Did DM Attorneys carry out these instructions as per the instructions given in that letter?

MS NGOYE: Yes Chair they did.

20 **CHAIRPERSON:** They did in accordance with the amounts given there?

MS NGOYE: That's correct Chair.

CHAIRPERSON: Okay and then what happened? Siyaya's Attorneys came back ...(intervenes).

MS NGOYE: Came back and complained that no, these amounts that

you are reflecting as settlement amounts are not what we understood to be the offer coming from PRASA.

CHAIRPERSON: Yes and have we got that letter here?

ADV VAS SONI SC: We don't Mr Chair.

CHAIRPERSON: Yes.

MS NGOYE: We will provide the letter Chair.

CHAIRPERSON: Ja, okay, it should be provided. Yes and what happened then?

ADV VAS SONI SC: Sorry Mr Chairperson maybe just – in fact they
10 don't say it is in terms of the offer but if you read what they're saying and if you put that in inverted commas.

MS NGOYE: The attorneys complained that the tender made did not correspond with ...(intervenes).

CHAIRPERSON: I'm sorry where are you reading from?

MS NGOYE: Paragraph 43 Chair.

ADV VAS SONI SC: Paragraph 43.

CHAIRPERSON: Paragraph 43?

MS NGOYE: Yes, on page 296.

CHAIRPERSON: Okay.

20 **MS NGOYE:** It says after the tender was made:

“Siyaya Attorneys complained that the tender made did not correspond with PRASA specific and express instructions.”

CHAIRPERSON: And you have quoted specific and express instruction, that was in their letter?

MS NGOYE: Yes.

CHAIRPERSON: Okay, which you saw?

MS NGOYE: Yes Chair.

CHAIRPERSON: Yes, okay.

ADV VAS SONI SC: And what is your comment about that – the fact that they knew what the specific and express instruction was?

MS NGOYE: A bit odd Chairperson that the attorneys of the other side would have been advised you know by somebody in PRASA of what the specific instructions were. We found that improper in fact to say how is
10 that they seem to know, our lawyers in any event had written what they thought they understood to be the case but in this regard Siyaya's Attorneys come back and say no those are not the express instructions, so in our mind it was very clear that they were communicating you know with the Chairperson around these matters and that's why ...(indistinct) it is not what was offered.

ADV VAS SONI SC: Alright, as a consequence then forgetting all of these concerns that you raise and I am not saying they are not important, but just to take the process forward, what happened next insofar as having the matter settled at the arbitration proceedings?

20 **MS NGOYE:** The offer – our attorneys then revised the offers to accord with what Siyaya's Attorneys had communicated to them and that is what was then sent to the arbitrators to be made ...(intervenes).

CHAIRPERSON: We are skipping.

MS NGOYE: Okay.

CHAIRPERSON: Okay, it seems natural that the attorneys for Siyaya

would have been asked by your attorneys where are you getting this from, didn't they ask this?

MS NGOYE: I don't know Chair one would have expected that but as to whether it happened I can't.

CHAIRPERSON: I would have expected you to ask DM, I know that they had said that you – they were barred from talking to you so maybe that is the reason why.

MS NGOYE: *Ja*, we ...(indistinct) Chair.

CHAIRPERSON: Yes, but internally within PRASA did anybody ask
10 who knows anything about what these attorneys are talking about, did anybody ask?

MS NGOYE: Well we knew that Mr Zede who was close to the process would know what was involved.

CHAIRPERSON: H'mm.

MS NGOYE: So you know – and ...(intervenes).

CHAIRPERSON: But you left it.

MS NGOYE: Now we left it at that.

CHAIRPERSON: In a role.

MS NGOYE: *Ja*.

20 **CHAIRPERSON:** Yes, okay and you have now talked about PRASA's attorneys sending a revised offer and – but you are skipping, somebody within PRASA must have given them instructions, that advice to offer, how did that come about?

MS NGOYE: They were speaking to Mr Lindikaya Zede at the time who was the acting ...(intervenes).

CHAIRPERSON: Group CEO.

MS NGOYE: Group CEO, there was a point where Mr Zede became the acting – no the Company Secretary. His official position in the organisation was Company Secretary.

CHAIRPERSON: Yes.

MS NGOYE: But at this time when these negotiations started he was the Acting ...(intervenes).

CHAIRPERSON: Acting CEO.

MS NGOYE: That's right and then later on I think he was removed
10 roundabout December, but he was the one that had engaged quite extensively in the meetings that the Chairperson had with our attorneys ...(indistinct), so he would have known and he would be the one that we understood that he was the one that then communicated to our attorneys to say fix the offer.

CHAIRPERSON: Do you know whether he would have been part of whatever meeting the Chairperson had with whoever in this regard to these matters?

MS NGOYE: Yes he was Chair.

CHAIRPERSON: He was?

20 **MS NGOYE:** We took issue with him to say you know how we work.

CHAIRPERSON: Yes.

MS NGOYE: Why are you not advising accordingly you know so he did, he was basically, even when he became Company Secretary I suppose from a Board relationship he continued to be part of those meetings.

CHAIRPERSON: H'mm, okay, alright. So he instructed PRASA's attorneys to send a revised offer?

MS NGOYE: To revise the offer.

CHAIRPERSON: Are you able to indicate how the revised offer looked like or not really?

MS NGOYE: Well I guess Chairperson the revised offer would be in accordance with the letter that Advocate Makubela ...(intervenes).

CHAIRPERSON: Just on the – what room there was to revise the offers when the amounts that the attorneys – PRASA's attorneys had
10 been instructed to offer were the amounts claimed?

MS NGOYE: Ja, I think it was around the interest, when interest will be calculated, you know Chair because you will recall in the letter that the Chairperson writes ...(intervenes).

CHAIRPERSON: It does state from the date of summons.

MS NGOYE: That's correct Chairperson.

CHAIRPERSON: Yes. So they wanted it earlier than that?

MS NGOYE: Exactly.

CHAIRPERSON: And then the instructions were given to say they must make it earlier than that?

20 **MS NGOYE:** That's it.

CHAIRPERSON: Oh and do you know whether by chance do you know whether in the summonses they claimed interest from a date earlier than the summonses?

MS NGOYE: No Chair.

CHAIRPERSON: It would have been from the date of the summons?

MS NGOYE: That's correct Chair.

CHAIRPERSON: Yes, is that something that you are sure about because you had a look or ...(intervenes).

MS NGOYE: Yes I am sure Chair, yes.

CHAIRPERSON: Yes, so to the extent that they may have wanted interest to ...(intervenes).

MS NGOYE: From the beginning.

CHAIRPERSON: To run from dates earlier than the dates of summons they were claiming something that they were not entitled to.

10 **MS NGOYE:** That's correct Chair.

CHAIRPERSON: For litigation.

MS NGOYE: Which is something we would have opposed.

CHAIRPERSON: Which you would have opposed.

MS NGOYE: That's correct Chair.

CHAIRPERSON: *Ja*, okay.

ADV VAS SONI SC: Now the revised offer is made and was that revised offer accepted?

MS NGOYE: That's correct Chair, it was accepted.

20 **ADV VAS SONI SC:** And first you went to that settlement in respect of the arbitration how was that brought to – or purportedly brought to an end?

MS NGOYE: Well in terms of – on the 7th of February Advocate Botes and Mr Mogashoa approached ...(intervenes).

CHAIRPERSON: Don't step away from the mic.

MS NGOYE: Sorry, sorry.

CHAIRPERSON: *Ja*, look at me.

MS NGOYE: I forgot for a minute there Chair. The attorneys for Siyaya as well as our attorneys then approached Judge Brandt who was dealing with the arbitration process, requesting ...(intervenes).

CHAIRPERSON: He was the arbitrator?

MS NGOYE: Yes.

CHAIRPERSON: *Ja*.

MS NGOYE: And to make the terms of the agreement you know to award a settlement agreement.

10 **CHAIRPERSON:** Was there a written settlement agreement that had been concluded?

MS NGOYE: That's correct Chair there was.

CHAIRPERSON: *Ja*, so they – the parties agreed that the settlement agreement should be made an arbitration award by consent?

MS NGOYE: That's correct. That's correct Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Now just for the record Ms Ngoye when we're talking about Judge Brandt we are talking about the retired Judge of the Supreme court of Appeal?

20 **MS NGOYE:** That's correct Chair.

ADV VAS SONI SC: Sitting with the hat of arbitrator?

MS NGOYE: That's correct Chair.

CHAIRPERSON: Wasn't he the – on the arbitrator or there were two or three arbitrators?

MS NGOYE: In the Siyaya matter he was the arbitrator Chair.

CHAIRPERSON: *Ja.*

MS NGOYE: It is in the Siyangena matter where we had two judges.

CHAIRPERSON: Yes, okay.

ADV VAS SONI SC: Then what is the next development following the order being made – I mean an award being made in terms of the settlement agreement?

MS NGOYE: Chairperson Siyaya's attorneys then brought an application to have that award made an order of court, so that you know it would be easy to pay once it's a court order.

10 **ADV VAS SONI SC:** And when was that?

MS NGOYE: It was in March 2018 Chairperson, we actually didn't know as the legal function that this was happening, in fact somebody from outside advised us of that fact and we were able to then you know intercept that process of making the order ...(intervenes).

CHAIRPERSON: Making the settlement an order of court.

MS NGOYE: The settlement an order of court.

CHAIRPERSON: Actually it was to make the award an order of court, because it was now an award.

MS NGOYE: Yes it was an award now Chair.

20 **CHAIRPERSON:** *Ja.*

ADV VAS SONI SC: Now Ms Ngoye you knew that the award had been made in terms of what Ms Makubela had said ...(indistinct) that now is – an attempt is made to make that into an order of the court, on what basis could you – or what authority would you have to oppose that application to make the award an order of the court?

MS NGOYE: Chairperson as the Head of the Legal Function and also in terms of the delegations of authority that have been given to me by the Board you know in terms of these type of matters I knew also in terms of the delegations of authority who has authority to do what and in relation to this settlement, which was negotiated by the Chairperson for me it was clear that the Chairperson did not have authority to be negotiating settlements with parties, also to the exclusion of the legal function. In fact the delegations of authority do not provide for that. So – and also knowing very well that there is no ways that PRASA
10 could have settled these matters, because we know our prospects of success was quite high and also taking into consideration the fact that you know our attorneys told us that you are barred from being part of this thing, so you know you put all those issues together and you realise that you know clearly this thing was not done properly, it was outside of the authorities and we could not as a legal function allow it to proceed.

