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PROCEEDINGS RESUME ON 17 MARCH 2020

CHAIRPERSON: Good morning Mr Soni, good morning everybody.

ADV VAS SONI SC: Morning Chairperson.

CHAIRPERSON: We are starting a little later than we should have because there was a matter that I needed to discuss with Mr Soni. And I think we must start with that Mr Soni. We will start with that so that everybody knows how today stands.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Yes.

- 10 **ADV VAS SONI SC:** Mr Chairperson having reflected on evidence that has been led since last week and some of the evidence led by Ms Ngoye I – we have come to the conclusion that it may be necessary for us to make further enquiries and investigations into certain matters. I do not need to detail them at this stage Chairperson but those enquiries would in fact give you especially but the public a better picture of what is it that PRASA – the investigations into PRASA be revealed. We have some of the versions we do not have all of the versions and we need to pursue those we submit in order for you to give you a complete picture. So what I am going to propose obviously
- 20 subject to your approval Chairperson is that after Ms Ngoye's evidence today we adjourn the proceedings in relation to PRASA and perhaps because there is nothing else said but in relation to PRASA until we are able to give you a more complete picture and that should not take more than about two or three weeks for us to complete the investigations Chairperson.

CHAIRPERSON: Yes. No I think that – that is important because for example yesterday there were some important documents that we – needs to be obtained apart from some that Ms Ngoye said she could get. I know that there was also a document that was referred to in Mr Molefe's evidence (indistinct) PRASA's that also needs to be searched for and found if possible and obtained. So I think – I think it would be – it would help that when the evidence is presented we already have a complete picture by way of at least statements, affidavits so that before the witness finishes the versions of people that she implicates in some
10 wrongdoing we will have been put to her.

ADV VAS SONI SC: Yes.

CHAIRPERSON: So that subject to a cross-examination application being granted subject to that when she is finished she would have finished her evidence as far as we are concerned.

ADV VAS SONI SC: yes.

CHAIRPERSON: That would be – should be the same with Mr Molefe because he was going to come back tomorrow.

ADV VAS SONI SC: Yes.

CHAIRPERSON: But it is necessary to also obtain certain affidavits in
20 relation to his evidence. I am sure with Mr Dingiswayo as well.

ADV VAS SONI SC: Yes.

CHAIRPERSON: That there may be others that we do not need to detail. But also there is a personal matter that I need to attend to which is also another reason. So we will try and go up to the end of Ms Ngoye's evidence and then we will adjourn and then we will resume

once the investigation is complete.

ADV VAS SONI SC: Chairperson just again for the record we are emboldening in making that proposal to you because you will recall at the outset I said we intended presenting the evidence in two stages.

CHAIRPERSON: Yes, yes.

ADV VAS SONI SC: So the second stage will now encapsulate.

CHAIRPERSON: Yes.

ADV VAS SONI SC: This plus what we had intended (indistinct) (Chair speaking of Mr Soni).

10 **CHAIRPERSON:** Yes, yes, no thank you. Okay. Ms Ngoye you are still under oath is that alright?

MS NGOYE: Yes Chair.

CHAIRPERSON: Okay alright.

ADV VAS SONI SC: Now Ms Ngoye yesterday we finished your evidence in relation to the Siyaya (indistinct).

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: And just to put it in context you will recall that the reason you highlighted the Siyaya matters is because the first of the person who received benefits from Siyaya or runs Siyaya – the identity
20 of the person. You remember that?

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: And who is that person?

MS NGOYE: Mr Mabunda.

ADV VAS SONI SC: Right. Now earlier yesterday when you gave evidence you indicated...

MS NGOYE: I am sorry I think she is referring to Mr Mabunda for the first time if I am not mistaken. Maybe she can give full names?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Full names.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Or names that you know rather than just Mr Mabunda.

MS NGOYE: I –

CHAIRPERSON: But you cannot remember his name?

MS NGOYE: The name escapes me Chair.

10 **CHAIRPERSON:** Okay no that is fine. Okay. He will be in some document.

ADV VAS SONI SC: Is it not Mr Makhensa Mabunda.

MS NGOYE: Makhensa Mabunda.

CHAIRPERSON: Okay.

MS NGOYE: Mr Makhensa Mabunda. Thank you Counsel.

ADV VAS SONI SC: Now yesterday when you gave evidence in referring to the major beneficiaries of these contracts one the names you mentioned was Mr Mabunda who is the other person that you identified as a major beneficiary of PRASA contracts/

20 **MS NGOYE:** Well it is Mr Moodley Chairperson.

ADV VAS SONI SC: What Moodley is he?

MS NGOYE: I think I am having a bad day today Chair in remembering the names. Mr...

ADV VAS SONI SC: Roy Moodley.

MS NGOYE: Roy Moodley yes. So it is Mr Roy Moodley the first one

and the second is Mr Mabunda those are the two gentlemen I referred to in my evidence.

ADV VAS SONI SC: Now in regard to Mr Mabunda and his company, the Siyaya companies you refer to the disputes that had been referred to arbitration.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Are there any disputes that have been the subject matter of litigation in relation to Mr Moodley's companies if I could put it broadly?

10 **MS NGOYE:** Well yes in relation to Mr Moodley's companies we have got you know other matters that have not necessarily been referred to here. One of the companies that Mr Moodley is associated with and is a director of is the Royal Security Company and I do know that in relation to that specific company there is current litigation happening. That company provides security for PRASA and I think it is a well-known issue that the security contract is with PRASA taking PRASA to court. So Royal Security is one of those companies.

ADV VAS SONI SC: And have there been any matters in which you have been involved where Mr Moodley's companies are the subject of
20 litigation?

MS NGOYE: Siyangena is the big one Chairperson. Siyangena Technologies is the big one where Mr Moodley you know is also involved.

CHAIRPERSON: I have to find a way of not confusing Siyaya and Siyangena. Siyangena relates – is associated with Mr Roy Moodley?

MS NGOYE: Also yes. Siyangena is not the ...

CHAIRPERSON: And who else?

MS NGOYE: It is Mr Roy Moodley and ...

CHAIRPERSON: His son.

MS NGOYE: No.

CHAIRPERSON: His son.

MS NGOYE: His son was Strawberry Worx.

CHAIRPERSON: Yes okay.

MS NGOYE: The advertising portfolio.

10 **CHAIRPERSON**: Yes.

MS NGOYE: So he basically is more involved in this one, the Siyangena Contract.

CHAIRPERSON: So – so...

MS NGOYE: And the Prodigy one.

CHAIRPERSON: So out of all the names that get mentioned in regard to Siyangena here he is the person associated with Siyangena?

MS NGOYE: His name does come up Chairperson.

CHAIRPERSON: But is there somebody else in Siyangena who gets mentioned in the – who else?

20 **MS NGOYE**: Yes quite a bit. There is Mr Ganjo (?).

CHAIRPERSON: Oh okay.

MS NGOYE: There is Mr Montana himself.

CHAIRPERSON: Okay.

MS NGOYE: And...

CHAIRPERSON: But the person that – the person from Siyangena that

PRASA really interacted with mostly would have been Mr Roy Moodley?

MS NGOYE: That is correct Chair.

CHAIRPERSON: Okay right. And Siyaya?

ADV VAS SONI SC: Sorry.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Sorry Mr Chair.

CHAIRPERSON: Oh okay. Okay. Thank you.

ADV VAS SONI SC: Sorry Mr Chair I would just like to place on record to assist the commission.

10 **CHAIRPERSON**: Yes.

ADV VAS SONI SC: Siyangena is a company that does not have Mr Moodley as a director.

CHAIRPERSON: Okay.

ADV VAS SONI SC: It is their company so they must be clear on that.

CHAIRPERSON: Okay.

ADV VAS SONI SC: We follow the witness's evidence.

CHAIRPERSON: Yes.

MS NGOYE: The witness is familiar with who the directors are.

CHAIRPERSON: Yes.

20 **ADV VAS SONI SC**: As well including these other companies like Strawberry Worx and Prodigy's.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Whilst they may have been appearances in certain instances.

CHAIRPERSON: Yes.

ADV VAS SONI SC: As the witness correctly points out here and there.

CHAIRPERSON: Yes.

ADV VAS SONI SC: But ultimately these are not his companies and I put it in inverted commas.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Because the witness is familiar with who the directors are.

CHAIRPERSON: Yes.

ADV VAS SONI SC: As the Head of Legal she would be.

10 **CHAIRPERSON:** Okay no that is fine.

ADV VAS SONI SC: I just want to clarify so – for Judge. So then we have Siyangena which is a different company.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And then you have Siyaya which has different directors and different role players.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Which is – that is just to assist Judge on that aspect.

20 **CHAIRPERSON:** Okay no that is fine. Thank you. Thank you. Okay now as far as you are concerned Siyangena is associated with Mr Roy Moodley?

MS NGOYE: Yes Chair there is – there is – in fact if I can clarify that?

CHAIRPERSON: Yes.

MS NGOYE: There is a company that was paid by Siyangena that is associated with Mr Roy Moodley.

CHAIRPERSON: Yes.

MS NGOYE: And I will come to that Chairperson in a moment.

CHAIRPERSON: Yes. But when – from your point of view when I hear the name Siyangena I must think of Mr Roy Moodley?

MS NGOYE: Correct Chair.

CHAIRPERSON: Okay. And Siyaya?

MS NGOYE: Siyaya is Mr Makhensa Mabunda.

CHAIRPERSON: Okay alright. Thank you.

ADV VAS SONI SC: Without going into details you were saying that
10 Siyangena paid a company which is associated with Mr Roy Moodley.

MS NGOYE: Yes.

ADV VAS SONI SC: What is the approximate amount Ms Ngoye?

MS NGOYE: It is R500 million Chairperson. Chair I must also say that this was also picked up you know when the media brought this to the attention of PRASA. So the investigations that we conducted did not pick up this. This was an issue that was picked up in the media but however PRASA then incorporates this issue in relation to the (indistinct) you know submission and it is included in there.

ADV VAS SONI SC: Now in regard to the dispute between PRASA and
20 Siyangena what is the nature of the dispute and where is the dispute?

MS NGOYE: Chairperson the dispute between PRASA and Siyangena is around you know payments of monies that Siyangena says it is owed by PRASA. But where PRASA wants to review and set aside all the contracts that had been concluded with Siyangena. So we would like that – those contracts to be set aside and as part of those contracts

there have been arbitration proceedings that have been brought by Siyangena in relation to their payments.

CHAIRPERSON: Well I will say this because I wanted to say – as I said I think was it during Mr Popo Molefe's evidence a litigant does not review it is the court that reviews and set aside.

MS NGOYE: Okay the court.

CHAIRPERSON: A litigant applies to the court.

MS NGOYE: For the review.

CHAIRPERSON: And ask the court to review and set aside in certain
10 decisions.

MS NGOYE: Yes Chair.

CHAIRPERSON: Okay.

MS NGOYE: Thank you Chair.

CHAIRPERSON: Alright.

ADV VAS SONI SC: Now can I ask you to look at Bundle B and FS3B
Chairperson that is at Bundle B page 126.

CHAIRPERSON: Thank you.

ADV VAS SONI SC: There are – are you familiar with these papers Ms
Ngoye?

20 **MS NGOYE**: Yes I am Chairperson.

ADV VAS SONI SC: Right. Firstly would you tell the Chairperson what
this – what this document is?

MS NGOYE: Chairperson this is the application that was brought by
PRASA in relation to the Siyangena contracts applying for the review
thereof.

ADV VAS SONI SC: Now before we look at what PRASA intends to review please give the Chairperson a brief background of the contracts that are the subject matter of the review application?