So we then you know engaged another set of attorneys to the exclusion of ...(indistinct) to go and defend this matter for us and oppose it.

20 **CHAIRPERSON:** You said this was around what time and which year?

MS NGOYE: This was 2018.

CHAIRPERSON: 2018 when?

MS NGOYE: March.

CHAIRPERSON: March?

MS NGOYE: March yes, 2018,

CHAIRPERSON: Was Mr Makubela still the Chairperson?

MS NGOYE: Yes he was.

CHAIRPERSON: Okay, but you decided to intervene nevertheless?

MS NGOYE: Yes I did.

CHAIRPERSON: Yes, okay, continue.

ADV VAS SONI SC: Chairperson just for you I want to ask Ms Ngoye to look at something on page 298 in that unnumbered paragraph on the second line there's a date and that date is the 9th of May 2018, what is the correct date?

10 **MS NGOYE:** No the settlements were made in March Chairperson, this was the date for the hearing of the award being made an order of court.

ADV VAS SONI SC: So ...(intervenes).

CHAIRPERSON: Well it looks like ...(intervenes).

MS NGOYE: The application was set down for the 9th of May.

CHAIRPERSON: It looks like you may have skipped something important in the preceding paragraph, 45 on page 298. You said you instructed a different firm of attorneys, you didn't tell me which firm and so on.

MS NGOYE: The firm of attorneys we instructed was Bowman Gilfillan
20 Chairperson.

CHAIRPERSON: Yes, continue Mr Soni.

ADV VAS SONI SC: And the reason you appointed a different firm of attorneys was that related to the fact that DM Attorneys had played a role in having the agreement made an award.

MS NGOYE: Yes Chair, we found that D L Magasha was conflicted in

this regard.

CHAIRPERSON: H'mm.

MS NGOYE: And we decided that we are not going to continue with them, because they were party to the process.

CHAIRPERSON: H'mm.

MS NGOYE: And so we went with a different law firm and we chose Bowman Gilfillan to oppose the application.

ADV VAS SONI SC: But you say – because this date is going to be important Ms Ngoye, I am going to ask you now to look at paragraph 46
10 and you say there at the hearing on the 9th of March but you then say earlier in the second line on that page it was set down for the 9th of May. Surely both dates can't be right.

MS NGOYE: No that's correct Chair there must be a typo, I think it's ...(intervenes).

ADV VAS SONI SC: So what is the correct date?

MS NGOYE: It is – let me just go back, the matter was set down in May so it would be the 9th of May.

ADV VAS SONI SC: No it was set down for March.

MS NGOYE: Let me just remember Chairperson. In March 20 we
20 became aware that Siyaya had brought an application, so that is when we became aware

CHAIRPERSON: In March?

MISS NGOYE: In March 2018

CHAIRPERSON: Yes

MISS NGOYE: Right,

CHAIRPERSON: *Ja* you do say in paragraph 45 it was set down for 9th May?

MISS NGOYE: Yes, it was set down for 9th May.

CHAIRPERSON: Second sentence, second sentence on page 298?

MISS NGOYE: That is correct Chair

CHAIRPERSON: Yes, but there is something that is important that I want you to deal with about the power of attorney and Siyaya's attendance challenging Bowman's, Bowman difference authority, tell me about that?

MISS NGOYE: Chairperson.

10 **CHAIRPERSON:** After you had instructed Bowman's Gilfillan then what happened?

MISS NGOYE: We were advised in fact by the attorneys on the other side that the Chairperson had written to them advising them that we did not have authority to appoint lawyers and therefore Bowman Gilfillan was not authorised, you know to act on behalf of PRASA . In terms of the delegations of authority Chairperson, the authority to appoint attorneys is given to the Head of the Legal Function which is myself.

And so when a Rule 7 Notice was issued requesting authority I then prepared the Power of Attorney to Bowman you know inflicting that
20 they were authorised to act and they also attached the delegations of authority to show that you know I was able to do that.

But you know, the Chairperson had advised the opposition that we did not have authority to act and we therefore did not have authority to appoint Bowman Gilfillan.

CHAIRPERSON: Now you say you go to hear this from Siyaya's

attorneys, is that right?

MISS NGOYE: No, the issue of yes in terms of ...(intervenes).

CHAIRPERSON: The challenge.

MISS NGOYE: That is it ...(intervenes).

CHAIRPERSON: The challenge to Bowman Gilfillan's authority and your authority to appoint them.

MISS NGOYE: That is correct Chair.

CHAIRPERSON: Now was that in a letter that Siyaya's attorneys sent to Bowman?

10 **MISS NGOYE:** It was an in a telephone message.

CHAIRPERSON: A message sent to you?

MISS NGOYE: Ja.

CHAIRPERSON: They sent to you?

MISS NGOYE: Yes, we saw the message their attorneys in fact sent us an excerpt of that communication that they had with the ...(intervenes).

CHAIRPERSON: Ja that is now the attorney from Bowman's.

MISS NGOYE: The attorneys from Bowman's were given this excerpt by the attorneys Siyaya so they sent it to us.

CHAIRPERSON: Yes, yes and what did the text message actually say
20 just repeat that. Did it say that Bowman's had no authority to represent PRASA?

MISS NGOYE: Yes, something to that affect Chair. I cannot paraphrase it properly – effectively it said ...(intervenes).

CHAIRPERSON: Yes, but effectively that –ja. No that is fine and what did you do after learning about this challenge?

MISS NGOYE: No we said to Bowman's they must continue, they must continue to go to court because we did not agree with what the Chairperson had informed them and we thought based on you know the documentations that we had given in support of the authority and the power to act that it would be sufficient o the court to show that no we do have the necessary authority.

CHAIRPERSON: And did you report this to anybody else and what did or this whole issue?

MISS NGOYE: Yes, we did Chairperson.

10 **CHAIRPERSON:** Who did you report to?

MISS NGOYE: In fact when all this was happening we wrote to the Board Mr Dingiswayo wrote to the Board to say we are – are you aware of this and has the Board authorised the Chairperson to be conducting and concluding settlement agreements but we got no response from the Board you know and what we also did ...(intervenes).

CHAIRPERSON: Before that when you say you wrote to the Board did you write to every Member of the Board?

MISS NGOYE: Every Member of the Board.

CHAIRPERSON: And not a single one responded?

20 **MISS NGOYE:** Not a single one responded Chair.

CHAIRPERSON: Not a single one of them called you in response to that letter?

MISS NGOYE: Not a single one Chairperson.

CHAIRPERSON: They said nothing.

MISS NGOYE: They said nothing.

MISS NGOYE: *Ja.*

CHAIRPERSON: Okay and who else if there is anybody else you did you report this to?

MISS NGOYE: At the same time Chairperson, so when one letter was going to the Board, I wrote a letter to the Minister as well ...(intervenes).

CHAIRPERSON: And who was the Minister at the time?

MISS NGOYE: Mr Blade Nzimande.

CHAIRPERSON: Yes.

MISS NGOYE: At the time he was.

10 **CHAIRPERSON:** He was Minister of Transport.

MISS NGOYE: That is it, he had just come into office. So, I wrote to the Minister explaining to the Minister that we are sadden with this issue and need intervention. We also wrote to the Portfolio Committee of Transport to say look help us, we got the situation within PRASA and we do not know where to go. So those letters were sent to the various people that we thought we could escalate the matter to.

CHAIRPERSON: Do you find any joy with both parties namely the Minister and the Portfolio Committee.

MISS NGOYE: Well, the Minister came back to us Chairperson. In fact
20 the Minister really came forward and called a meeting that perhaps I may say Chairperson when we were in court the court – the Judge you know upheld the fact we did not have authority to act so granted default judgment against us. So we were all saying to the Ministers give us authority to apply for rescission of this matter because the – was still there and she was not actually interested in us applying for rescission, so

we needed some form of authority.

So when we raised that Mr Minister Blade Maimane he called a meeting immediately after he had received the letter to engage both parties and we had ...(intervenes).

CHAIRPERSON: Both parties being?

MISS NGOYE: Being the Chairperson of the Board, in fact it was the Chairperson of the Board and the legal function of PRASA together with the acting CEO at the time Mr Pomet Molepo and the company secretary was there as well, so the Minister wanted us to you know obviously speak
10 to him about this matter and advise what had transpired cause clearly you had conflicting you know views from the same entity around a matter that required PRASA to pay monies to a supplier.

CHAIRPERSON: Well you may as well for the completeness tell us the meeting took place ...(intervenes).

MISS NGOYE: Well the meeting took place Chairperson it was very clear in the meeting that the Chairperson was offended. ...(intervenes).

CHAIRPERSON: Offended by what?

MISS NGOYE: By the Minister having asked her to come to a meeting with managers of PRASA without the Minister having engaged with her
20 first because that was the first encounter that the Chairperson had and in that meeting Chairperson the Minister after then hearing both sides you know from the Chairperson and from myself you know the Chairperson felt that she did not want to go into the merit of the matter. She was not there for that and she did not want me to go into the merit of the matter as well as she would rather have reports drafted so the Minister then

requested.

CHAIRPERSON: She would rather have what?

MISS NGOYE: Reports.

CHAIRPERSON: A reporter?

MISS NGOYE: A report drafted to the Minister.

CHAIRPERSON: Oh okay.

MISS NGOYE: Yes, so the Minister then said okay I will then need a report that comes from PRASA on this and I said to the Minister you know with the greatest respect I do not think I can do a report with the
10 Chairperson, I rather suggest that the Chairperson does her own report and we as the legal function do our own report and the main issue for us is for you also to give us authority to apply for rescission of the matter and you know we left the meeting on the basis each party given a specific date would then go then and prepare the report.

So, we as the legal function myself and Dingiswayo put a report together for the Minister and we submitted the report the Chairperson did not produce the report at all. In fact and we then got a letter from the Minister an instruction from the Minister to say defend PRASA's interest accordingly in this and that is when we rushed to interdict the Sheriff from
20 paying the monies that the Sheriff had already attached so effectively immediately after the summary judgment was given the Sheriff went and attached our bank account and would only release the monies within 30 days of that. So, we were hoping we would receive instruction from the Minister and we did and so we were able to then challenge the release of the monies by the Sheriff and we were successful in that respect.

CHAIRPERSON: I am sorry Mr Soni.

ADV VAS SONI SC: No, no, no.

CHAIRPERSON: I needed to just hear the whole part.

ADV VAS SONI SC: Absolutely Chair.

CHAIRPERSON: Okay you may continue.

ADV VAS SONI SC: I just want to place so that when you look at the document Chairperson displayed on record if you look at page 298 that is the unnumbered paragraph of your affidavit you will see there that there is a reference to annexure NM8 Is that your letter to the Minister in which
10 you ask for the meeting and ask him to intervene.

MISS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: And you have already indicated he did intervene.

MISS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: In your letter you then say to him and your letter is dated the 16th of March and you say to him that the application brought by Siyaya was granted and the arbitration award was made in order of court?

MISS NGOYE: So, you are referring to the date of March Chairperson I may be getting my dates mixed up Chair I must concede.

20 **CHAIRPERSON:** Well if the letter is here let us go to it.

ADV VAS SONI SC: Yes.

CHAIRPERSON: What page is it?

ADV VAS SONI SC: Page 263 Chairperson.

CHAIRPERSON: 263?

ADV VAS SONI SC: Sorry page 364.

CHAIRPERSON: 364?

ADV VAS SONI SC: At 363 sorry Chair.

CHAIRPERSON: Yes.

MISS NGOYE: Yes.

CHAIRPERSON: I see the letter is written by two people yourself and Mr Dingiswayo.

MISS NGOYE: That is correct Chair.

CHAIRPERSON: And it is addressed to the Minister of Transport, Mr Bongisi Nzimande. Yes.

10 **MISS NGOYE:** It is March.

CHAIRPERSON: Continue.

ADV VAS SONI SC: In essence what did you say to the Minister in this letter?

MISS NGOYE: We basically complained to the Minister of Transport you know stating the fact that the Chairperson of the Board you know exceeded her authority effectively in settling these matters and that the rescission we would request the Minister to approve that we apply for the rescission for the judgment that was taken against us.

ADV VAS SONI SC: I just want you to look at paragraph two. Sorry

20 **MISS NGOYE:** Just read that into the record please.

MISS NGOYE: “The Chairperson of the interim Board is correct to say that the matter in question is by all accounts a small matter in the context of PRASA.”

ADV VAS SONI SC: Now we dealt with the amounts and we know whatever it is. It is in the region of 50 to 60 million Rand.

MISS NGOYE: Yes.

ADV VAS SONI SC: And would you regard it as a small matter?

MISS NGOYE: Well in the bigger scheme of things Chairperson I mean I guess 56 million Rands when we deal with billions at PRASA is a very small amount you know and I think what concerned one was one ... (intervenes).

CHAIRPERSON: That is a lot of money to the taxpayer.

MISS NGOYE: It is a lot of money to the taxpayer Chairperson in terms of you know dealing with matters that would concern the Chairperson you
10 know obviously from a focus perspective this is what one was referring to because if you look at the delegation of the Group CEO at the time. His delegation was one 100 million so 58 million really would not be something that the Board would really saddle themselves with ... (intervenes).

CHAIRPERSON: We would need to go to the Board.

MISS NGOYE: That is it, that is it. That is the context within which we sort that, indeed you know it is a small amount of money where things are concerned within PRASA and therefore we did not understand why she had placed so much emphasis and importance of the matter.

20 **ADV VAS SONI SC:** But is not that really the issue that on the one hand she says it is a small amount and that is what is reflected in the letter but on the other hand she spent so much of time getting information from people, giving these instructions, revising the instruction and why would a Chairperson of a Board do that?

MISS NGOYE: Well Chair I mean it was a question that we had as well

and it was suspicious at the end of the day to say how is it that so much time by the Chairperson of the Board and it is the port of call really where the Chairperson was concerned to then deal with this matter and to then deal with it in the manner that she had dealt with it you know for herself to concede that it was a small amount we agreed. You then do not concern yourselves with matters of this nature and in any event as a ...(intervenes).

CHAIRPERSON: You do not have authority to settle agreements on behalf PRASA and that comes from the delegation of authority. That is
10 prepared by the Board itself.

CHAIRPERSON: Did you ever get to know and maybe Mr Soni wants to – going to ask you about this whether the Board has authorised that these claims be “settled” and in the manner she had said the attorneys for PRASA should be instructed to settled that.

MISS NGOYE: No Chair, we actually inquired and as I said there was no response from the Board and one of the Board Members Mr Xholile George we engaged with him because he was a long standing Member of the Board and we went to him, we said but what is happening, have you as the Board given authority to the Chairperson to deal with this matter
20 and he said no. So, we know Chairperson that this was something that the was running herself.

CHAIRPERSON: And as you sit there you know that definitely there were no such resolutions.

MISS NGOYE: There was none, Chairperson.

ADV VAS SONI SC: And it was not even mentioned according to the

person you spoke to it was not even mentioned at the Board meeting.

MISS NGOYE: No, Chair. No and then the letter that the Chairperson writes, was to brief the Board, but as to whether, you know, it happened is another question, but what we knew, because that was one of the issues that we had requested from Mr Zede as the company secretary at that time to say, give us the resolution of the Board that authorizes the Chairperson to enter into the settlement agreement having regard to the delegations of authority.

CHAIRPERSON: What had Mr Zede's response been to it?

10 **MISS NGOYE**: He said there was not any.

CHAIRPERSON: Did you ever – you said earlier on that Mr Zede was close to the Chairperson, is that right?

MISS NGOYE: That is correct, Chair.

CHAIRPERSON: And I think you have suggested that he also would have been with the Chairperson in whatever meetings the Chairperson may have had with various parties relating to this case.

MISS NGOYE: That is correct, Chair.

CHAIRPERSON: Did you ever ask him, why are you getting involved in these matters in this way when you know it is not right?

20 **MISS NGOYE**: We did, Chair.

CHAIRPERSON: And what was his response?

MISS NGOYE: We asked him and his response really was along the lines that you know the Chairperson wants to deal with these matters in this way. We really took serious issue with Mr Zede, Chairperson. He was a colleague.

CHAIRPERSON: Yes.

MISS NGOYE: We had worked with him and we had a particular way of working and we told him, we said to him, it is interesting that you spend so much time with the Chairperson and you are busy instructing lawyers on the instructions of the Chairperson. You are not even coming to us. We are in the same corridor with you. Why are you not speaking to us? So we took issue with Mr Zede on this thing and we said to him, we are not happy and we are noting what is happening within the organization as far as these issues concerned. Mr Zede was before me a legal advisor for
10 PRASA before he came, became the company's secretary so he is a lawyer. He understands the issues as well and we really did tell him that we are not happy with how he as well was conducting himself where the Chairperson was concerned.

CHAIRPERSON: As you sit there are you quite clear in your own mind that Mr Zede knew that what was happening was wrong?

MISS NGOYE: I am sure.

CHAIRPERSON: And he continued to participate?

MISS NGOYE: Yes, Chair. Sure. Sure, he knew.

CHAIRPERSON: Okay.

20 **ADV VAS SONI SC:** As you already please, Chairperson, may I just ask the issue of – sorry the matter comes in court. What happens in court in relation to the point taken about PRASA's lack of authority?

MISS NGOYE: Well the – when we went to court to oppose the application that they had made, the judge obviously, you know, recognized that the instruction coming from the Chairperson of the Board

weighs more than just what the Power of Attorney was saying and therefore, you know, he decided the matter in favour of Siyaya and against PRASA and we were obviously, you know, saddled with having to now apply for the rescission and taking the matter forward, Chairperson.

ADV VAS SONI SC: But Miss Ngoye is there not a problem with the way the matter was dealt with which ever fault it is it does not matter. On your version and I am not saying it is wrong, the Chairperson had no authority to conclude the agreement or to agree to the agreement.

MISS NGOYE: That is correct, Chair.

10 **ADV VAS SONI SC:** Secondly, the Chairperson had no authority to contract lawyers on behalf of PRASA. That was your function, that is in terms of the delegation.

MISS NGOYE: That is correct, Chair.

ADV VAS SONI SC: Was that pointed out to the judge?

MISS NGOYE: Well, I guess Chair our attorneys, you know, found themselves in the back foot. Remember we came to hear about this matter just before it was going to court so we needed to act speedily and brief the lawyer speedily so we did not have enough time, I guess, to talk to our attorneys properly around the issues of authority and so on
20 because naturally with the Rule 7 Notice, you know, once the Power of Attorney has been granted it suffices and that is what we thought would help us deal with the matter as far as authority was concerned, but that note coming from the Chairperson weighed against PRASA and I guess the judge looked at it on the basis that she is the Chairperson of PRASA and therefore it must be that these people do not have authority.

ADV VAS SONI SC: It is an acting judge, though.

MISS NGOYE: That is correct, Chair.

ADV VAS SONI SC: The arbitration award is then made an order of court.

MISS NGOYE: That is correct, Chair.

ADV VAS SONI SC: Where – what happened here from Siyaya's point of view once it had got an order of court.

MISS NGOYE: Chairperson, the sheriff was then instructed by Siyaya in fact, immediately to go and attach one of the bank accounts of PRASA. If
10 I recall I think it was an ABSA bank account that was attached and obviously with a court order, you know, the sheriff could do so.

ADV VAS SONI SC: Now, in the meantime, all of this is happening, you are acting in the best interests of PRASA given the delegations and so on. The Chairperson has obviously communicated to the other side even that you do not have or purportedly do not have authority. Was there any communication between you and the Chairperson in relation to how this matter on the 9th of March is dealt with in court?

MISS NGOYE: No, Chair, there was not. In fact, I think the relationship was strained at that time. In fact, what I then understood from the group
20 CEO at the time was that we as the legal function were not authorized to go and defend that matter. In fact, that was the instruction that I received from the group CEO and I was very clear, you know, I said to the group CEO, look, Mr Cromet Molepo at the time at Exco, I said, I do not take on unlawful instructions. Not from anybody and I am going to defend this money of PRASA because we do not owe Siyaya this amount of

money' and it was during that day that, Chairperson that all these communications were happening between the Chairperson and the other side and I raised that with Members of Exco.

I even said to the executives that were responsible for the contract on which Siyaya had sued us to say, are you aware that this is happening, are you aware that the contracts are now being settled? So they themselves did not know that there was a settlement process that was happening. So, the relationship between me and the judge was strained, I mean and the Chairperson, was strained at the time and in
10 fact, what the Chairperson had then said is that I should be disciplined.

CHAIRPERSON: You should be disciplined?

MISS NGOYE: That is correct.

CHAIRPERSON: For what?