MS NGOYE: Chair there is quite a number of contracts that – that are involved in this matter. In fact you know I would be referring to phase 1 and phase 1 extension of the contract and then there was phase 2. So effectively there is about four and the amendment that was also introduced in – in you know in the proceedings that we found out about when we were going to court. So the first part of the Siyangena where
10 Siyangena was involved as a sub-contractor that contract is not is dispute. It is only in relation to where there were extensions of that contract which were – did not follow procedure that are in dispute. So we have got in respect of that the extension of the pilot phase which is the extension of what was done in the (indistinct) cup period and then the 2010 Soccer World Cup as well. You know the process that was followed in appointing Siyangena in respect of that. And then also the extension to that contract as well as well as the first – the second phase which we call the second phase where again Siyangena was appointed to you know work on our stations in relation to the ISAMS
20 contract. And the final one is the amendment, the addendum which we – I – we only saw for the first time Chairperson when Siyangena took us to court. When we had requested that they stop working on PRASA had requested that they stop working on our sites. They took us to court applying for an interdict. And that is when we became aware of the other addendum in relation to their contracts.

ADV VAS SONI SC: Just to put it in context Ms Ngoye. This application is an application by PRASA to ask the court to review and set aside some of the contracts you have referred to?

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Okay we will deal with those contracts because you deal with it in the affidavits but let us deal with them systematically otherwise it is going to be all over the place

MS NGOYE: That is fine Chair.

ADV VAS SONI SC: Okay in relation to the papers in the Siyangena
10 matter have you now made a different affidavit for the purposes of the commission?

MS NGOYE: Yes Chair I had to because in my first affidavit the one that I signed on the 14 April the one we were dealing with yesterday I do make reference you know to the Siyangena companies and the litigation that PRASA is involved in. So I needed to do the supplementary affidavit so that I can deal further with the – the issues that PRASA raise in the Siyangena application. So this is why there is this supplementary affidavit which I have made.

ADV VAS SONI SC: Please look at Bundle E and if I can ask you to
20 look at the documents that is marked SS7C.

CHAIRPERSON: Did you say SS7C?

ADV VAS SONI SC: Yes that is right.

CHAIRPERSON: C?

ADV VAS SONI SC: It is right at the end of Bundle E.

CHAIRPERSON: Yes.

MS NGOYE: Sorry Chair. I have got it Chair.

ADV VAS SONI SC: Will you explain to the Chairperson what is the purpose of this affidavit?

MS NGOYE: Sorry Chair annexure to?

CHAIRPERSON: Actually before you do that can I just check particularly with the transcribers are you able to hear Mr Soni quite well? I think sometimes he stands a little too far from the microphone. The transcribers. I do not think they can hear me.

ADV VAS SONI SC: They do not even seem to be (indistinct).

10 **CHAIRPERSON:** Will somebody find out from them whether they hear when Mr Soni speaks? The transcribers and let us know. But try not to speak from – far from the...

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja I do not know whether it is going to put it in the centre or not but as long as you try to – wherever it is as long as you try not to be too loud. Too far from it. I see things fall apart. Okay whatever is convenient as long as when you speak you are not too far from it. I am just scared that the transcript might have too many inaudibles in the end. I am trying to avoid that.

20 **ADV VAS SONI SC:** That – as you please Chairperson.

CHAIRPERSON: Ja. I think somebody wants to tell you whether they can hear you.

ADV VAS SONI SC: I am told they can hear Chairperson.

CHAIRPERSON: Oh okay. I am – I am...

ADV VAS SONI SC: But I will still attend to the concern.

CHAIRPERSON: Yes okay no thank you.

ADV VAS SONI SC: To the concern. Ms Ngoye can you tell the Chairperson what the purpose of – well firstly do you confirm that what is contained in this affidavit is true and correct?

MS NGOYE: I do Chair.

ADV VAS SONI SC: And what is the purpose of this affidavit?

CHAIRPERSON: And just to confirm this is one of your affidavits?

MS NGOYE: That is correct Chair.

CHAIRPERSON: Yes okay.

10 **ADV VAS SONI SC:** This is one that is made on the 15 March.

MS NGOYE: That is correct Chair. Chair the – the application papers in PRASA's review application are – you know are part of the bundles that have been put before the commission. And the purpose of this affidavit is to refer to specifics in – in the main affidavit of Siyangena that PRASA has highlighted. You know in relation to the Siyangena applications.

ADV VAS SONI SC: Now in this affidavit you deal with a number of issues but you start off with if you look at paragraph 6 you start off with two preliminary points. Will you tell the Chairperson what the first
20 preliminary point is please?

MS NGOYE: Chairperson the review application that is now before the courts is the second review application. PRASA had applied before to review the contracts but because of the 180 Rule in terms of PAGA we – we were obviously not successful in that regard and when the concourt decided on the (indistinct) case you know referring to issues

of legality PRASA saw it fit to then go back to court to then issue the second review application.

ADV VAS SONI SC: Sorry before you go on just to put things in context. The – you refer to this would I be correct in paragraph 13 of your founding affidavit I am going to refer to your affidavit in the review applications as the founding affidavit and that appears at page 141 of SS3D would that be correct?

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Now who made the affidavit in the first application
10 for review that went before court that was dismissed?

MS NGOYE: Doctor Popo Molefe was still the Chairperson of PRASA at the time so he made that application Chair. He signed the paper for the application.

ADV VAS SONI SC: And then when you went back to court on the basis of the present application who made the founding affidavit?

MS NGOYE: I had to make the founding affidavit Chairperson in my capacity as the Head of Legal and that is why my name is on the papers.

ADV VAS SONI SC: Alright and then you indicate in paragraph 7 what
20 that application is about. Would you explain to the Chairperson?

MS NGOYE: The application Chairperson is to review and set aside the contracts that had been...

ADV VAS SONI SC: To have reviewed and set aside?

MS NGOYE: Have reviewed and set aside. We are learning as we go along Chair. Those contracts of Siyangena that I highlighted

Chairperson before.

ADV VAS SONI SC: And just in brief what were the basis on which PRASA had brought that up – as in just in brief?

MS NGOYE: Sure. Chair there was – the processes that are required to be followed in you know appointing suppliers in relation to these contracts were not followed. So effectively you know there was no authority to enter into these contracts and we did not comply with the Section 217 of The Constitution in terms how matters of you know Procurement need to be dealt with. Our own Supply Chain processes
10 were flouted in relation to how these contracts were entered into.

ADV VAS SONI SC: And any legislation?

MS NGOYE: There is the PPPFA as well which obviously was also not complied with.

ADV VAS SONI SC: And then you make another point about certain dealings between people and PRASA and attorneys for Siyangena.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: What – are you going to come back to those dealings?

MS NGOYE: I will come back to those – to those Chair.

20 **ADV VAS SONI SC:** Alright. Now you then set out how these contracts came into being and you do that at paragraph 9. Will you set that out as simply as possible for the Chairperson Ms Ngoye?

MS NGOYE: Yes Chair. Chairperson in 2009 you know during the Confederations Cup Process PRASA in fact appointed two construction companies Enza and Rainbow Construction to assist in the development

of two stations. This was the Nazarec station as well as the Doornfontein station. And in that process this was handled by Intersite. You will recall Chairperson I said that Intersite was a subsidiary of PRASA. At the time Intersite was Intersite Property Management Services of PRASA and it ran with that process of appointing those suppliers. And those suppliers appointed Siyangena as their sub-contractor. So as far as we are concerned there is no issue with that contract. I think it was important to highlight it so that you know there is context as how Siyangena then is involved in relation to the other

10 matters. The second issue Chairperson that is being challenged is that immediately after that (indistinct) process PRASA again you know gave about seven of our stations to be developed to Siyangena without following process. This is – this is one which we call the Pilot Phase. Effectively the extension of the Pilot Phase. So you – what we are actually saying Chair is that in relation to that particular contract no process was followed. In fact this is one of those matters that was dealt with by the Public Protector who also found that there was no processes followed procurement-wise SCM was flouted and so on. So you know that is the other contract that we wish to review.

20 **ADV VAS SONI SC:** Ms Ngoye sorry to trouble you. You mentioned a Pilot Project and mentioned the extension are the two the same? In other words the Nazarec and Doornfontein contract is that the Pilot contract and then the seven is the extension of that Pilot Contract.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Okay and now that you deal with in paragraph 10

of your affidavit.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Sorry (inaudible).

MS NGOYE: And Chair the other contract that we wanted to review is what I refer to as the Phase 1 of the tender that Siyangena was appointed for. And in...

ADV VAS SONI SC: Sorry before you get to Phase 1 if you followed your affidavit Ms Ngoye it is going to help because your affidavit I am talking about your SS7C.

10 **CHAIRPERSON:** You must say if you need assistance.

MS NGOYE: I need assistance Chair.

CHAIRPERSON: Somebody can assist you.

MS NGOYE: I think – I am not sure if I have got these files properly.

CHAIRPERSON: Okay let somebody will come there.

MS NGOYE: SS7. Will you help me? May I ask Counsel are you referring to the affidavit?

ADV VAS SONI SC: To the affidavit ...

MS NGOYE: The supplementary affidavit?

ADV VAS SONI SC: Yes. Yes.

20 **MS NGOYE:** Okay. Not confuse myself because referring to the application ...[intervenes]

CHAIRPERSON: Okay.

ADV VAS SONI SC: I said I will refer to that as the founding affidavit and I will refer to the one you are now looking at as the supplementary one.

MS NGOYE: Okay, so we deal with the supplementary one?

ADV VAS SONI SC: Yes.

MS NGOYE: I am with you.

ADV VAS SONI SC: Now if you look at paragraph 9 in paragraph 9 you raise a number of matters in regard to the extension of the contract, ...[indistinct] pointing out the irregularities?

MS NGOYE: Yes Chair, the extensions I thought I said that the extensions were obviously not – did not follow process in terms of you know what needs to be done when procurement of services is required,
10 so they were irregular indeed and this was what was found.

CHAIRPERSON: Ja, okay, I am sorry, I may be the one who is lost now, I am looking at paragraph 9 in – at page 388, is that where we all are?

ADV VAS SONI SC: Yes that is where we are.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Ms Ngoye in that right in the middle of that paragraph you say second, you make an important point there, what is that point?

MS NGOYE: In paragraph 9.

20 **ADV VAS SONI SC:** Paragraph 10

MS NGOYE: Okay. First it is not procurement, second Siyangena had not been the original contractor but only a sub-contractor, the extension has no legal basis because there was no privity of contract between Sengena and/or Intersite or PRASA so effectively Chair in the CONFED Cup Sengena is a sub-contractor and then the extension to

that pilot Siyangena is appointed even though they were sub-contracted to the first, so they were not even a party to those contracts that were entered into with PRASA in relation to the CONFED Cup stations.

CHAIRPERSON: So the contract was with one entity and Sengena was a sub-contractor to that entity.

MS NGOYE: That's correct Chair.

CHAIRPERSON: But when it came to the extension instead of doing an extension with the entity with whom – with which PRASA had a contract it did an extension with the sub-contractor?

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

CHAIRPERSON: Something that's difficult to follow.

MS NGOYE: It doesn't happen like that.

CHAIRPERSON: Ja. Okay

ADV VAS SONI SC: But you make another point in that paragraph and you say what implied here the CONFED Pilot Contract was a contract between Intersite and Enzo and Rainbow am I right?

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: And in regard to the extent here who was – who were now the contracting parties.

20 **MS NGOYE:** In relation to the extension Chairperson PRASA was the contracting party.

ADV VAS SONI SC: But would that be proper and lawful?