MISS NGOYE: For having acted without her consent in terms of briefing the attorneys and also the fact that I knew that she was saddled with dealing with this matter.

CHAIRPERSON: But your and what – she did not say this to you, she said it to somebody else and you heard from somebody else?

MISS NGOYE: This was to the group CEO who then advised me.

20 **CHAIRPERSON:** Yes.

MISS NGOYE: Yes, that the Chairperson wants me to, you know, ...(intervenes).

CHAIRPERSON: To be disciplined.

MISS NGOYE: Yes, Chair.

CHAIRPERSON: Yes. What was your reaction to this news?

MISS NGOYE: I was fine, Chair. I said, fine and then we will have to deal with the disciplinary action as and when it comes. I even said to him, look, it is not the first time that I would be disciplined for doing the right thing within PRASA.

CHAIRPERSON: So, you had from what you had told me you had been subjected to dismissals and suspensions or a dismissal and a suspension during Mr Montana's time that was coming from the group CEO. Now you – there was a threat of this reaction emanating from the Chairperson of the Board.

10 **MISS NGOYE:** That is correct, Chair.

CHAIRPERSON: Yes. Against you.

MISS NGOYE: Yes, Chair.

CHAIRPERSON: So and on both occasions you, well certainly in regard to the first one, you ultimately, nothing was shown to have justified the suspension and dismissal as far as you are concerned.

MISS NGOYE: Yes, Chair.

CHAIRPERSON: And in regard to this new threat as far as you were concerned you were just doing your job.

MISS NGOYE: I was just doing my job, Chair.

20 **CHAIRPERSON:** You were acting on the basis of a delegated authority that had been issued by the Board and it had not been revoked.

MISS NGOYE: That is correct, Chair.

CHAIRPERSON: Yes.

MISS NGOYE: All we were doing was protecting PRASA.

CHAIRPERSON: And you were protecting.

MISS NGOYE: The interests of PRASA.

CHAIRPERSON: PRASA's interests. That is what I was going to say.

And your point was either all or some of these things from Siyaya that the

CHAIRPERSON had said should be paid and were not owned at all.

MISS NGOYE: That is correct.

CHAIRPERSON: And that was your position.

ADV VAS SONI SC: Of course, you were saying we cannot settle this matter given what we know about the matter and what our lawyers have told us.

10 **MISS NGOYE:** That is correct, Chair.

ADV VAS SONI SC: Now the sheriff then attaches 59 million Rand of PRASA's money, which the Chairperson did not think was a large sum of money and I am just saying it because I am still surprised that 59 million Rand in an Organ of State is not regarded as a large sum of money and I wonder what the auditor general's view of that statement would be, but that is a different point. What happened next in the protection of PRASA's interests?

MISS NGOYE: Chair, so the sheriff attaches, right and we then allege the Minister. That was the time that we had requested the Minister to
20 come to our aid, so we waited, you know, for the Minister to say yes, please rescind the matter for PRASA and also at the time that we got the go ahead from the Minister to defend PRASA and defend the interests of PRASA, we had really run out of time.

I think it was about a day or two before the sheriff was authorized to release the monies to the other side so we had to rush and

to bring the application on an urgency basis, you know, to say we want this to not proceed.

And obviously we knew that we were going to be challenged around issues of urgency because it could be argued that the urgency is brought on by ourselves and therefore the matter was not urgent, but you know, we were then able to really convince the court based on the papers that we put forward that there was something untoward with the manner in which the settlement agreement was awarded and that we would want the sheriff to be interdicted from paying out the matter so that we can deal
10 with the rescission of the matter following that process.

So their idea was to get back the money for PRASA and make sure that it does not go because we knew the minute it leaves the Sheriff we would never see it.

ADV VAS SONI SC: The – you effectively took two steps. The first was to secure an interdict restraining the sheriff from transferring the money to Siyaya.

MISS NGOYE: That is correct, Chair.

ADV VAS SONI SC: And the next was to bring a rescission application.

MISS NGOYE: That is correct, Chair.

20 **ADV VAS SONI SC:** Was the interdict application granted?

MISS NGOYE: The interdict application was granted, Chair.

ADV VAS SONI SC: And the rescission application?

MISS NGOYE: The rescission application was also granted in favour of PRASA.

CHAIRPERSON: And at the time of the granting of the interdict and the

– well, the granting of the interdict, what kind of time in 2018 were we talking about? Around March, April?

MISS NGOYE: Yes, it was around.

CHAIRPERSON: May?

MISS NGOYE: I am getting my dates wrong, mixed up, Chairperson.

CHAIRPERSON: But somewhere around March, April?

MISS NGOYE: That is it. That is it.

CHAIRPERSON: And the rescission happened.

MISS NGOYE: It happened later.

10 **CHAIRPERSON**: Much later?

MISS NGOYE: Yes, because we dealt first with the interdict.

CHAIRPERSON: *Ja*. Okay..

ADV VAS SONI SC: When did Miss Makubela leave the Board of PRASA?

MISS NGOYE: I think it was around about June, Chairperson. Let me just get my facts, I know I stated ...(intervenes).

ADV VAS SONI SC: Was it not the 17th of or the 27th of March?

MISS NGOYE: Let me just see. What I know, Chairperson. ...(intervenes).

20 **CHAIRPERSON**: I think it must have been around either March or April.

MISS NGOYE: March/April.

CHAIRPERSON: I think I have seen something like that based by May or June she was no longer there.

MISS NGOYE: It was after March, Chairperson because the 25th of April we held a meeting with the Department of Transport. No, no, no I am

looking.

ADV VAS SONI SC: You will find it at page 299 paragraph 51 of the affidavit.

MISS NGOYE: Sorry, I was looking at the wrong – yes, on the 23rd of March the resignation from the Board was announced on the 23rd of March.

ADV VAS SONI SC: But with effect from when?

MS NGOYE: With effect from the 16th of March 2018.

CHAIRPERSON: With effect from?

10 **MS NGOYE:** The 16th of March 2018.

CHAIRPERSON: Was it kind of backdated?

MS NGOYE: That is correct Chair.

CHAIRPERSON: That is interesting. Yes.

ADV VAS SONI SC: Chairperson, I see it is 16:00 o'clock. There is still a big bit on this to be dealt with. I do not know whether you want to continue.

CHAIRPERSON: I expect there is still a lot to be dealt with.

ADV VAS SONI SC: Yes.

CHAIRPERSON: By this witness, is that right?

20 **ADV VAS SONI SC:** Yes.

CHAIRPERSON: Because we have not – she has not given evidence relating to the two other affidavits.

ADV VAS SONI SC: Affidavits, yes. But this fortunately, this affidavit is nearly done Mr Chairperson.

CHAIRPERSON: This one is nearly done

ADV VAS SONI SC: Yes.

CHAIRPERSON: If – how long do you think it would take us to finish this one?

ADV VAS SONI SC: Chairperson it raises a number of issues for example, what Ms Makubela's role is. Not only this but how she got appointed then what should have happened in between. And I suspect it will take at least 45 minutes to an hour to deal with that as a whole Chairperson.

CHAIRPERSON: Okay. So and that would then be the end of this
10 affidavit?

ADV VAS SONI SC: It would be the end this affidavit.

CHAIRPERSON: Yes. And these other ones, the rest of her evidence might need how much time?

ADV VAS SONI SC: Chairperson, the next affidavit I deal with which is the one that Ms Ngoye made yesterday, is really summarising for you the main aspects in the Siyangena matter.

CHAIRPERSON: H'mm.

ADV VAS SONI SC: The papers are before you.

CHAIRPERSON: H'mm.

20 **ADV VAS SONI SC:** She just highlights.

CHAIRPERSON: Yes.

ADV VAS SONI SC: So that I suspect will be quite expeditious Chairperson.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And then the DBSA matter we are going to cut it

down to the finest details revolving and discuss that.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Now I do not think Ms Ngoye will be more than about 2 and a half hours now.

CHAIRPERSON: Yes okay. That is once we start with the other ... (intervenes).

ADV VAS SONI SC: Yes.

CHAIRPERSON: Affidavits.

ADV VAS SONI SC: No, all together.

10 **CHAIRPERSON:** Excluding finishing on this one?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Excluding finishing on this one?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay. I am trying to see whether- and then Mr Dingiswayo you said he is coming tomorrow.

ADV VAS SONI SC: He – Ms Ngoye has dealt with many of the matters.

CHAIRPERSON: Ja.

ADV VAS SONI SC: So, it will be to some extend confirmatory.

CHAIRPERSON: Ja.

20 **ADV VAS SONI SC:** He will just deal in a little more detail with the Prodigy matter.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Because he dealt with the contract itself.

CHAIRPERSON: Ja.

ADV VAS SONI SC: But that would be the main crust of his affidavit.

CHAIRPERSON: Yes.

ADV VAS SONI SC: He deals quite a bit with the Siyaya settlement.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Or purported settlement and so in a sense we can just get him to confirm it.

CHAIRPERSON: What is your estimate of how much time mister – we might need for Mr Dingiswayo?

ADV VAS SONI SC: I do not think more than 2 and a half hours at maximum.

10 **CHAIRPERSON:** So, we should be able to finish both of them tomorrow?

ADV VAS SONI SC: Yes.

CHAIRPERSON: And then you have Mr Popo Molefe and Ms Kweyama.

ADV VAS SONI SC: That is so Chairperson.

CHAIRPERSON: Mr Popo Molefe will be about what 2 hours?

ADV VAS SONI SC: About 2 hours Chairperson, yes,

CHAIRPERSON: Then Ms Kweyama would be your last witness for now this session.

ADV VAS SONI SC: Well and then we have got Mr Achmat Zakia.

CHAIRPERSON: Oh, we have got Mr Achmat.

20 **ADV VAS SONI SC:** Can I in relations to Mr Achmat Mr Chairperson.

CHAIRPERSON: H'mm.

ADV VAS SONI SC: It is to a large extend – his affidavit replicates to a large extend what he said to the Portfolio Committee.

CHAIRPERSON: H'mm.

ADV VAS SONI SC: And so, in that sense it is not details of first-hand

knowledge.

CHAIRPERSON: Yes.

ADV VAS SONI SC: It is the sort of thing one can say, well we know you have said this, you have said this.

CHAIRPERSON: Ja.

ADV VAS SONI SC: And what influences can be drawn from it.

CHAIRPERSON: It is already there.

ADV VAS SONI SC: Yes.

CHAIRPERSON: So, there is no need to be long with him.