MS NGOYE: Well Chair these stations belong to PRASA at the end of the day you know so effectively PRASA would be contracting party. I guess when it went to Intersite, Intersite was the property management

portfolio of PRASA, there again you know the rationale of taking these contracts through to Intersite was also something that was an issue Chairperson.

ADV VAS SONI SC: In paragraph 11 you point out that the Public Protector had dealt with this matter in her report, can you tell the Chairperson what that was?

MS NGOYE: Chairperson the Public Protector dealt with this in the Derailed Report, there's two Derailed Reports, so the first derailed report that I guess Mr Malefa was referring to, that's the one I am
10 referring to, so the Public Protector had – you know was forwarded information dealing with this particular contract.

ADV VAS SONI SC: Yes and she says that contract was worth R1.95billion.

MS NGOYE: That's correct Chair.

So effectively what happened Chair with the Public Protector PRASA gave the Public Protector information not in respect of the stations that were expended so – and that is why the Public Protector then refers to an amount of R1.9billion. That amount in fact was an amount in relation to a contract that was concluded in the Phase 1 of
20 the transactions that we concluded with PRASA so there was that you know misrepresentation that was made to the Public Protector by PRASA and that is why she makes that finding, but when you look at what the Public Protector was given to deal with is the extension which she found to be irregular.

ADV VAS SONI SC: Just to put it in context, the pilot is extended,

that is the matter that the Public Protector investigated?

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: And you say that the amount of that extension was not R1.95billion?

MS NGOYE: No it was not Chair.

ADV VAS SONI SC: But there is another contract where the amount is R1.95billion?

MS NGOYE: That is correct Chair, that's right.

ADV VAS SONI SC: You are going to come to that?

10 **MS NGOYE:** I will come to that one Chair.

CHAIRPERSON: Well tell me what is the correct number or the amount for the one where you say it is not the correct amount?

MS NGOYE: I am not actually sure what the number is, we could never pick up what the number is of the seven, it ranges between 800million Chair and so on.

CHAIRPERSON: Yes, it is less than the ...[intervenes]

MS NGOYE: It is less than, it definitely is because this increase I mean extension related to seven stations.

CHAIRPERSON: Yes.

20 **MS NGOYE:** So the other one of one billion is more stations.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Chairperson just because Ms Ngoye has mentioned 800million you will remember the Public Protector in her report says the complaint was it was 800 – the extension was 800million but she says in effect it was R1,95billion so if she had been

given the correct information you would have come to the correct conclusion that the amount of that extension was R800million.

CHAIRPERSON: Yes okay, okay.

ADV VAS SONI SC: Alright, then you're saying that in fact that refers to the Phase one, now in regard to the extension in paragraph 12 you deal with the problems that you think ...[indistinct] the award of the extension.

MS NGOYE: That's correct.

ADV VAS SONI SC: Could you tell the Chairperson what those are?

10 **MS NGOYE:** Chairperson in this paragraph I highlight in respect of the Sengena proposal how Mr Gantshu, I have referred to Mr Gantshu before, had indicated you know to Mr Montana that you know Sengena's price was too excessive it didn't comply really with the specifications that we required you now for the gates that we were looking for and also the gates that Sengena was going to provide to PRASA were not suitable, and he raises these issues in any event in relation to that extension.

ADV VAS SONI SC: Can I ask you to please look at the founding affidavit at page 389, this is SA7B.

20 **CHAIRPERSON:** Is that a different affidavit from the one we have been looking at?

ADV VAS SONI SC: Chairperson I am looking at the founding affidavit and the review application.

CHAIRPERSON: Okay, that is in another bundle.

ADV VAS SONI SC: That's in Bundle B, sorry Bundle E.

CHAIRPERSON: E?

ADV VAS SONI SC: Sorry, sorry, Bundle B Chair.

CHAIRPERSON: B for Beatrix, Bundle D or Bundle BA, ja okay.

MS NGOYE: What page counsel?

ADV VAS SONI SC: (Inaudible – microphone off)

MS NGOYE: 167.

CHAIRPERSON: Okay, 126, page 126?

ADV VAS SONI SC: 167 Chair.

CHAIRPERSON: 167, oh but that's the one starting at 126 I guess.

10 **ADV VAS SONI SC:** That's right.

CHAIRPERSON: 167.

ADV VAS SONI SC: Chairperson if I could explain if it is going to be confusing then I needn't do it, I am just conducting this exercise so that you can navigate yourself between the supplementary affidavit and the founding affidavit when you are considering the whole matter, so I am just trying – but if it is going to be confusing we can just ...[intervenes]

CHAIRPERSON: Yes, no, no, no it is not confusing. 167?

ADV VAS SONI SC: Yes, at paragraph 17.6.

CHAIRPERSON: Okay.

20 **ADV VAS SONI SC:** Have you got it?

MS NGOYE: No, I don't have it, I think I am not looking at the right document.

CHAIRPERSON: Okay page 167.

MS NGOYE: Did you say SS7?

ADV VAS SONI SC: No, SS3. Have you got that Ms Ngoye?

MS NGOYE: I do.

ADV VAS SONI SC: Now will you refer the Chairperson to those paragraphs, or to those sub-paragraphs in which Mr Gantshu expresses concerns about the extension?

MS NGOYE: It's paragraph 17.6 Chairperson.

ADV VAS SONI SC: And what does he say there?

MS NGOYE: He sent an email to Mr Montana and in that paragraph3 he says after interrogating the operation methods and comparing with other install gates elsewhere in the world it turns out that these gates
10 were not suitable.

He goes on in paragraph he said in our efforts to centralise this procurement we approached ESS.

ADV VAS SONI SC: And who is ESS?

MS NGOYE: ESS is a group of companies – is part of a group of companies that belong to TMM Holdings. Now TMM Holdings was the main company and Siyangena and ESS were subsidiaries to that company. It says to provide PRASA with a quotation to supply all the 2010 stations. It turned out that their gates are fully imported and very expensive. So he says that in that letter and then the third issue that
20 he raises is that in an unnumbered paragraph of that letter we referred to he says that they were not budgeted for in the original scope.

ADV VAS SONI SC: Alright, thereafter you point out in paragraph 13 that there was a change in heart, what – how did that come about.

CHAIRPERSON: Now that's paragraph of?

ADV VAS SONI SC: Sorry, of the supplementary affidavit Chairperson.

CHAIRPERSON: Okay.

MS NGOYE: Well in the supplementary Chair I state that following that telephone call which – with Mr Montana that Mr Guntsha made you know he requested Mr Montana to approve the extension, so even though you know those issues were there he still made the request for the extension to be approved.

ADV VAS SONI SC: If I could just stop you there, that change of heart came about as a result of what? Of that telephone call was it not?

10 **MS NGOYE:** Yes of course, yes it was the telephone call that he had had with Mr Montana.

ADV VAS SONI SC: And based on that ...[intervenes]

CHAIRPERSON: Well I am sorry why do you say it was a result of the telephone call?

MS NGOYE: Chairperson because before you know the letter that he writes he highlights all these issues and you know after making the call to Mr Montana you know based on what he said there was a change of heart.

CHAIRPERSON: Yes, but what I am asking is whether are you basing
20 that on what somebody said or ...[intervenes]

MS NGOYE: It is just part of the evidence that we were able to get Chairperson in relation to the matter.

CHAIRPERSON: Oh from the ...[intervenes]

MS NGOYE: From the investigations Chairperson.

CHAIRPERSON: Yes, you will talk to ...[intervenes]

MS NGOYE: Yes, Mr Gantsho yes with reference to the papers Chair that telephone discussion.

CHAIRPERSON: I just want to make sure that I know what the basis is for saying that.

MS NGOYE: Chair perhaps I must also state that because this matter is before Court, obviously we're just bringing it to the Commission just to highlight the irregularities that are there and this was the subject of the forensic investigation that was conducted, so a lot of the information that is available to PRASA in relation to these matters was
10 obtained through the forensic investigation.

CHAIRPERSON: Yes, no that's fine.

ADV VAS SONI SC: Just in relation to the Chairperson's question about why do you say there is a telephone call can I ask you to look at page 168 now of your founding affidavit, paragraph 17.71.

MS NGOYE: Chairperson that paragraph reads that Mr Gantsho refers to a telephone discussion with Mr Montana during which Mr Montana advised him that the contract with Siyangena for the extension on the basis that Siyangena was contracted and installing similar systems at NASREC and Doornfontein, stations under the Intersite
20 contract.

So this is information that we were able to piece together so in his email I guess he speaks to it.

CHAIRPERSON: Ja, okay, thank you Mr Soni?

ADV VAS SONI SC: So Mr Gantsha now is in favour of the extension as a result of this telephone call, or according to him as a result of this

telephone call, according to him as a result of this telephone call with Mr Montana, what happens next, you set that out in paragraph 14.

MS NGOYE: Well three days later Chairperson you know Mr Montana approves the request, but he approves it subject to you know the matter being referred to finance for budgetary purposes.

ADV VAS SONI SC: And in respect of finance's attitude what was, what did your investigations reveal?

MS NGOYE: Chairperson these matters were not budgeted for, in fact one of the executives that was responsible for the strategic asset
10 development side of – within PRASA –raised a number of questions.

ADV VAS SONI SC: Who was that executive?

MS NGOYE: It was Mr Piet Sibola.

ADV VAS SONI SC: And where do you highlight that in your founding affidavit?

MS NGOYE: In paragraph 17, 16 Chairperson.

ADV VAS SONI SC: At page 174 Chairperson.

CHAIRPERSON: Paragraph 17?

MS NGOYE: 16.

CHAIRPERSON: 16, at page 174, let's complete the reference Mr Soni
20 for purposes of the transcription.

ADV VAS SONI SC: Oh sorry, yes it is SS3D page 174 paragraph 17.16.

CHAIRPERSON: Yes okay, thank you.

ADV VAS SONIC SC: And we needn't go into all of them with you, just summarise what the main ones were please Ms Ngoye.

MS NGOYE: Chairperson Mr Sibola raised issues around you know non-compliance for instance with the CIDB process and that Siyangena did not comply with it, you know raised the issues around the procurement process and raised the issues of there not being budget, in relation to this matter and also you know the fact that this type of contract would be a BBB contract which would warrant PRASA to comply with legislation really in relation to entering in these types of contract.

ADV VAS SONI SC: In fact in regard to the CIDB non-compliance he
10 goes further, he says Siyangena was not certified.

MS NGOYE: That's correct.

ADV VAS SONI SC: Now these were the concerns that Mr Sibola raised, what – how were these concerns addressed if you look at paragraph 16 of your supplementary affidavit you deal with it there.

MS NGOYE: Chair the concerns were raised at Head Office, at PRASA, but however because these were not finalised at PRASA it was then decided to refer the matter to Intersite which is a subsidiary of PRASA so that decision making process was then removed from PRASA itself and given to Intersite for Intersite to continue with the process.

20 **ADV VAS SONI SC:** Why do you think that happened?

MS NGOYE: Well Chair I mean clearly there was no support you know of this particular contract you know at PRASA and I guess in my observation really when one looks at this is around the fact that you know because processes were not going to be followed somebody else must deal with it, so it was trying to move away from really having to

deal with the issues that were raised by people at PRASA and giving in to Intersite because the instruction to Intersite could then be coming from Head Office.

ADV VAS SONI SC: You will recall yesterday when you gave evidence in regard to the Strawberry Worx matter.

MS NGOYE: Yes I do Chair.

ADV VAS SONI SC: You remember there was a dispute about where the contract should rest and they had, you were then the CEO of Intersite and you said that they threatened that they were going to take
10 the matter from Intersite to PRASA?