10 **ADV VAS SONI SC:** I do not think so Chairperson.

CHAIRPERSON: Ja. I was wondering whether we should stop for the day now or whether we should take maybe like another 30 minutes or so and see if we – if you can finish with her on this affidavit or whether we should just adjourn. What do you say?

ADV VAS SONI SC: Chairperson I know the witness has had a long day because a number of matters that she was not expecting to be probed, we probed. I am just assessing from my – what I am seeing from the witness.

CHAIRPERSON: Yes.

20 **ADV VAS SONI SC:** I do not know whether ...(intervenes).

CHAIRPERSON: Ms Ngoye, how do you feel about – do you feel you can still go on, if I say let us go on? Or you feel exhausted now?

MS NGOYE: I can go on Chair.

CHAIRPERSON: You can go on.

MS NGOYE: Yes.

CHAIRPERSON: *Ja.* Maybe let us take a 5 minutes break.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And then let us see whether we might be able – you might be able to finish her evidence in relation to this affidavit. And then we proceed. Is that fine with you, I forgot to check with you. That is fine, okay. Let us take a 5 minutes adjournment.

ADV VAS SONI SC: As you please.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Okay, let us proceed.

ADV VAS SONI SC: Now in relation to the rescission application that was granted, what did you use as the basis on which you persuaded the court to rescind the order granted by the acting judge?

MS NGOYE: We obviously put the affidavits together Chairperson that spells out the conduct also of the Chairperson during the process and also reflecting the issues around lack of authority of the Chairperson to having concluded the settlement agreement on behalf of PRASA. And the
20 manner in which the Chairperson had also engaged with the other side's attorneys to the detriment of PRASA where it should have not been. So those were some of the arguments that we put together in our case.

ADV VAS SONI SC: And you ...(intervenes).

CHAIRPERSON: I am sorry. As be prior to this stage, the stage where you applied for an interdict and you applied for the rescission of the

argument. And particularly as the events were unfolding at PRASA and as far as you were concerned the Legal Department was excluded from the Siyaya meetings by the Chairperson. Do you know whether the Chairperson was aware that you were saying the delegated authority or instructing attorneys was with you and not with the Chairperson of the Board?

MS NGOYE: Chair in fact as far as that is concerned, I mean where I was sitting, I would have expected the Board at least the Board Chairperson to have familiarised herself with what was contained in the delegations of
10 authority.

CHAIRPERSON: H'mm.

MS NGOYE: Now one of the issues that came up at the time was for me to be challenged about this particular delegation of authority that I have.

CHAIRPERSON: H'mm.

MS NGOYE: So, it was raised vehemently by her together with the Group CEO at the time Mr Cromet Molepo saying I did not have authority and I my response was, this is a document that comes from the Board that indicates the authorities. It is not my document.

CHAIRPERSON: H'mm.

20 **MS NGOYE:** But because that particular document was last approved during the tenure of Dr Popo Molefo's Board. This particular Board I guess had not necessarily familiarise themselves with the delegations of authority.

CHAIRPERSON: H'mm.

MS NGOYE: That is why I think the Chairperson did not have an

appreciation of the fact that she did not have that authority to enter into the contracts.

CHAIRPERSON: But my question is whether you are aware whether she knew that actually there was an existence that delegated authority from the Board in favour of the Head of the Legal Department?

MS NGOYE: She knew Chair.

CHAIRPERSON: She knew.

MS NGOYE: She did know.

CHAIRPERSON: And ...(intervenes).

10 **MS NGOYE**: Because she engaged with the documents absolutely, yes.

CHAIRPERSON: She engaged with the documents.

MS NGOYE: Yes.

CHAIRPERSON: At what stage was that?

MS NGOYE: It was during this process Chairperson.

CHAIRPERSON: But prior to ...(intervenes).

MS NGOYE: So the matters is, yes.

CHAIRPERSON: Interdict and so.

MS NGOYE: That is it Chair.

CHAIRPERSON: And is that because you were in a discussion with her
20 that is how you know she knew of the document? Or is that because you were in discussion with somebody else who was in discussion with her and based on that you know that she knew about the document?

MS NGOYE: It was Chair the – I think the query was raised by the Group CEO with me to say the Chairperson wants to know where it is that you believe you get this delegation of authority from. So, I knew at the time

that they were discussing the issues around the delegations of authority and I – for me I took it that the interpretation perhaps is not understood in the manner that I had understood the delegations of authority. And so, I knew that she had wanted clarity around it and requested the Group CEO at the time Mr Cromet Molepo to request me to explain why I believe I have got authority.

CHAIRPERSON: And you had explained where you believed you got the authority from?

MS NGOYE: From the delegations of authority, yes. And what I indicated
10 Chairperson was this was a Board document.

CHAIRPERSON: Yes.

MS NGOYE: It was not my document.

CHAIRPERSON: That's that, *ja*.

MS NGOYE: And also, what I had indicated is that it is very easy should the Board take away that delegation.

CHAIRPERSON: *Ja*.

MS NGOYE: It is still their ambit to do so.

CHAIRPERSON: Yes.

MS NGOYE: But for as long as it existed, then it meant that I was the
20 person that was authorised.

CHAIRPERSON: Yes. So, your response to the Group CEO was I have got delegated authority.

MS NGOYE: Yes, in terms of the Board of – in terms of the delegation of authority document.

CHAIRPERSON: Yes.

MS NGOYE: And I pointed out ...(intervenes).

CHAIRPERSON: And he knew what you were talking about?

MS NGOYE: That is correct Chair.

CHAIRPERSON: And did you subsequently have any discussion with him that suggested that he had conveyed this through the Chairperson you have said.

MS NGOYE: I had – well we did not have a discussion as such Chairperson.

CHAIRPERSON: Yes.

10 **MS NGOYE:** But I have written to him.

CHAIRPERSON: Yeah, you have written to him, oh ...(intervenes).

MS NGOYE: Yes, with the hope that we would transfer it to the Chairperson.

CHAIRPERSON: So, this was in an e-mail?

MS NGOYE: That is correct Chairperson.

CHAIRPERSON: Is the e-mail here ...(intervenes).

MS NGOYE: I can also retrieve that.

CHAIRPERSON: Please get it. Had he written to you and you are responding or have you just spoken to him?

20 **MS NGOYE:** He had written to me Chairperson.

CHAIRPERSON: So please get all of that.

MS NGOYE: Okay, I will.

CHAIRPERSON: *Ja.* So, but you would have expected him to then have either passed on your response to the Chairperson.

MS NGOYE: That is right.

CHAIRPERSON: Or should have told the Chairperson of the gist of your response.

MS NGOYE: That is correct Chairperson.

CHAIRPERSON: And so, after that the chair – but after that still the Chairperson continued to deal with the matter on the basis that she was one who had authority.

MS NGOYE: That is correct Chair.

CHAIRPERSON: And that you did not have authority.

MS NGOYE: That is correct Chairperson.

10 **CHAIRPERSON:** But you never got to know what the basis was for that view?

MS NGOYE: No, I did not. I mean there was a point where I had requested to have a meeting with the Chairperson herself.

CHAIRPERSON: Yes.

MS NGOYE: And she just refused.

CHAIRPERSON: Yes. Okay, thank you. So in other words – I am sorry Mr Soni.

ADV VAS SONI SC: No, it is fine.

20 **CHAIRPERSON:** Are you able to say as you sit there that as far as you are concerned there is no way the Chairperson could say she was not aware of the delegation of authority in your favour.

MS NGOYE: That is correct Chairperson.

CHAIRPERSON: Yes. She might have some other contention but not that.

MS NGOYE: That is correct Chairperson.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Ms Ngoye you may have said this and I am just trying to determine when you talked to mister – is it Malogi?

MS NGOYE: Molepo. Mr Cromet Molepo.

ADV VAS SONI SC: Yes. If it was he who was coming to you to say the Chairperson wants to know.

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: Now ...(intervenes).

MS NGOYE: In fact, if I may Chairperson. Mr Molepo came to me and
10 said the Chairperson was upset with the fact that we had interfered in a matter that she was dealing with. So, she raised that annoyance with Mr Molepo and Mr Molepo communicated that to me. And requested that I then explain myself as to what the basis of my involvement was in the matters.

CHAIRPERSON: Did you by any chance attach to your response a copy of the delegation?

MS NGOYE: I did Chairperson.

CHAIRPERSON: You did?

MS NGOYE: Yes.

20 **CHAIRPERSON:** Okay.

ADV VAS SONI SC: It was going to be my question Chairperson.

CHAIRPERSON: Yes. So, let us get that tomorrow. The complete stuff that you sent to the Group CEO.

ADV VAS SONI SC: Now there is a matter that I should have taken up. You indicated that the Chairperson that told the CEO that you must be

disciplined.

MS NGOYE: That is correct Chairperson.

ADV VAS SONI SC: And what were you going to be disciplined for?

MS NGOYE: Well I do not know Chair. I was waiting to see what I will be disciplined for. Maybe it was for not taking instructions as I was told not to defend the matter on behalf of PRASA. I do not know. Because one thing that I was certain of is that what I did was in the best interest of the organization and I would have done it again faced with the same circumstances so.

10 **ADV VAS SONI SC:** Were it through circumstance or subsequent circumstances or for other reasons, you were not disciplined.

MS NGOYE: No, I was not disciplined Chairperson. I think when the Chairperson then resigned the matter fizzled away and it is what it was.

ADV VAS SONI SC: Now let us just take the Chairperson. She is appointed on the 17th of October.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: At that time, she was a senior council.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Now in terms of what I was out in the public space,
20 what was going to happen to her practice from what was in the public space in October?

MS NGOYE: Well in the public space in October Chair we knew that she had been appointed as a judge to act as a judge – I mean to become a judge not act as well. So, it was something that was spoken of and we were looking – in fact we asked ourselves questions around how possible

is it that she could take on the Chairmanship of the PRASA Board when she was going to be a judge. So that was in the public domain at the time.

ADV VAS SONI SC: The announcement – well I think it is common knowledge the process that is followed is before a judge is appointed there are hearings before the JSC. The JSC make recommendations and then a member the President then appoints.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: At the time Ms Makubela was appointed to the
10 Board, had any of those processes taken place?

MS NGOYE: Chairperson I think she had gone through the interviewing process and identified as a candidate. I think the last leg of it was where the President would that confer the judgeship onto her.

ADV VAS SONI SC: She then – well before then what was the feeling in PRASA about a person who has been nominated by the JSC to be appointed as a judge to take up a position of the Chairperson of a statutory body effectively an executive position.