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: And they did that?

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: Is this a similar manoeuvre in the opposite direction? I am just asking if that is the analogy that one can draw?

MS NGOYE: I think it is Chair, you know if it doesn't work here move it there, and allow those ones to continue with it, because I think for me also what I understood is that you know Intersite being a subsidiary and you will recall I did indicate that Mr Montana was the Chairperson
20 at Intersite, you know and the fact that challenging Mr Montana was really an issue at PRASA, you know so moving those things across to Intersite, the instruction across to Intersite would have then you know meant that he has also you know ...[indistinct] over them to deal with the contract.

ADV VAS SONI SC: What is the next development thereafter, now that

the matter is moved to Intersite?

MS NGOYE: Well we've got a Mr Jabulani Sendani who worked at Intersite, so he then made the submission you know for these contracts, for this process to be concluded at Intersite but we had an – and had requested a Mr Kulu Nxuba to approve these contracts, the submission of these contracts for on statement to the Group CEO.

When Mr Nxuba refused to do that, he refused on the basis that the amount involved was even about you know the CEO of Intersite and he needed permission from the Board of Intersite.

10 **ADV VAS SONI SC:** And was such permission granted?

MS NGOYE: No Chair there was no – we couldn't find anything that showed that you know the Board even granted permission for these contracts to be concluded.

ADV VAS SONI SC: As far as you – the information at your disposal is there was no Board approval for that?

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: But what nevertheless happened?

MS NGOYE: Well the contracts were entered into, Sengena was then you know "given the tender" and they proceeded with the stations.

20 **ADV VAS SONI SC:** Now in paragraph 17 of your affidavit – I mean of your founding affidavit, that's in the review application you frequently make reference to the role played by Mr Gantsho, is that correct?

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: And why is that, why do you refer to that in paragraph 17 of your founding affidavit?

MS NGOYE: Chair Mr Gantsho was the one that was really championing you know this matter, so he was the one that you know was making sure that this – as you recall he spoke to Mr Montana and convinced Mr Montana to allow PRASA to enter into these agreements, so one could safely say that because he championed this process and that's why there's a lot of reference to him in the documentation.

ADV VAS SONI SC: And of course you refer later in your affidavit to Mr Gantsho again.

MS NGOYE: That's correct Chair.

10 **ADV VAS SONI SC:** Then that was the extension of the pilot phase.

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: That's one set of contracts, the pilot phase and then the extension.

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: What is the next contract that is concluded in relation or between PRASA and Siyangena.

MS NGOYE: This is what we call phase one of the projects Chair.

ADV VAS SONI SC: And what did that entail?

20 **MS NGOYE:** It also turned to be a once again a contract that was given to Siyangena in relation to 69 stations of PRASA.

ADV VAS SONI SC: So originally there were seven, Doringfontein plus five and then you say 69 would then that be an extension to 62 stations?

MS NGOYE: Well no Chair, remember the – yes, yes you are correct, you are correct, so it's the nine that happened, because the two was

Nasrec and Doringfontein and then the seven was the one that related to the extension of the pilot phase and this one was phase one, it was an extension of yes those two, so the 69 included that seven that was referred to above.

ADV VAS SONI SC: Can I just again start off with you have the pilot phase or two, Doringfontein and Nasrec.

MS NGOYE: Yes.

ADV VAS SONI SC: Siyangena is not a party to those contracts.

MS NGOYE: That's correct.

10 **ADV VAS SONI SC:** Then it's extended to seven, Siyangena is a party to that.

MS NGOYE: That's correct.

ADV VAS SONI SC: That then is now extended to 69, or to a further 62.

MS NGOYE: That's correct Chair.

CHAIRPERSON: So these further extensions originate from the contract which Siyangena was not a party.

MS NGOYE: Yes Chair if you look at it, so ...[intervenes]

20 **CHAIRPERSON:** But Siyangena ends up being the direct beneficiary of extensions.

MS NGOYE: That's correct Chair.

CHAIRPERSON: Ja, and to many train stations.

MS NGOYE: That's correct Chair.

CHAIRPERSON: Yes, and what happened to the entity that had originally entered into the first contracts along these extensions, was it

pushed aside, was it still going along, what was happening?

MS NGOYE: Well ...[indistinct] and Rainbow Chair were the companies that appointed Siyangena so they basically fell off the radar, one Siyangena you know was then introduced into the ...[intervenes]

CHAIRPERSON: So the sub-contractor took over?

MS NGOYE: Yes Chair.

CHAIRPERSON: (laughing) *ja*, okay.

ADV VAS SONI SC: Two becomes 69.

CHAIRPERSON: *Ja*, okay.

10 **ADV VAS SONI SC:** Now ...[intervenes]

CHAIRPERSON: But the original entity fell off completely, didn't provide, as far as you know even any capacity that Siyangena might not have had to deal with so many train stations.

MS NGOYE: No it was not involved Chair.

CHAIRPERSON: It was not involved.

MS NGOYE: So those two companies were not involved at all, once Siyangena came to the fore Siyangena became the main player with PRASA.

CHAIRPERSON: Yes, okay.

20 **ADV VAS SONI SC:** Now how did it come about that Phase one was implemented, you deal with that in paragraph 20?

MS NGOYE: Chair in relation to Phase one the CPO at the time, the Chief Procurement Officer at the time was a gentleman by the name of Mr Chris Nbata, he then gave instructions to a senior manager in the procurement space, Ms Mathiso Moshode to have that meeting with

eight companies that had been identified to participate in this next phase of the project, so there was a briefing session that was held with eight companies that had been identified, and that is how the start of Phase one you know comes about.

ADV VAS SONI SC: And how was that process managed, the restricted process, well before I get to that was that an legitimate way of extending a contract?

MS NGOYE: No it was not Chair because you know when the – what we picked up was when those eight companies were in the meeting
10 naturally they asked for an RFP, a request for proposal document, and when Ms Moshode, remember Ms Moshode is given instructions by the boss to say this is a meeting, go chair this meeting and with these eight companies in relation to this next phase of the project, so when she enquires or they, the companies that had been invited, enquires about the document, the RFP whether it was issued or not, and when Ms Moshode, because she wouldn't have known, enquired whether there was an RFP document it came out that there clearly wasn't an RFP document that was present, so from a process perspective Chair it just shows that you know no process was followed in that respect,
20 that's not how you do these type of transactions.

ADV VAS SONI SC: Can I just understand it, and it is not entirely clear and I know you will explain later that you had a limited set of documents, but as you understand what unfolded is that instead of an RFP being issued out to the world as it were it was – an invitation was sent to just eight companies?

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Is there any indication of how those eight companies were chosen?

MS NGOYE: I cannot remember Chair how that invitation came about, so I am not really ...[indistinct] to that.

ADV VAS SONI SC: But if proper procurement processes had been followed what was the process that should have been followed?

MS NGOYE: Well Chair the normal process would be to invite people, you know you advertise the tender so that you can have participants
10 you know coming through and responding to the tender that you would have invited, you would have you know advertised but because there was no tender that was advertised so we didn't have the RFP that those suppliers, the eight were looking for, so there were stages missing in the process.

ADV VAS SONI SC: Alright, the Ms Mashudi can't find the RFP whom does she go to, to locate the RFP?

MS NGOYE: Ms Mashudi then goes to Mr Gantshu to ask for the RFP.

ADV VAS SONI SC: And what does Mr Gantshu do?

MS NGOYE: Well Mr Gantshu then asked Ms Mashodi to actually
20 request those companies that had been invited to propose a best solution for PRASA, so once again you can see things are done you know backward, they are not done properly, so in that process that's where you then ask the companies to you now propose a best solution for PRASA, you just don't do things like that.

ADV VAS SONI SC: I am just trying to understand then, I understand

you say it is not processed but what would this whole enterprise about?
I mean PRASA wants to now enter Phase one, ordinarily it should send out an RFP outlining what work it needs to be done, what the approximate cost is going to be and so on, but in this case it sought information from the eight people whom he had chosen.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: And is such a procedure countenanced by any aspect of PRASA or PRASA's procurement ...[intervenes]

MS NGOYE: It is not compliant Chair, it does not comply with our
10 processes, our SEM processes, so clearly from that prospective that process as granted.

ADV VAS SONI SC: Now what eventually happened, so companies are asked to deal with this matter, or well to produce solutions, what then happens?

MS NGOYE: They do produce the solutions Chair and a bid evaluation committee is then set up to evaluate the responses that came from these companies, effectively they sat for two days in December 2010.

Chair I think one of the things that one must mention, which is important, is that you will recall this particular process was intended to
20 deal with those stations for the 2010 World Cup and when you look at when it happened, this thing happened long after the 2020 World Cup had finished.

ADV VAS SONI SC: And you say – when you look at – what period are you looking, do you look at paragraph 21?

MS NGOYE: That's correct, that's from the bid evaluation committee,

so from a process perspective after receiving the documentation the bid evaluation will then evaluate the responses that come from the respective bidders.

ADV VAS SONI SC: And just for the record when was the World Cup?

MS NGOYE: June 2010.

CHAIRPERSON: Now the point you were making about when you said let's look at when this happened, and saying when what it was for was the point you were seeking to make that the need, for this head following away in the light of the fact that the World Cup had come and
10 gone.

MS NGOYE: That's correct Chair.

CHAIRPERSON: Is that the point you are making?

MS NGOYE: That's correct, in terms of also my following procedure, but the argument that could be put forward was there was urgency around the person, that's how you knew to confine the process to eight companies.

CHAIRPERSON: Yes, yes.

MS NGOYE: But when you look at what then happened it clearly did not serve the purpose of dealing with the stations that were required
20 for the 2010 walk-on.

CHAIRPERSON: Would the position be that even though originally the idea may have been to do this for the World Cup when it may have become clear that it wasn't going to be ready before the World Cup, it was proceeded with in any event on the basis that it would be helpful to PRASA anyway?

MS NGOYE: Yes Chair I think that was the ultimate intention, to proceed anyway with this but also Chair I think from a process perspective within PRASA the planning has got to be done properly, the budgeting has got to be done properly for this type of work to be undertaken.

CHAIRPERSON: Yes, yes.

MS NGOYE: And none of that you know had happened and that's we still have partially done.

CHAIRPERSON: Yes you see I am asking these questions so that I
10 appreciate the point you see to make. One point would be the need had fallen away ...[intervenes]

MS NGOYE: That's correct Chair.

CHAIRPERSON: ...therefore there was no need for them to proceed with this project once it was clear that it wasn't going to be ready for the World cup, that's one point.

MS NGOYE: That's correct Chair.

CHAIRPERSON: Another point would be to say either in addition to the first point or as a standalone point to say processes that ordinarily would have to be followed for this to be done, whether for the World
20 Cup or not for the, were not followed because it was said it is for the World Cup based on urgency but once it became clear that this was not going to be ready for the World Cup then it shouldn't have been proceeded with because then there was no need or basis to justify ...[indistinct] processes if it was now being done just for PRASA.

MS NGOYE: That's correct Chair.

CHAIRPERSON: You make both points?

MS NGOYE: Both points Chair.

CHAIRPERSON: Okay.

MS NGOYE: That's correct.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Chairperson I see it is just quarter past eleven now.

CHAIRPERSON: Alright, let us take the tea adjournment, we will resume at half past eleven, we adjourn.

10 **REGISTRAR:** All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Let us continue.

ADV VAS SONI SC: As you please Chairperson. Now Miss Ngoye we were at the stage where you say the BEC had met in regard to this contract. What was their decision?

MS NGOYE: Chairperson the BEC had decided to proceed with the with – with the appointment of Siyagena and they would have to refer that to the BEC you know for recommendation then to Mr Montana and then to
20 the Board.

ADV VAS SONI SC: Well if you look at what you said at paragraph 21, you – you just, what – what did they say there?

MS NGOYE: Well Mr Montana at paragraph 21 I did show that this is when the BAC the BEC sat but I guess when the recommendation was given to Mr Montana he decided he does not want to proceed with – with

the process anymore and once again you know it shows in the papers that Mr Gansho you know was relentless. He just effectively assured the team not to be discouraged and he would do something about it.

ADV VAS SONI SC: Chair we have a situation, sorry Chair.

CHAIRPERSON: Well I may as well just say this for what it is worth, the name Siyangena is interesting but I do note that it is not Siyabangena.

MS NGOYE: It is angena Chair.

CHAIRPERSON: Those who understand Isizulu and the current township language will have a certain connotation I think Mr Soni understands it to
10 but if not somebody will explain and it is quiet interesting in the context of what happened here the name here, okay yes.

ADV VAS SONI SC: So, we have a situation where Mr Montana says no you are not to proceed.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Then Mr Gansho assures the team, what - how did that come about?

MS NGOYE: Well Chair effectively the discussions that were held between Mr Montana and Mr Gansho around that the time resulted in a change of heart, I think he was sure you know Mr Gansho that you know
20 after speaking to Mr Montana, Mr Montana would change his mind because as I said initially he championed this course so I think he needed to see it to finality.

ADV VAS SONI SC: And the point I am trying to make here Miss Ngoye one if the reasons that the procurement system, any procurement system has a whole series of decision makers, for example an inter analysis

would be done by the department in the BEC and then the BAC, would mean that each of these, each of them has a particular role to play and their decisions would be all fundamental to a fair process.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: And what does Mr Gansho's assurance to the team on whatever that means what – what does that do to that process?

MS NGOYE: Well it inter fears with the process Chair, you know and I cannot also explain or understand why actually after the BEC had looked at the – at the responses that came from the various bidders that Mr
10 Montana had to be consulted, because invariably from the BEC the process would go to the BAC and then if it is within his limit, authority wise he would then be able to say yay or nay. So, you know this consultation with Mr Montana after having decided that we are going to go through with this process, just did not make sense. It just shows you that no proper processes were followed in this regard.

ADV VAS SONI SC: Well let me suggest something else and it is not a question of just making sense, it means if I am going to make this suggestion to you and tell me if you agree. Did the entire process in subverted

20 **MS NGOYE:** Of course, it is. It is subverted

ADV VAS SONI SC: Now that was on the in December 2010. What happens next?

MS NGOYE: Chairperson as part of the processes as I explained from BEC which is the Bid Evaluation Committee you will go to the BAC which is the Bid Adjudication Committee it is the committee that will then work

out the submission from the- from the BEC. When the BEC- BAC sat on the 14th of February all of sudden there was a revival

CHAIRPERSON: 2011 [intervenes].

MS NGOYE: 2011 Chair that matter suddenly came back to life. Mr Montana refuses it from the BEC side but where the BAC sits in 2011 you – you find that the period the matter had come to life because they- they made a submission to the BAC for the conciliation.

ADV VAS SONI SC: And Mr Gansho reassurance then has some basis?

MS NGOYE: That is correct, he clearly knew what he was doing.

10 **ADV VAS SONI SC:** Now what did the – excuse me Chair. What did the BAC then decide?

MS NGOYE: Chairperson the BAC had a problem dealing with the submissions that was made by the – by the BEC, a lot of questions that were asked by the BAC in fact in a nutshell you know they did not agree with the process issues are wrong, budget issues around you know why not going out to a formal tender process were raised by the BAC during that time so effectively there was no support of the submission by the BEC to the BAC and also at the time what was referred to the BAC was that there was a contest between now Siyagena and Protea a company
20 called Protea – Protea Coin.

Now if you look at what was involved Chairperson from a pricing perspective you know it was odd that the – the – the - the submission that was made by Protea was sitting at 1.3 billion in relation to this particular transaction and but when you look and I will go into that evidence Chairperson ultimately what was awarded for Siyagena the maths – the

numbers never lie. I mean clearly Protea Coin should have been the successful party if you look at the number that was ultimately forced to Siyagena in relation to this process.

ADV VAS SONI SC: Now a submission was made to the BAC and what was that submission?

MS NGOYE: That submission was really the effectively the – the –the from the BEC to request that they consider the appointment of Siyagena.

ADV VAS SONI SC: And were they to make a recommendation to some

MS NGOYE: Yes so after the BAC, the BAC would then recommend the –
10 the – the transaction to the FCIP which is there Finance Capital Investment Committee of the Board so from that process it went from a subcommittee of the Board. So that is the recommendation they would have made to the Board as the BAC

ADV VAS SONI SC: But the BAC in any case took a decision in what was its decision you deal with it paragraph 23

MS NGOYE: Chair yes in paragraph 23 I do point out that what was submitted to the FCIP was the proposal to Siyagena to the value of 1.9 - 1.1billion rand for the entire transaction so this is what the BA –the FCIP had to consider.

20 **ADV VAS SONI SC:** Well if you look at the third line of paragraph 23 you –you if you could just read that the next sentence into the record starting with having deliberated

MS NGOYE: Reads into the record.

“Having deliberated on this submission the BAC
decided not to recommend the award to Siyagena

however PRASA documents show a document with a signature that purports to be that of the Chairperson of the BAC Miss Taran Ngubani in a minute of the BAC that records the decision recommending the award to Siyagena for an amount of 1.1 billion”

ADV VAS SONI SC: What are you-you trying to suggest with –with that Miss Ngoye that from your –your founding affidavit and in the review application

MS NGOYE: Once again Chair you know if it does not pass master it
10 should not proceed. Now if the FCIP had decided not to recommend this particular issue to –to-to the Board for approval because when they considered the submission they said they decided that not to recommend the – the submission they received from the BAC was that the appointment should not be made in favour of. But what then happened Chair I guess I must continue, and I refer to this minute of that was purported and I say purported because [intervenes].

CHAIRPERSON: I am sorry maybe there is some mistake in paragraph 23. Or unless I am confused. The submission requested BAC to recommend to the FCIP the appointment of Siyagena for the project
20 called ISAMS for a tender of 1.1 billion rand and for a period of five months. Having deliberated on the submission the BAC decided not to recommend the award to Siyagena or the possible appointment. So, it is not at – at FCIP level as yet, at that stage.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Okay, okay, okay.

MS NGOYE: So when the BAC said because of the issues they had raised and the concerns that came from that meeting they decided not to recommend it to the BAC and that is how I refer to this minute which is purportedly signed by Miss Taran Ngubani because there were issues around that minute because also that minute came long after the matter was referred to the FCIP by Mr Mbata.

ADV VAS SONI SC: Could you- could you expressly tell the Chairperson what you are trying to say the BAC makes a decision not to recommend.

10 **MS NGOYE:** They do Chair, they make [intervenes].

ADV VAS SONI SC: But what is – what is the minute what does the minute of that meeting record?

MS NGOYE: The minute of the meeting Chairperson according which - according to the evidence we have was not even signed at the time by the Chairperson. This is Miss Taran Ngubani and what became evident you know through the investigation process was it was very clear that the BAC does not agree that this process must be completed. So you know and that is why I talk to the purported minute that was now signed that had a signature that was signed by Miss Taran Ngubani which she obviously
20 then you know objected to and said it was not her signature as part of the investigation process that we did. So clearly from the process perspective the BAC had decided we are not going to recommend this thing to – to -to the FCIP.

CHAIRPERSON: Now you said the minutes of the Board –of the BAC.

MS NGOYE: Of the BAC ...[intervenes].

CHAIRPERSON: Were not signed?

MS NGOYE: That is correct Chair.

CHAIRPERSON: Now if that is the case how do you know what their decision was?

MS NGOYE: Well we have got a copy of those minutes Chair and there was a record a recording of [intervenes].

CHAIRPERSON: You have a recording?

MS NGOYE: That is it

CHAIRPERSON: So, when you listen to the recording it is quite clear
10 that [intervenes].

MS NGOYE: It is very clear.

CHAIRPERSON: Oh okay.

MS NGOYE: It was very clear

CHAIRPERSON: Okay and then the recording has been transcribed.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Yes, okay but in –in in at some stage a document was discovered that appeared to be signed by the Chairperson [intervenes].

MS NGOYE: By the Chairperson, ja.

CHAIRPERSON: Suggesting that the BAC had decided that Siyagena
20 should be awarded.

MS NGOYE: That is correct Chair.

CHAIRPERSON: But you say in the stations seems to have suggested that the then Chairperson of the BAC said she had not signed.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Yes okay.

ADV VAS SONI SC: So, the minute was in fact a forgery for falsely representation.

MS NGOYE: That is what Miss Taran Ngubani effectively says in – in another proceeding where she was asked to explain you know the existence of that minute. She indicated her signature was forged and she had never signed that minute.

CHAIRPERSON: Was it established did PRASA conduct any other investigation to establish whether that was true?

MS NGOYE: Well Chair I do not think it went further than that because
10 as part of the –the –the process that PRASA was conducting at the time. Miss Taran Ngubani then decided not to you know proceed with the hearings [intervenes].

CHAIRPERSON: Yes.

MS NGOYE: And to resign. So PRASA did not follow through and check up on that valid- the validity of that signature so we did not do it.

CHAIRPERSON: Yes, okay.

ADV VAS SONI SC: Now if I could just deal with that issue and I know that it is not immediately here. If the contention allegation is that the minutes were forged clearly a crime had been committed.

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

ADV VAS SONI SC: Has this matter been reported to the Police well this and other matters relating to this contract?

MS NGOYE: Yes Chair this matter and everything that has transpired as far as you know the –the -the mallard ministration of this and noncompliance with processes has been reported.

ADV VAS SONI SC: Well if it is reported to the Police it would have to be beyond mallard ministration. It would have to be criminal conduct [intervenes].

MS NGOYE: It would be fraud as well and so on yes.

ADV VAS SONI SC: Yes, now was that reported to the Police?

MS NGOYE: It was reported Chair.

ADV VAS SONI SC: And what – what is the outcome of those Police investigations?

MS NGOYE: Well Chair there has not been much really that has come
10 from the Police side in relation to the matters that we have referred to you know through PRECCA you know for instance matters to the Hawks and I cannot remember if Doctor Motana gave evidence to the fact that you know [intervenes].

ADV VAS SONI SC: Doctor Molefe.

MS NGOYE: I mean Doctor Molefe gave evidence to the fact that a lot of work that was done and referred for investigation there was no traction really effectively to that. And that is why he then had to also you know sue the DCPI for –for work not done.

ADV VAS SONI SC: Anyway.

20 **CHAIRPERSON:** And well knowing who –knowing who did that signature on that document that purported to be that of the Chairperson might throw light on who wanted what but I accept that maybe for PRASA's purposes once the Chairperson says it is not my signature then they may have said well then nobody can claim that such a decision was taken if the person if the Chairperson says it is not her signature.

MS NGOYE: That is correct Chair.

CHAIRPERSON: And then it may well be that from our side or our place we do not – we do not need to do anything about it but it may well be that it is something that could throw light if it was to be known who's – who had put in that signature.

MS NGOYE: Chair perhaps I can help by saying that in the –the disciplinary proceedings that Miss Taran Ngubani had to go through. She makes an allegation that her signature was forged by Mr Chris Mbata that is what she alleges in that proceeding [intervenes].

10 **CHAIRPERSON:** Yes.