MS NGOYE: We did not understand it Chairperson because we saw a bit of a conflict really in that respect to say, she is going to be the
20 Chairperson of PRASA and she is going to become a judge. How is it going to look because the appointment had already happened and when I am talking about the appointment before the President confers it on her. It was common knowledge that ...(intervenes).

CHAIRPERSON: The recommendation.

MS NGOYE: The recommendation.

CHAIRPERSON: It might be important that we get this right.

MS NGOYE: The terms.

CHAIRPERSON: I see even in other sources it is misunderstood.

ADV VAS SONI SC: Yes.

CHAIRPERSON: The Judicial Service Commission interviews candidates and then in the case of appointments to high courts it advises the President who to appoint. That is the correct terminology.

MS NGOYE: Okay.

CHAIRPERSON: It advises the President who to appoint. And then there
10 is usually a period between the time the JSC advises the President and the announcement by the President that he has appointed. So, when the JSC advises the President, the candidate is not yet a judge.

MS NGOYE: Okay Chair.

CHAIRPERSON: And when the President appoints the person as a judge ... (intervenes).

MS NGOYE: It is only then.

CHAIRPERSON: If the appointment is with effect from the 8th of letter of the President, then the appointment is with immediate effect. If the – but usually the letter of the President will indicate with effect from when the
20 appointment is so you could have an announcement by the Presidency that so and so is appointed as a judge but with effect from a month from now or something like that. So, there is that process.

MS NGOYE: Sure.

CHAIRPERSON: So and the person cannot start performing the duties of a judge, cannot assume the job until when the appointment says this is

the day from when they do that. Okay.

MS NGOYE: Thank you.

ADV VAS SONI SC: As it pleases Chairperson. Ms Ngoye can I ask you to please look at paragraph 51 because all these small issues – well seemingly small issues are quite important. So, I am going to ask you questions relating to the process that the Chairperson has outlined. And you – where did you get this information in respect of paragraph 15 – 51 from?

MS NGOYE: Chairperson as I indicated ...(intervenes).

10 **CHAIRPERSON:** What paragraph?

ADV VAS SONI SC: Oh, sorry Chairperson. Paragraph 51 page 299.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Of SS7B.

CHAIRPERSON: Okay, thank you.

MS NGOYE: Chairperson it was – I think for me it was communicated. We got to hear about it in the media and I remember there was a time when UniteBehind as well had captured this and had started questioning the Chairpersonship of Ms Makubela. So, it was something that was in the media that was communicated.

20 **CHAIRPERSON:** Well first tell me what it is that you say in 51?

MS NGOYE: Oh, in paragraph 51 Chair I just basically mention when the Chairperson was nominated to be a judge which was in July 2017 ...(intervenes).

CHAIRPERSON: That was before she was appointed to chair the PRASA Board?

MS NGOYE: That is correct Chairperson so in July already the nominations had happened. And then she takes up the chairmanship in the Board in October ...(intervenes).

ADV VAS SONI SC: No, no.

MS NGOYE: In ...(intervenes).

ADV VAS SONI SC: Sorry Ms Ngoye. Sorry, can I just do it in sequence?

MS NGOYE: Okay.

CHAIRPERSON: Yes.

ADV VAS SONI SC: So we have the correct order.

10 **CHAIRPERSON:** Yes.

ADV VAS SONI SC: She is nominated in July.

MS NGOYE: Yes.

ADV VAS SONI SC: When is she recommended for appointment by the judicial services commission.

MS NGOYE: It is on the 4th of October.

ADV VAS SONI SC: Yes. Then when is she appointed as Chairperson of the Board?

MS NGOYE: On the 19th of October.

20 **ADV VAS SONI SC:** Now a few things would have happened in regard to that appointment. The first is the Minister would have had to make the appointment. Would that be correct?

MS NGOYE: That is correct Chair

ADV VAS SONI SC: And he would have known that she is already nominated.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Well one would assume he would know.

MS NGOYE: One would assume Chair.

ADV VAS SONI SC: And she would have had to accept the appointment as Chairperson of the Board.

MS NGOYE: Well I guess so Chair. I mean I am taking it from the fact that she – the nominations had already happened.

CHAIRPERSON: Yes.

MS NGOYE: And that – and then she gets appointed as the Chairperson of the Board.

10 **CHAIRPERSON:** Yes.

MS NGOYE: I do not know what her frame of mind was ...(intervenes).

CHAIRPERSON: *Ja.*

MS NGOYE: At the time to accept the chairmanship when the process of becoming a judge was in place.

CHAIRPERSON: *Ja.*

ADV VAS SONI SC: But I am just putting it as a matter of common sense.

I am nominated for a position by a Minister and I say to the Minister that I have a difficulty. I cannot accept this nomination because I am likely to be a judge in January. So, in order for me to accept the appointment I

20 would have to indicate to the Minister that there are no obstacles to my being appointed as a Chairperson of the Board.

MS NGOYE: That is correct chair. One would expect that that happens.

ADV VAS SONI SC: Anyway, she is nominated or appointed on the 19th.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: You say thereafter she accepted the appointment.

CHAIRPERSON: And actually, she is appointed as – the last appointment you were talking to is appointment to the Board or as a judge?

ADV VAS SONI SC: Oh, sorry Chairperson ...(intervenes).

MS NGOYE: There are two appointments so we need to clarify which one we are talking about.

ADV VAS SONI SC: Yes absolutely. She is appointed as Chairperson of the interim Board on the 19th of October.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Yes okay.

10 **ADV VAS SONI SC:** And when you make a point about her accepting the appointment, yes.

MS NGOYE: As the Chairperson?

ADV VAS SONI SC: Yes, as the Chairperson, yes?

MS NGOYE: Yes, she accepted that appointment because she came and became the Chairperson of PRASA.

ADV VAS SONI SC: Okay. And you say that surprised you.

MS NGOYE: Well after a while when you start understanding Chairperson what is involved one would not have thought that somebody who is really going to be appointed at the bench would want to still be involved in
20 running a State-Owned Enterprise. It is just for me it is just common sense but I guess we do not look at things the same way.

CHAIRPERSON: Well we will hear. She will come and she will put her side of the story.

MS NGOYE: Okay.

CHAIRPERSON: But it does look quite strange.

MS NGOYE: Yes.

CHAIRPERSON: That after she had been to the interview and she must have known soon after the interviews that the JSC was going to advise the President to appoint her. So, if the JSC interviews were around beginning of October 2017 and she accepts an appointment as Chairperson of the Board on 19 October 2017 or thereabout she would have known that her appointment was imminent.

ADV VAS SONI SC: Indeed.

CHAIRPERSON: Well I think it is – many people would know that I have
10 been a judge for many years. I have been to the JSC many times and I have no recollection of any President in the last 20 years or so who have rejected advise from the JSC to say so and so should be appointed as a judge. It normally just happens if the JSC advises the President, we found so and so suitable, appoint, we advise you to appoint. The President would just appoint.

So, it is something that one would look forward to. How she deals with it because if the interviews were in October also it must have been that whatever appointment as a judge would happen would likely to take place to be with effect from early in the following year if not before
20 the end of that year. So, acceptance of the Chairmanship at that stage under those circumstances is rather strange.

ADV VAS SONI SC: Indeed. Now you then say that there was a particular date on which the Presidency announced that Ms Makubela had been appointed as a judge.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Now what was that date?

MS NGOYE: It was the 2nd of November 2017.

ADV VAS SONI SC: And when was her appointment as a judge to take effect?

MS NGOYE: The appointment was to be effective from the 1st of January 2018.

ADV VAS SONI SC: Now you then record that she differed the appointment.

MS NGOYE: That is correct Chair.

10 **ADV VAS SONI SC:** Until when?

MS NGOYE: Until the 1st of April 2018.

ADV VAS SONI SC: 2018.

MS NGOYE: Yes.

ADV VAS SONI SC: Is there any reason that you know of that she differed the appointment?

MS NGOYE: Chair, I am surmising, and I think for me really in my-
having seen what transpired during that period. In my mind I believe that
the Chairperson wanted to see this particular matter through before she
went to the bench. So it – that is my explanation of it that she needed
20 to finalise this matter and before it was finalised she was not able to
leave. That is why for me I think I think that is why the resignation
came in March you know after the Sheriff had attached and removed
and so – and this is what I believe that I guess maybe that she thought
that her task was done and therefore she can move on.

CHAIRPERSON: But your – what you think in this regard would not be

consistent would it be with this matter involving a small amount?

MS NGOYE: Well Chair I do not know. Look Chair I think at the end of the day I mean one thing that I also – we battled – you know this matter involved Mr Mabunda. You know and Mr Mabunda was somebody who was you know known at PRASA and influential at PRASA. So when you try and put the pieces together you then say this is yet again one of those matters where you know we have this particular person who knows exactly what is supposed to happen but who is now going to be assisted you know again. And that was taboo for us you know to say,
10 can the Chairperson really come to PRASA only to have this matter settled because of whatever relationships that she had. We spoke about it Chair and that is how we saw it because it was too obvious for us. To say you do not come into an organisation in the circumstances where you have been appointed as a Judge – as a Chairperson of the Board and pick this particular matter up and run with it to its conclusion and then resign when you think that it is over. So for us it was just something that was obvious.

CHAIRPERSON: Well I know Mr Soni I think you said you will deal with this I am quite interested in it as well.

20 **ADV VAS SONI SC:** Yes.

CHAIRPERSON: The question of what other business of PRASA the Chairperson during her tenure was interested in what other tasks or whatever? What other issues were dealt with by the Chairperson of her Board during her tenure?

ADV VAS SONI SC: I will deal with that right now Chairperson. One of

the questions you have raised is that in her short stay of five months as you say at the end of paragraph 51 this is the one matter that you dealt with?

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Are there any other matters, disputes between contractors and PRASA that she involved herself?

MS NGOYE: No Chair this was the only one.

CHAIRPERSON: How many meetings did her Board have during her tenure are you able to remember?

10 **MS NGOYE**: I do not remember the exact number Chair but there was quite a number of meetings.

CHAIRPERSON: H'mm.

MS NGOYE: That the Board was having.

CHAIRPERSON: H'mm.

MS NGOYE: In fact the Chairperson also spent a lot of time at PRASA using the office at PRASA you know on a daily basis. So the meetings were not quarterly you know.

CHAIRPERSON: H'mm.

MS NGOYE: As one would have thought in relation to Board matters.