MS NGOYE: and perhaps maybe the papers relating to that proceeding maybe helpful.

CHAIRPERSON: Yes.

MS NGOYE: As well as the commissions so that you can see what the Chairperson of the BAC says.

CHAIRPERSON: Yes –no –no I think that would be important and if that is the allegation and given the role that Mr Mbata I think seems to have played it might be important to establish whether indeed it is Mr Mbata who purported to forge the Chairperson signature. So obviously they
20 ought to be documents that have Mr Mbata's signature at PRASA and a comparison of signatures and expert and writing expert is it could throw light okay.

ADV VAS SONI SC: So, the next step in this process is what Miss Ngoye?

CHAIRPERSON: I am sorry. In the proceedings that you have referred to in which you say Miss Ngubani alleged that it was Mr Mbata who had forged his – her signature and do you know whether she was saying that because she recognised that handwriting as that of Mr Mbata or whether she knew some more information about how that had happened.

MS NGOYE: Well I guess Chair during the proceedings Miss Ngubani really because Mr Mbata had played a major role really in also submitting these papers to the FCIP even after knowing that the BAC had not approved these things. The submission that she believed that the only
10 person that could have done that was Mr Mbata.

CHAIRPERSON: Okay thank you. I think with all this latest information I think something should be done to see whether or whose signature that was. Thank you

ADV VAS SONI SC: From the BAC if the matter is to go forward which committee would it go?

MS NGOYE: It would have to go to the FCIP Chair. So maybe I could also put some light into – into effectively what had happened. The 14th of February the BAC sits and does not recommend this thing in fact they raise a whole lot of questions and the expectation would be Mr Mbata
20 would go back to the BAC after having resolved the issues that were raised by the BAC but this did not happen. Three days later on the 17th of February you know the FCIP sits and Mr Mbata then submits this proposal to the FCIP for recommendation to the Board but you know it had not been approved there and there was not a further meeting of the

BAC that would have allowed Mr Mbata to do that but what we found is that three days later on the 17th this matter sits before the FCIP.

CHAIRPERSON: Well that is interesting. So, you say that if the BAC refuses or refused as it refused to make a decision that Siyagena even be awarded contract. The matter should have not gone to a [intervenes].

MS NGOYE: FCIP.

CHAIRPERSON: FCIP.

MS NGOYE: That is correct Chair.

CHAIRPERSON: And whoever was sponsoring the matter I use the term
10 Mr Mbata in this case. He should have gone back to the BEC [intervenes].

MS NGOYE: The BAC.

CHAIRPERSON: The BAC after attending the queries.

MS NGOYE: That is correct.

CHAIRPERSON: Okay, so that is [intervenes].

MS NGOYE: That will raise ...[intervenes].

CHAIRPERSON: What should happen?

MS NGOYE: That is it because [intervenes].

CHAIRPERSON: If he is able to attend to them [intervenes].

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

CHAIRPERSON: And rectify the –the –the whatever errors maybe there.

MS NGOYE: It cannot proceed.

CHAIRPERSON: It cannot proceed.

MS NGOYE: Because the BAC said no.

CHAIRPERSON: If he is able to in his view satisfactory attend to the queries and managing from the BAC would he then be entitled to later on have it placed before another meeting of the BAC for them to see whether now they can make a proper decision.

MS NGOYE: That is correct Chair.

CHAIRPERSON: That- that is what would happen.

MS NGOYE: Ja that is what would have to had happened because the BAC says no.

CHAIRPERSON: Ja.

10 **MS NGOYE**: And raises questions.

CHAIRPERSON: Yes.

MS NGOYE: Tell us where the battered is for this.

CHAIRPERSON: Yes.

MS NGOYE: And you know why have we not gone out to tender for [intervenes].

CHAIRPERSON: Ja.

MS NGOYE: Such a big transaction he must have had to satisfy those issues first before he takes it to the FCIP.

20 **CHAIRPERSON**: Now when a matter comes before the FCIP would not the FCIP normally require proof that the BAC has made the right decision the recommendation that makes it necessary for the matter to come before the FCIP.

MS NGOYE: It would have to Chair.

CHAIRPERSON: It would have to?

MS NGOYE: It would have to.

CHAIRPERSON: Because they are supposed to look at the recommendation of the BAC.

MS NGOYE: That is correct Chair.

CHAIRPERSON: That is right.

MS NGOYE: Yes.

CHAIRPERSON: Now if Mr Mbata within three days after the BAC refused placed the matter before the FCIP how would it have been possible in circumstances where there was no recommendation from the BAC.

- 10 **MS NGOYE**: Chair this is the issue of that minute. Remember when the Chairperson of the BAC signs off on a minute that – that supports the appointment of -of -of Siyagena then you know it give credence to the matter being referred now to the FCIP. So in the report that Mr Mbata as the CPO would make – they would have attach what transpired at the BAC and then the-the the FCIP would then consider all the information they have get given in the report that would have been prepared by Mr Mbata.

CHAIRPERSON: So in the position that Mr Mbata placed before the FCIP this minute that is alleged to have been got and suggested that the BAC had decided to recommend Siyagena.

- 20 **MS NGOYE**: It is only explanation Chair so he - he yes.

CHAIRPERSON: Yes.

MS NGOYE: Because otherwise the FCIP would not have [intervenes].

CHAIRPERSON: Would not have entertained the matter.

MS NGOYE: Ja, yes Chair.

CHAIRPERSON: But you are – are you saying you the that document that is now alleged to have been forged was definitely placed before the FCIP.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: May I follow up with two questions.

CHAIRPERSON: Yes, yes

ADV VAS SONI SC: We know that a document was presented to the FCIP that is the one that MR Mbata presented to them.

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

ADV VAS SONI SC: But that is the one that Miss Ngubani distances herself from. She says that she did not sign that minutes.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: I want to ask you a prior question and that is in regard to the meeting of the 14th the BAC meeting of the 14th of February. This–did Miss Ngubani say that the BAC had not in fact approved the – the award to Siyagena.

MS NGOYE: Yes Chair in fact Miss Ngubani was very vocal if you listen to the recording she just did not take it in terms of the submissions that
20 was made before the BAC she flatly refused because she – the questions that you can hear from the recordings really showed that this is no the process that she was going to support.

ADV VAS SONI SC: So on any basis whatever was presented to the FCIP we can say safely here and in this commission so that the –the -the

BAC did not prove that the matter be sent to the FCIP contrary to what was said in that minute.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Now the second issue and it arises from what Chairperson has said was. Whilst there was this minute from the BAC to say look we – we think the award should be made to Siyagena but they had a different fiduciary duty they were not simply required to accept the recommendation of the BAC they were required to check all the processes before the matter came before the BAC and how the BAC handled the
10 matter.

MS NGOYE: Chair you know the thing – the way things happened at PRASA that is simply the expectation. You know that you satisfy yourself fully as to what as transpired but I guess in –in you know the way things work is that from the submission that was made by the BAC would not necessary also go backwards. When it gets to the FCIP you know the FCIP will just you know saddle itself with what is before it. I guess questions would be asked you know, you know what processes were there and so on and I guess what happened in this particular case was is that Board assumed you know that everything you know was in order but again
20 Chair if you look at the amount of money that was involved it was an amount that was way beyond the – the -the authority of the group CEO and I think I would like to make a submission that says for that type of matter to appear before a subcommittee of a Board before it was you know taken up to tender the Board would have had to approve that this particular transaction is taken out to tender so one would have expected

that questions maybe asked to say what process was followed in this regard. I do not think that happened.

ADV VAS SONI SC: Well, so they would have had to ask them if they were acting in terms of their fiduciary duties in terms of the PFMA being the – the accounting authority of –of PRASA that one would assume then that they would inquire as to why was this matter not before us prior to the process being stopped.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: And the from the information you have that was not.

10 **MS NGOYE:** No, it is evident Chair from what transpired that clearly that did not happen.

ADV VAS SONI SC: Anyway, the matter is now before the FCIP as you say in paragraphs 24 and 25 in your affidavit what happens then?

MS NGOYE: Chair the submission that was made to the BAC, right was for Siyangena to be appointed and the value of the transaction was 1.1 billion rand. But when it went now to the FCIP the amount was increased to 1.9 billion rand. So it was no longer that 1.1 that was shown to the BAC to consider. So you can already see that there is no justification or explanation of why you would then have then produced an amount of 1.1

20 to the BAC, you then go to the FCIP and hype it up to 1.9

CHAIRPERSON: So there is about 8- and additional 800 million rand ...
(intervenes)

MS NGOYE: That is correct.

CHAIRPERSON: Just thrown in.

MS NGOYE: That is correct Chair.

CHAIRPERSON: And having regard to the documents that were placed before the BAC and the documents that were placed before the FCIP, in what document does this change? Is there an alteration in some document that was before the BAC, alteration of the number of the amount or is there a new document that was not before the BAC that is put into the documents that will go to the FCIP?

MS NGOYE: Chair the document that was placed before the BAC spoke to 1.1 so remember also that the BAC does not support the submission.

CHAIRPERSON: Yes.

- 10 **MS NGOYE:** So effectively it is a new document that then contains this number of 1.9. Which would have not been taken back to the BAC because all this happened 3 days after the BAC had given a clear indication that they are not going to support this process. So it does show that a separate new document was then created which reflected the number 1.9 which is not what was taken to the BAC.

ADV VAS SONI SC: What was the number in the forged document? When I say number, what was the amount set out in the document that Ms Ngubane says is a forged document?

MS NGOYE: It is 1.9 Chair.

- 20 **ADV VAS SONI SC:** So that document had not only wronged- I mean not only misrepresented what the decision of the BAC was but also misrepresented the amount that the contract would be worth?

MS NGOYE: That is correct. Because if you look at the minutes Chair, the minute does not also capture what was in the recording. So you can see there was alterations of things that were discussed there and it

becomes evident that. And also from the fact that Ms Tara Ngubane says, look I do not know this document it is not my signature that is on there, shows very well if it had been the minute of the BAC it would have reflected 1.1 billion because that is what was presented to them. But because this document appears from somewhere with her signature and different information on there shows a clear misinterpretation that was then sent to the FCIP for consideration.

CHAIRPERSON: Is it possible to get the documents- the set of documents that served before the BEC, the set of documents that served
10 before the BAC and the set of documents that served before the FCIP? You have got that somewhere at PRASA.

MS NGOYE: We got- yes Chair.

CHAIRPERSON: Okay. If we can get those, it is basically all the levels, BEC, BAC, FCIP.

MS NGOYE: That is correct Chair.

CHAIRPERSON: So one can have the- so I can have the documents in front of me I can see where the differences are in terms of what was placed before which level.

ADV VAS SONI SC: Are there an annexed to the affidavit in the founding
20 of it?

MS NGOYE: Yes, they will be part of the documents that support the review application Chair.

CHAIRPERSON: Yes okay.

ADV VAS SONI SC: It would be easy to access those Chairperson.

CHAIRPERSON: Yes okay. As long as we have got them.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Before the Commission.

ADV VAS SONI SC: Now Ms Ngoye you also make a second point in paragraph 26 about an auditee in respect of what happened at the FCIP meeting on the 17th of February. What is that?

MS NGOYE: Chair the other issue that comes up as part of the agenda item at the FCIP is the approval of the budget. And what is reflected in there is an amount, for this specific project for instance in terms of the gates and security processes was an amount of 317 million that was
10 allocated to this project, right.

So the same board considers this amount from a budgetary perspective but has approved a transaction the FCIP in fact recommends a transaction that is way above this amount that they would have considered as a budgetary amount for the MTF where this product was concerned. So there is an anomaly there Chairperson. Because clearly if you know that there is no budget for this you should not then entertain an amount that is greater than that which you have budgeted for.

ADV VAS SONI SC: At the risk of perhaps being too pedantic, the same meeting indicates or approves an amount of 1,95 billion rand in respect of
20 this contract.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: And at some stage during that same meeting it is told that the budget is 317 million.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Would you be able if you were asked to explain that sort of anomaly?

MS NGOYE: I do not know if I can explain it. It should not have happened. I mean it is common sense I guess we won a sitting. You have got to analyse these things properly and applying your mind you would have picked up that there is something amiss as far as this is concerned.

ADV VAS SONI SC: What we- you have highlighted some of the irregularities in regard to the matter before the FCIP. And from the FCIP
10 where would the matter go to next?

MS NGOYE: The matter went to the board Chair. So from the FCIP it goes to the board because the FCIP recommends to the board which then approves.

ADV VAS SONI SC: And the FCIP's recommendation to the board was a contract at 1,95 billion rand.

MS NGOYE: That is correct but the minutes does not show Chair, of the board meeting Chair, does not show the amount that the board reflected. So the minute, the board when it is taken there effectively it says to the team negotiate with Siyangena on this contract but it does not talk to the
20 amount.

CHAIRPERSON: But what was before them ... (intervenes)

MS NGOYE: Was 1,9

CHAIRPERSON: Was 1.9?

MS NGOYE: That is correct Chair.

CHAIRPERSON: So if they said negotiate, they knew that they were saying negotiate in respect of 1.9?

MS NGOYE: That is correct Chair.

CHAIRPERSON: And if they did not want the contract to be concluded at 1.9 they would have said if- depending on what they meant when they say negotiate, one thing is they could be saying, negotiate a lower price or they could be saying negotiate everything and conclude a contract and we leave it up to you.

MS NGOYE: That is correct Chair.

10 **CHAIRPERSON:** But if they did not want the contract to be concluded on the basis of 1.9 billion, they would have said, well negotiate but if the price does not come down to whatever with a figure, then do not sign.

MS NGOYE: That is correct Chair. That is the expectation that one would have had.

CHAIRPERSON: Yes.

MS NGOYE: When you look at these things in the manner in which they are supposed to be done.

CHAIRPERSON: Yes.

MS NGOYE: Yes Chair.

20 **CHAIRPERSON:** Yes.

MS NGOYE: So there is a clarity all the way.

CHAIRPERSON: So if they said negotiate without putting any conditions in terms of what amount it means that they had no particular discomfort about a contract being concluded on the basis of that amount.

MS NGOYE: Yes Chair.

CHAIRPERSON: Ja.

MS NGOYE: But also Chair if you look at it, it is a huge amount. It is 1.9 ... (intervenes)

CHAIRPERSON: It is about 2 billion.

MS NGOYE: That is correct.

CHAIRPERSON: Ja.

MS NGOYE: But the- one would have expected that there is also a requesting when did the tender go out, all those questions.

CHAIRPERSON: Yes.

10 **MS NGOYE:** It has to have been asked.

CHAIRPERSON: Yes.

MS NGOYE: And ja, one does not ... (intervenes)

CHAIRPERSON: But also, the issue of the budget is it not?

MS NGOYE: That is correct Chair.

CHAIRPERSON: Do we have budget for this?

MS NGOYE: Yes.

CHAIRPERSON: It is the most obvious question.

MS NGOYE: Ja.

20 **CHAIRPERSON:** And as you say then they higher the amount then more cautious.

MS NGOYE: That is it.

CHAIRPERSON: The board rule should be and the more it should ask probing questions.

MS NGOYE: That is correct Chair.

CHAIRPERSON: And ask for documents and so on.

MS NGOYE: That is correct.

CHAIRPERSON: Yes. Okay, I guess we- it will be important to get even the minutes of these various levels when laid out with this issue, BEC, BAC, FCIP and board. So one gets a good picture because it is- there are strange versions.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja. Okay.

ADV VAS SONI SC: Now in regard to your evidence up to 9 regard to phase 1 ... (intervenes)

10 **CHAIRPERSON:** I am sorry. I am sorry Mr Soni.

ADV VAS SONI SC: Sorry.

CHAIRPERSON: So the people who sit in the BEC, BAC and FCIP are officials of employees of PRASA, no board members sit there?

MS NGOYE: The BEC and the BAC are the employees of PRASA.

CHAIRPERSON: Ja.

MS NGOYE: The FCIP ... (intervenes)

CHAIRPERSON: Is a subcommittee of the board.

MS NGOYE: Ja. It is a subcommittee of the board.

CHAIRPERSON: Yes.

20 **MS NGOYE:** So it is only board members. The management that goes to the FCIP.

CHAIRPERSON: Yes.

MS NGOYE: Would just be for purpose of presentation the matters to the FCIP.

CHAIRPERSON: Ja.

MS NGOYE: But they are not members of the FCIP.

CHAIRPERSON: Ja well, I was asking that question because I was wondering whether somebody who may have sit at one of these levels would not pick up the discrepancy on the price when the matter came before the board. But if board members were only at- advice at ... (intervenes)

MS NGOYE: FCIP.

CHAIRPERSON: FCIP level and they were misled into thinking that this was the price that had already been attached to this project, they might
10 not have any issues when it came before the board.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Whereas if somebody who have sat at BAC level happened to be aware that this matter was before the board and saw the figure they will say, hang on, when this thing was before us the figure was 1.1 so how do you explain this.

MS NGOYE: Ja. It is very unfortunate Chair and I think what we picked up because of the anomalies that were happening in PRASA around the submission of documentation to the FCIP. Because of these issues that the chairperson for instance on the FCIP is not the person that prepares
20 the report that goes to the FCIP. The report is prepared by the CPO the Chief Procurement Officer and the chairperson of the FCIP does not have sight of what then is referred to the FCIP by the CPO. So there is that missing link.

CHAIRPERSON: But ordinarily the report that will go to the FCIP would have been prepared by the chairperson of the BAC.

MS NGOYE: That- well, it should have been- that is not how it was.

CHAIRPERSON: It is normally.

MS NGOYE: That is it.

CHAIRPERSON: That is what happens normally?

MS NGOYE: That is it. But it did not happen that way at PRASA. It was the Chief Procurement Officer who prepared a report to the FCIP.

CHAIRPERSON: Yes. But what I am trying to understand then you see you say at PRASA. What I am trying to understand is what the practice was at PRASA generally? And that what happened on this occasion was
10 something that did not accord with practice at PRASA.

MS NGOYE: No Chair, at PRASA in stead ... (intervenes)

CHAIRPERSON: Is it always prepared by this ... (intervenes)

MS NGOYE: The CPO.

CHAIRPERSON: Procurement- oh, okay.

CHAIRPERSON: Yes. So we found out in other transactions Chair that were done where the board started questioning certain things.

CHAIRPERSON: Yes.

MS NGOYE: Well we then went back to the chair of this of the-

CHAIRPERSON: The FCIP.

20 **MS NGOYE:** The BAC.

CHAIRPERSON: The BAC, ja.

MS NGOYE: They would not necessarily agree. I remember one matter yes when the chair of the BAC said, but that is not the report that I would have sanctioned as the chair of the BAC to go to the FCIP. So that

continuity was just not there. So you have one person being in control of a particular process but you have another preparing a report.

CHAIRPERSON: Ja, it is quite strange if it is referred to as a report of the BAC to the FCIP.

MS NGOYE: No it is correct.

CHAIRPERSON: If it is not prepared by the BAC or the chairperson of the BAC.

MS NGOYE: That is correct Chairperson.

CHAIRPERSON: Because actually it means it is not a report of the BAC.

10 It means that someone ... (intervenes)

MS NGOYE: It is the report of the CPO.

CHAIRPERSON: This report of what the proceedings- how the proceedings were.

MS NGOYE: Ja.

CHAIRPERSON: Okay, but that was PRASA practice?

MS NGOYE: Well that is how we did things Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Now Mr Mbatha was the Chief Procurement Officer, is that correct?

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

ADV VAS SONI SC: In that capacity would he be a member of any of the committees like the BEC or the BAC?

MS NGOYE: Well he- no. He makes submissions. So he would be the one that ... (intervenes)

CHAIRPERSON: He effectively sponsors.

MS NGOYE: That is it Chair.

CHAIRPERSON: Yes.

MS NGOYE: Yes.

CHAIRPERSON: Things that comes before this committees.

MS NGOYE: That is right Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: And would he attend the BAC meeting?

MS NGOYE: He would have attended the BAC meeting Chair because ...
(intervenes)

10 **ADV VAS SONI SC:** (indistinct) is not.

MS NGOYE: That is it. Because the questions that are posed would be posed to him. So in this respect he was present at the BAC meeting.

ADV VAS SONI SC: And this highlights the anomaly raised by the Chairperson that the person who has an interest in why they are asking the BAC to sanction or reject a contract is the person who is then going to do the report for the FCIP.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Now in your evidence up to now relating to phase 1 Ms Ngoye you have detailed the irregularities and so on. In paragraph 28
20 you summarise that. Could you just summarise just so that we have a sort of picture of how irregular the process was?

MS NGOYE: Yes Chair. So effectively there was no open tender process. And there was not even a request to deviate from the open tender process. There was no RFP and there were no evaluation criteria because that would be stated in the tender documentation. So effectively

bidders were asked to really make, I say a shot in the dark, and hope that PRASA would be happy with it. And that is why I then earlier on refers to Protea Chair. Protea Coin submitted a response, their amount was 1.3 billion. Now if you had then looked at the amount that was finally awarded 1.9, the award should have gone to Protea Coin because they were the cheaper ones. But it did not it went to Siyangena.

ADV VAS SONI SC: And what do you say about that in paragraph 28?

MS NGOYE: Protea- I did not mention that Protea Coin tendered the price of 1.3 billion which is must cheaper than Siyangena. It lost because
10 of a funding model that apparently is part of the submissions that Siyangena made, it provided a funding model. But that funding model was not a requirement that everybody knew they had to give this part of the responses they made to PRASA.

CHAIRPERSON: Well when you say Protea Coin tendered contract wise was 1.3 billion and it was much cheaper than Siyangena's one. You are comparing that price with 1.9?

MS NGOYE: That is 1.9 Chair.

CHAIRPERSON: Yes.

MS NGOYE: Yes. Because that was ultimately the amount that sat at the
20 board at the FCIP.

CHAIRPERSON: Yes. But at- we know that at ... (intervenes)

MS NGOYE: BAC.

CHAIRPERSON: BEC level ... (intervenes)

MS NGOYE: And BAC.

CHAIRPERSON: All the prices would have been there. Is that right?

MS NGOYE: That is correct.

CHAIRPERSON: But do we know whether at BAC level all the prices would have been there and at FCIP and at the board?

MS NGOYE: All the prices would be there Chair.

CHAIRPERSON: It would have been there.

MS NGOYE: Yes, they would have had to be there.

CHAIRPERSON: Yes.

MS NGOYE: Because you- as part of the reporting you then show who came where and so.

10 **CHAIRPERSON:** Yes. Ja. So because Siyangena was still competing ...
(intervenes)

MS NGOYE: Yes.

CHAIRPERSON: Yes. Throughout the process with Protea Coin and so on.

MS NGOYE: That is correct Chair.

CHAIRPERSON: So Protea Coin's price was there? Siyangena's price was there?

MS NGOYE: That is correct.

CHAIRPERSON: And basically, both at FCIP and the board level- the
20 FCIP and the board had to look at 1.9 billion and 1.3 billion?