20 **CHAIRPERSON**: H'mm.

MS NGOYE: You know they would call special meetings. But as to the number Chair I would not be able to say.

CHAIRPERSON: Well she was appointed as Chairperson of the Board in October 2017 is that right?

MS NGOYE: That is correct Chair.

CHAIRPERSON: And she resigned.

MS NGOYE: In March.

CHAIRPERSON: In March about twenty something but with effect from the 16th, is that right?

MS NGOYE: The 23rd of March.

CHAIRPERSON: 23rd of March. So that would be about what four months?

MS NGOYE: Five months.

CHAIRPERSON: Five months?

10 **MS NGOYE:** Yes.

CHAIRPERSON: Five months. Normally in a five month period in your experience the Boards at PRASA would have met how often?

MS NGOYE: Well Chair normally the first port of call would also be the induction.

CHAIRPERSON: *Ja*.

MS NGOYE: For the Board and that you do not regard as a Board Meeting.

CHAIRPERSON: *Ja* it is the new Board.

20 **MS NGOYE:** Yes. And one of the meetings at least that she had was with the entire staff. But this was her not the Board.

CHAIRPERSON: H'mm. *Ja*.

MS NGOYE: You know as far as the Board was concerned I guess they would not necessarily limit it to the quarterly.

CHAIRPERSON: H'mm.

MS NGOYE: They would want to try and understand you know the

business of PRASA.

CHAIRPERSON: H'mm.

MS NGOYE: Before the first quarter is over. So invariably they would call meetings Chair at least in my experience you know not long after the appointment and call a Board Meeting to try and understand and have executives explain to them what it is that they are doing in their respective roles that each one you know would be involved in. So it would not necessarily be a Board Meeting as such but it would be the Board trying to understand the business of the organisation.

10 **CHAIRPERSON:** H'mm.

MS NGOYE: So I guess it was not something that was surprising to see the Board engaging you know often.

CHAIRPERSON: H'mm.

MS NGOYE: At the time.

CHAIRPERSON: Now you have said as far as you know she dealt with this – the Siyaya matter or matters.

MS NGOYE: Yes Chair.

CHAIRPERSON: And nothing else or not much else, is that right?

20 **MS NGOYE:** No Chair. This was the only litigation or disputed matter within PRASA.

CHAIRPERSON: Yes.

MS NGOYE: That she had an interest in.

CHAIRPERSON: But you did say that she spent a lot of time in PRASA?

MS NGOYE: That is correct Chair.

CHAIRPERSON: And one would expect that she would be doing something at PRASA.

MS NGOYE: Well that is correct Chair.

CHAIRPERSON: Yes. But when I asked you whether she concerned herself about any other matters I was not talking it was simply about litigation matters.

MS NGOYE: Oh.

CHAIRPERSON: I am talking about other issues that might have needed the attention of the Board and her attention as far as you
10 know?

MS NGOYE: Yes Chair there were a couple of matters yes.

CHAIRPERSON: There were other matters?

MS NGOYE: That she dealt with yes.

CHAIRPERSON: Yes that she dealt with.

MS NGOYE: That is it Chair.

CHAIRPERSON: And the Board?

MS NGOYE: Yes Chair.

CHAIRPERSON: Yes. But in terms of litigations.

MS NGOYE: This was the only one.

20 **CHAIRPERSON:** But were there other litigation matters other than this one that were in existence during her tenure?

MS NGOYE: Many Chair.

CHAIRPERSON: There were many?

MS NGOYE: Yes.

CHAIRPERSON: Did she show any interest in the other ones?

MS NGOYE: No Chair.

CHAIRPERSON: When you say namely can you help give me some idea 10 others, 20 others?

MS NGOYE: Chairperson as we sit currently PRASA has got litigations more than 100 cases.

CHAIRPERSON: More than 100 cases.

MS NGOYE: Yes that it is dealing with. It is either suing or it is being sued.

CHAIRPERSON: Yes or being sued.

10 **MS NGOYE**: Reviewing contracts.

CHAIRPERSON: Yes.

MS NGOYE: And so there is a lot of work that gets done within the litigation space at PRASA.

CHAIRPERSON: Was that more or less the number even at that time or would you say it might not have been hundred but certainly not less than fifty or?

MS NGOYE: Yes correct Chairperson.

CHAIRPERSON: So ...(intervenes).

MS NGOYE: There was not less than 50.

20 **CHAIRPERSON**: So there were tens of other matters.

MS NGOYE: Yes Chair.

CHAIRPERSON: Which were pending in courts.

MS NGOYE: Yes Chair.

CHAIRPERSON: And this Siyaya matters were the only matters where she was – in which she was interested?

MS NGOYE: That is correct Chair.

CHAIRPERSON: Alright.

ADV VAS SONI SC: Ms Ngoye if the ...(intervenes).

CHAIRPERSON: I am sorry. I am sorry Mr Soni.

ADV VAS SONI SC: No, no Chair.

CHAIRPERSON: Just to tie – to complete this. In regard to – was the position that in regard to all the other matters she did not challenge your authority to represent PRASA and to instruct attorneys?

MS NGOYE: She did not Chair. In fact if anything after I had deposed
10 to the Siyangena affidavit some of my colleagues Mr Chris Mbatha as well as Mr ...(indistinct) Hube wrote to her complaining about you know the allegations that were contained in the Siyaya contract – I mean Siyaya affidavit. She once again you know wanted me to explain myself as far as deposition of that affidavit was concerned.

CHAIRPERSON: H'mm. But never in regard to all the other matters?

MS NGOYE: No Chair.

CHAIRPERSON: And she was aware you would be dealing with them is that correct?

MS NGOYE: That is correct Chair.

20 **CHAIRPERSON:** Yes.

MS NGOYE: Because also we – whenever we sat with the Board we would report.

CHAIRPERSON: Yes.

MS NGOYE: On legal matters.

CHAIRPERSON: Yes.

MS NGOYE: That the company was involved in.

CHAIRPERSON: And that would be in her presence?

MS NGOYE: That is correct Chair.

CHAIRPERSON: And in terms of amounts that the other matters may have involved were they much more less than the R56 million or so involved here?

MS NGOYE: They differed Chair. Some amounts are small.

CHAIRPERSON: Yes.

MS NGOYE: You know some amounts are big.

10 **CHAIRPERSON**: Yes.

MS NGOYE: We have got like the R2 billion that we talk about. R4 billion. It was this hundreds of thousands, others is millions. So they would vary.

CHAIRPERSON: But are you able to say – are you able to remember whether among the matters that you say she did not show any interest there may have been matters with much more.

MS NGOYE: Yes Chair.

CHAIRPERSON: Amounts than R56 million?

MS NGOYE: Yes Chair.

20 **CHAIRPERSON**: And is there a figure that comes to mind?

MS NGOYE: About – you know from about R100 million to up.

CHAIRPERSON: Oh upwards?

MS NGOYE: Ja.

CHAIRPERSON: But there was no interest?

MS NGOYE: No there was no interest Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Now in regard to the Siyaya matters she kept your section, legal section, out of the picture?

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: If she had done that in regard to any other matter would you have been aware of it?

MS NGOYE: Yes we would. We would Chair because we – when we deal with legal matters we obviously are the custodians of all the cases. So invariably anybody that asks anything would have to come to
10 us first to say you know what is happening in this matter and we would have to advise? So if any other matter – but also the way we worked within the organisation Chair was that everybody understood the role of legal within the organisation. So if anybody would ask about a legal matter that was dealt with at a particular business unit the person responsible for briefing legal at the time would then come to us and say, look these are the questions that I have had to deal with coming from whoever it is? For instance in this particular of Siyaya when the colleagues that had given evidence at the liquidation proceedings were asked to put their statements together. The Chairperson they came to
20 us and they said, why have we been asked to do this? Why are you guys now all of a sudden you know asking that we put this together for the Chairperson? So they were concerned because that request was a request that was made obviously via the Chairperson directly to those people.

CHAIRPERSON: Now when the Chairperson was appointed the

litigation between PRASA and Siyaya had been going on for some time, is that correct?

MS NGOYE: That is correct Chair. In fact it started in 2015 so we were sitting two years.

CHAIRPERSON: You said going on for about two years.

MS NGOYE: That is correct Chair.

CHAIRPERSON: And during that time your Legal Department had been handling it through the attorneys?

MS NGOYE: That is correct Chair.

10 **CHAIRPERSON:** When she then came and then showed interest in it and started playing the role that she played and you say that you – your Department was excluded did she ever complain that maybe the Legal Department had failed to handle it properly as far as you know?

MS NGOYE: She did allude to that.

CHAIRPERSON: H'mm.

MS NGOYE: She did allude to the fact that she did not think that we had handled this matter properly.

CHAIRPERSON: Yes.

MS NGOYE: She said that she believed that the matter could have
20 been settled long ago.

CHAIRPERSON: Yes.

MS NGOYE: You know but obviously where we were sitting there was no need to settle because we did not believe that we owed Siyaya.

CHAIRPERSON: Yes.

MS NGOYE: And Chair I must say that as a legal function we do not

defend all matters that come our way we weigh what the facts are and whether the company has got a you know a good case.

CHAIRPERSON: Defence or case *ja*.

MS NGOYE: To defend.

CHAIRPERSON: Yes.

MS NGOYE: We take them on that basis.

CHAIRPERSON: Yes.

MS NGOYE: And the instructions that we had received from the business units was solid you know as far as those issues were
10 concerned.

CHAIRPERSON: But did she say in what respect she thought you had – your Department had failed to handle this matter properly in her view?

MS NGOYE: She linked it to the liquidation process Chairperson.

CHAIRPERSON: Yes.

MS NGOYE: And she said because our people – our colleagues had conceded in the liquidation process that we owed Siyaya. She believed that we had not handled this matter properly. But when we engaged with the colleagues Vincent Gabue for instance Mr Vincent Gabue and
20 asked what had transpired. But also Diale Mogashoa was representing us at the time Chairperson and even though they were not allowed to participate in the liquidation proceedings they were there and they could themselves come back to us and tell us how you know what transpired at the sessions. So you know when she came with that report saying a colleague of hers you know gave her this report and we

made concessions we disagreed with her. But she proceeded with it.

CHAIRPERSON: But as a matter of fact were there any concessions that are relevant to settling these particular claims that had been made by your colleagues at the inquiry?

MS NGOYE: No Chair. No Chair. They wrote.

CHAIRPERSON: And that you know that as a fact?

MS NGOYE: Yes they wrote Chair.

CHAIRPERSON: *Ja*.

MS NGOYE: Because they had to write to her.

10 **CHAIRPERSON**: Yes.

MS NGOYE: And explain.

CHAIRPERSON: Yes.

MS NGOYE: And in their explanations they do say.

CHAIRPERSON: Yes.

MS NGOYE: That they do not concede.

CHAIRPERSON: And do you know whether once they had written she accepted that they had not made any such concessions?

MS NGOYE: No Chair.

CHAIRPERSON: You do not know?

20 **MS NGOYE**: *Ja* Chair I think the way things happened.

CHAIRPERSON: *Ja*.

MS NGOYE: Is that even though they wrote I guess she did not like what they wrote and wanted to proceed with settling the matter.

CHAIRPERSON: We have here in the bundle of copies of e-mails or whatever statements that they wrote to her?

MS NGOYE: I can attach them Chair. I have not.

CHAIRPERSON: You can get them for us?

MS NGOYE: *Ja* there is quite of information we removed from them.

CHAIRPERSON: Okay thank you. So she had complained that she did not think that the Legal Department had handled the matter properly.

MS NGOYE: That is correct Chair.

CHAIRPERSON: But as far as you understood her point it was about the – it was because she said the matter should have been settled?

MS NGOYE: That is correct Chair.

10 **CHAIRPERSON**: And – should have been settled because of alleged confessions that she said ...(intervenes).

MS NGOYE: That is correct Chair.

CHAIRPERSON: She had been been made.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Now with regard to the cases Chairperson we asked how long they have been ...(indistinct). Chairperson if you look at DN4 and I am not giving evidence – NN4 at page 3 – it starts at page 322 you will see that the cases are from 2015 and 2016.

20 **CHAIRPERSON**: Yes.

MS NGOYE: *Ja*.

CHAIRPERSON: Yes, yes.

ADV VAS SONI SC: That would give an indication of when the litigation had started.

CHAIRPERSON: *Ja*.

ADV VAS SONI SC: Now as – when Ms Makubela resigned what happened to the rest of the Board Members?

MS NGOYE: If I recall Chair they – you know some of them stayed and there was no Chairperson so it was an anomaly that existed at PRASA at the time. And I think for me what I had understood from the Minister at the time, Minister Blade Nzimande was that you know he was going to make his own appointment of an interim Board again. So the rest – the Board Members I think if it was – it I recall one of the Board Members was then playing the role of the Chairperson and I think it was
10 Doctor Scheepers at the time who was a Board Member who just took on that role. But at the time again Chairperson if you look at the composition of the Board it was not compliant because you know there were other Members that are required in terms of statute that were not in the Board.

CHAIRPERSON: But had that been the position even during her tenure?

MS NGOYE: It was the case Chairperson.

CHAIRPERSON: Okay.

MS NGOYE: So I mean and there was a lot of attack coming from the
20 likes of UniteBehind on the Board that had been appointed by Minister Masangwana to say it is not compliant with the Legal Succession Act.

CHAIRPERSON: Yes. I just – before Mr Soni proceeds I just want us to deal with this. You told me that the Chairperson did say that she did not think that the Legal Department had handled the Siyaya matter properly. What is your response to that criticism of the – of your

Department?

MS NGOYE: I did not agree with the Chairperson Chair.

CHAIRPERSON: Yes.

MS NGOYE: I really did not agree with her and I made it known to her that I do not agree with her. Because in my view and what had been reported to me was that we have good prospects of success.

CHAIRPERSON: H'mm.

MS NGOYE: So when she said that I was taken aback and I was not sure how it is that she could come in and within such a short space of
10 time be able to make that assessment without necessarily engaging fully with the matters. So I just thought now I do not know what the Chairperson is talking about but I just did not agree with her.

CHAIRPERSON: H'mm okay.

ADV VAS SONI SC: Can I ask you this – sorry Ms Makubela left in March 2018 and the Rescission Judgment was granted soon thereafter would I be correct?

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: In regard to that arbitration where is the matter sitting at the moment?

20 **MS NGOYE**: Well I need to remind myself Chair. So we were successful with the interdict and we were successful with the arbitration, the rescission of the matter. I think that was the end of the matter Chair if I recall properly.

ADV VAS SONI SC: But the – all that was rescinded was the agreement.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Or the award that was issued.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: But the dispute as I understand it would continue to exist.

CHAIRPERSON: The merits of the case.

MS NGOYE: The merits of the matter yes we proceeded with that Chairperson and ...(intervenes).

CHAIRPERSON: In arbitration?

10 **MS NGOYE**: Yes.

CHAIRPERSON: H'mm.

MS NGOYE: No in court.

CHAIRPERSON: H'mm. Did it move from arbitration to court?

MS NGOYE: So remember we had Part A and Part B Chairperson of when we brought the application.

CHAIRPERSON: *Ja*.

MS NGOYE: For the interdict as well as the rescission.

CHAIRPERSON: Oh *ja*.

20 **MS NGOYE**: And then it also had to do with the facts surrounding you know the conduct of the Chairperson and how it got to us having had to approach the court.

CHAIRPERSON: Part A was the interdict?

MS NGOYE: Part A was the interdict.

CHAIRPERSON: What was Part B?

MS NGOYE: Part B was the rescission.

CHAIRPERSON: Rescission.

MS NGOYE: Yes.

CHAIRPERSON: Yes but what Counsel is asking is a rescission once granted all it would have meant is that the order of the court making the arbitration award an order of court would rescinded.

MS NGOYE: Yes Chair.

CHAIRPERSON: That would mean the arbitration award remains.

MS NGOYE: Yes Chair.

CHAIRPERSON: Technically.

10 **MS NGOYE**: Yes.

CHAIRPERSON: As an arbitration award as no longer as an order of court.

MS NGOYE: Yes.

CHAIRPERSON: So in other words the arbitration award is its status as an order of court is taken away.

MS NGOYE: That is correct Chair.

CHAIRPERSON: So it remains simply as an arbitration award.

MS NGOYE: Yes Chair.

20 **CHAIRPERSON**: Now the question he is asking is what happened after that? Was the award itself set aside and if it was, was the claim – original claims that had been pursued by Siyaya not pursued anymore?

MS NGOYE: Well they have not pursued the claims Chairperson.

CHAIRPERSON: They did not pursue it?

MS NGOYE: They did not pursue the claims.

CHAIRPERSON: But what – do you remember whether the actual

award was also set aside?

MS NGOYE: I cannot remember if that award was set aside.

CHAIRPERSON: Or you only remember the order?

MS NGOYE: *Ja* but the – I cannot remember if that one was set aside.

CHAIRPERSON: Yes but that never pursued?

MS NGOYE: That they did not pursue the matters Chairperson.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Is it two years since the – at least two years since the court order was rescinded?

10 **MS NGOYE**: That is correct Chair.

ADV VAS SONI SC: And that if I may point out will go to whether the defence was a good defence or not a good defence.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Having pursued it.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Now you finalise this part of your affidavit in relation to the Siyaya matters by pointing out that ...(intervenes).

CHAIRPERSON: Before that ...(intervenes).

ADV VAS SONI SC: That in fact – sorry ...(intervenes).

20 **CHAIRPERSON**: Maybe before that Mr Soni. Was the Rescission Judgment by Judge Tuchten?

MS NGOYE: Tuchten yes.

CHAIRPERSON: H'mm.

MS NGOYE: Yes Chair.

CHAIRPERSON: Is that the one for rescissions?

MS NGOYE: I did not get the ...(indistinct) that is one.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Mr Chairperson we can make it available this as part of the ...(intervenes).

CHAIRPERSON: It should be part of also of the papers.

ADV VAS SONI SC: What in relation to now Judge Makubela what has happened as a result of all these developments that you have summarised in your evidence this afternoon?

MS NGOYE: Well Chair I am aware that you know a complaint was
10 lodged with the JSC on the conduct of Judge Makubela and I think for me also coming from the decision of Judge Tuchten which was scathing really on Judge Makubela she obviously took exception to that and was challenging that at that judgment and – so where one is sitting now I am aware that it has been referred to the Judicial Services Commission and this was referred by UniteBehind – #UniteBehind again you know and so I am not sure where the process is right now.

CHAIRPERSON: H'mm.

MS NGOYE: But I know there is a challenge.

CHAIRPERSON: Okay.

20 **ADV VAS SONI SC:** Chairperson may I just make this point for completeness sake so when eventually you are looking at everything you would know what the various developments are. Following Judge Tuchten's judgment in which she set aside the judgment granting effectively unopposed – granting the application unopposed Ms Makubela complained to the JSC that Judge Tuchten had raised matters

in his judgment that ought not to have been raised. That matter was considered by the JSC and there is a decision of the JSC. So we have all of that.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And we will make that all available to you Chair.

CHAIRPERSON: Okay. Okay.

ADV VAS SONI SC: That will just give you a complete picture.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Of what has happened.

10 **CHAIRPERSON:** Okay.

ADV VAS SONI SC: But of course as pointed out here it is Ms – it is the complaint that UniteBehind brought against Judge Makubela that is now before the JSC.

CHAIRPERSON: No that is fine. The – I think it would be a judgment or decision of the Judicial Conduct Committee.

ADV VAS SONI SC: It is.

CHAIRPERSON: Which I think can be said to be a baby of the JSC.

ADV VAS SONI SC: Albeit sorry, sorry, yes.

CHAIRPERSON: Yes the JSC Judicial Conduct Committee *ja*.

20 **ADV VAS SONI SC:** Yes.

CHAIRPERSON: Okay. Is that where ...(intervenes).

ADV VAS SONI SC: This is where we end.

CHAIRPERSON: Are we done with this part?

ADV VAS SONI SC: For this part.

CHAIRPERSON: Yes. Yes. Okay we are going to adjourn then for

today. We will resume tomorrow at 10:00.

ADV VAS SONI SC: Thank you Mr Chairperson.

CHAIRPERSON: We will resume at 10:00 so we will then continue. We adjourn.

ADV VAS SONI SC: As it pleases.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 17 MARCH 2020

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TRANSCRIBER'S CERTIFICATE FOR COMMISSION OF INQUIRY INTO STATE
CAPTURE
HELD AT
BRAAMFONTEIN CHAMBERS

DATE HELD : 2020-03-16

DAY: : 224

TRANSCRIBERS : B KLINE; M NETTA; D STANIFORTH;
B DODD; D BONTHUYS

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