MS NGOYE: That is right Chair.

CHAIRPERSON: And on each- okay, in each case they chose 1.9 billion?

MS NGOYE: That is correct Chair.

CHAIRPERSON: Instead of 1.3 billion.

MS NGOYE: 3, yes.

CHAIRPERSON: But in the minutes of these- of the FCIP and the board and I know Mr Soni might still have been planning to go there, is there- does the FCIP and does the board when the matter comes before it, deal with what justifies taking- giving the contract to Siyangena at 1.9 billion when Protea Coin is at 1.3?

MS NGOYE: No Chair.

CHAIRPERSON: They do not?

MS NGOYE: No.

CHAIRPERSON: How is that possible?

10 **MS NGOYE:** It is not reflected on the minutes. One would expect you would see that in the minutes but the deliberations did not factor that.

CHAIRPERSON: Nobody said, but the difference in the price is so vast?

MS NGOYE: Ja.

CHAIRPERSON: Do you know whether there was anything that Siyangena had put into the documentation that anybody could or that they sought to use to say, in case somebody else has a lower price well you will still be justified in awarding us the contract because of A B C D that they do not have and, ja?

MS NGOYE: This was the funding model that I referred to Chair. So as
20 part of their submission.

CHAIRPERSON: Yes.

MS NGOYE: Remember at the time PRASA was saying we do not even have money to run with this process?

CHAIRPERSON: Yes.

MS NGOYE: So they prepared a funding model which would then assist PRASA in carrying out this particular transaction.

CHAIRPERSON: Yes.

MS NGOYE: Protea Coin did not.

CHAIRPERSON: Yes.

MS NGOYE: And with that benefit that they had furnished to PRASA, they were the ones that were considered.

CHAIRPERSON: Yes.

MS NGOYE: Because Protea Coin really loses on the basis that there is
10 no funding model.

CHAIRPERSON: Yes.

MS NGOYE: And it- when you think about it, it does make sense that PRASA would have wanted somebody to suggest how we are going to fund this thing. Because the evidence that has been given shows that there was no budget really for this so this funding model would have assisted the organisation.

CHAIRPERSON: Mm. I may have missed this but the funding model, are we going to deal with it at some stage Mr- how beneficial was- what was- did it have real value to PRASA.

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

CHAIRPERSON: Okay.

ADV VAS SONI SC: Now earlier in your affidavit, your supplementary affidavit the one you looking at, you made the point that nobody knew what a funding model was.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Now just taking that into account and it seems to have played an important role in making the- in having the award made to Siyangena. Effectively what did the funding model entail in respect of budget? Because what we see is at PRASA 1,9 million rand as opposed to 1,3 million rand but to what extend did Siyangena fund anything for PRASA?

MS NGOYE: Well in the end it did not happen Chair. When the whole process started it was clear that PRASA does not have money to undertake this project from a budgetary perspective. So Siyangena then
10 proposed to say, we will give you a funding model that would then assist you guys in terms of carrying out this project. But what happens in the end is that that funding model does not even play a role in fulfilling that contract that PRASA had entered into with Siyangena. So they did not give money to PRASA as an example to assist PRASA with carrying out the project so that PRASA could then pay back at the time that they had the necessary monies. So it was a proposal that was made by Siyangena right up front. Remember this process is not proper Chair.

CHAIRPERSON: Yes, but I think what council is asking is, tell me the features of this funding model that Siyangena put forward. I think you are
20 talking at- you are talking about after the contract has been concluded that ultimately, they did not deliver on the funding model. But at the time they put- when it was simply a proposal, what was its important features

MS NGOYE: Well it is around how they would assist PRASA in funding the project. So they would pay. They would effectively ... (intervenes)

CHAIRPERSON: They will provisionally fund the project themselves.

MS NGOYE: That is it. And then they would be paid by PRASA when PRASA has got the sufficient funds.

CHAIRPERSON: Effectively they would lend PRASA money.

MS NGOYE: That is correct.

CHAIRPERSON: And then later on when PRASA had money then PRASA would basically ... (intervenes)

MS NGOYE: Pay back.

CHAIRPERSON: Refund them.

MS NGOYE: That is correct. Because at that time it was very clear that
10 there is no money for this project.

CHAIRPERSON: Yes.

MS NGOYE: Yes. And that is one of the issues. Remember Mr Gunjo had raised it up front that it had only been on the budget for this.

CHAIRPERSON: Yes

MS NGOYE: And when you also look at the NTF amount that was put to the board of 317 million, it is way less than that was required for this project.

CHAIRPERSON: I take it that in- to the extend that they put up a funding model that is Siyangena, that they would have charged an interest for the
20 loan.

MS NGOYE: I am sure. Yes.

CHAIRPERSON: Yes. Did you get to know how much of the 1.9 billion award effectively have been interest and how much really would have been the capital?

MS NGOYE: Well Chair I do not think I would ... (intervenes)

CHAIRPERSON: You do not.

MS NGOYE: Venture into that.

CHAIRPERSON: Yes.

MS NGOYE: But when you look at what the BAC was settled on, it was an amount of 1.1 billion.

CHAIRPERSON: Yes.

MS NGOYE: So that is what ... (intervenes)

CHAIRPERSON: That is with the funding model being part of the proposal, ja.

10 **MS NGOYE:** That is correct Chair. Ja.

CHAIRPERSON: So this extra 800 million was just thrown in?

MS NGOYE: Yes.

CHAIRPERSON: But what I think Mr Soni wanted and what I am interested in is, what it is in the proposal that in this funding model that may have been so attractive to the BAC members, no- the FCIP members and the board that they would think, it is fine that 800 million- additional 800 million rand is fine. We go with Siyangena not with Protea Coin. But of course, I think one of the points you have been making is without a funding model there would be no project.

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

CHAIRPERSON: Because PRASA did not have the money for this.

MS NGOYE: We did not have the money.

CHAIRPERSON: So it seem therefore that either the board would say, we take the only party that has got a funding model or we do not proceed with this whole thing at all.

MS NGOYE: Yes, correct Chair.

CHAIRPERSON: It was- that was the choice.

MS NGOYE: Ja. That is correct.

CHAIRPERSON: Ja.

MS NGOYE: Because the basis on which Siyangena really is the successful party is on the funding model.

CHAIRPERSON: Yes.

MS NGOYE: That is why I say when you compare the price of Protea Coin with that of Siyangena, ultimately that was presented for approval.

10 Siyangena was much higher than Protea Coin. The expectation that you though had is the Protea Coin would then succeed because it was at 1.3 billion and Siyangena's price as reflected in the documentation that was sent to the FCIP was 1.9. So the funding model would have helped been an advantage that the- Siyangena had. But also remember Chair, the Protea Coin was not asked to provide a funding model so they did not know that they had to even provide a funding model. The issue of the funding model was only known by Siyangena.

CHAIRPERSON: Oh no, I think I have missed that.

MS NGOYE: Yes Chair.

20 **CHAIRPERSON:** I thought they were all asked.

MS NGOYE: No, Protea Coin was not aware that it had to provide a funding model in respect of its contract.

CHAIRPERSON: And the only person who would have and should have made them aware, would have been Mr Mbatha?

MS NGOYE: The CPO together with Mr Gunjo.

CHAIRPERSON: Mr Gunjo.

MS NGOYE: Ja.

CHAIRPERSON: And they did not.

MS NGOYE: No.

CHAIRPERSON: Okay.

ADV VAS SONI SC: As you please Mr Chairperson. One of the things that you referred to earlier and I asked you to please look at paragraph 15 of the supplementary affidavit. You might remember you referred to matters that Mr Sebola had raised. One of the issues he raised is what
10 was being considered was a public private partnership.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Now in regard to public private partnerships I take it that there are different mechanisms or different procedures that would be followed if you are asking for the private sector to be involved with an organ of state in a particular contract?

MS NGOYE: That is correct Chair. In terms of Treasury rules PRASA is a – is a Schedule 3B and take for instance Transnet is a Schedule 2B. So issues pertaining to public and private partnership PPP are specified to the Treasury Regulations in relation to entities falling
20 within the Schedule 2B aspect and not 3B. You know so PRASA could never enter into public private partnerships. Because also the process is very tedious. I think when one looks at the regulations from National Treasury you understand that it is not – is not an easy process to follow and it is a process that really is run then by National Treasury because there is a lot of things that are involved in that process. So PRASA is

not allowed to enter into PPP's.

ADV VAS SONI SC: And so if it chose Siyangena on the basis that it had provided a – a funding model it would in fact be entering into as public private partnership.

MS NGOYE: Well effectively yes you know and that is why Mr Sebola was concerned you know.

ADV VAS SONI SC: And then you finalise paragraph 28 Ms Ngoye with other points.

CHAIRPERSON: Of course Mr Soni somebody will need to speak about
10 this on the model and evaluate it in terms of its merits and demerits so that one can see whether the FCIP and the Board in coming to the conclusion that they should award the contract to Siyangena and not Protea Coin they did nothing more than just act in good faith on what appeared to be a sensible decision to them or whether one is able to say but really with ease I saw features in this kind of model. Nobody could in good faith have thought that this is the way to go.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Sorry Ms Ngoye I am just then finalising your
20 paragraph 28 and you say the – you talked about minutes being forged could you tell the Chairperson what that is about?

MS NGOYE: These are the minutes Chair from the BAC that one speaks about. You know the fact that the BAC minutes had not been signed but you then have a copy of the minutes that are now signed and this is obviously the allegation that Ms Tara Ngubane makes to say

look I do not know anything about those minutes.

CHAIRPERSON: Hm.

ADV VAS SONI SC: So it is a clear indication that you know there was a forgery of the documentation that went to the XTIP. But also in what we have seen in the evidence in relation to the minute of the Board where the Board does not specify an amount.

CHAIRPERSON: Hm.

MS NGOYE: But the excerpt that gets then prepared is prepared on the basis of the resolution of the Board having approved R1.9 billion. This
10 is what I am referring to and this is the evidence we were able to pick up you know when we did the investigation.

CHAIRPERSON: Hm.

ADV VAS SONI SC: So in addition to the BAC minutes being forged as indicated by Ms Ngubane there is evidence that there is a discrepancy between what the Board decided and the resolution – the written resolution?

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: And then you make the point that the minutes in respect of the budget were self-contradictory?

20 **MS NGOYE:** That is correct Chair. I explained that you know say it is 317 it is R1.9. I mean if you look at it in totality it does not make sense that you would approve a transaction of R1.9 billion when you have only a budget of R3.17.

ADV VAS SONI SC: So I am just asking and perhaps this – this may not be something you can answer. The Board at that meeting says or

the FCIP says we have only got R317 million but we are accepting the tender for R1.95 billion. Did they in that indicate that this is because Siyangena has provided a funding model which allows us to overcome the budgetary constraint?

MS NGOYE: I guess one could explain it that way Chair if you really think about it because it just does not make sense that you – you know your budget is about 3. – 317 million and yet you approved a tender of R1.9 you know one would think that they also relied on this funding model that Siyangena makes.

10 **ADV VAS SONI SC:** No, no, no I am asking a different question. I am saying in explaining why it accepted the amount of R1. – an amount of – a contract of R1.95 billion did the Board say that notwithstanding that we only have a budget of R317 million this allows us to overcome that difficulty?

MS NGOYE: No I – I – that is not reflected Chair – it does not – the minutes do not show that.

ADV VAS SONI SC: Alright so...

CHAIRPERSON: Do you – well you should know. When was the – when was PRASA going to be required to pay back the loan as it were?

20 This R1.9 billion loan when it had what R300 and?

ADV VAS SONI SC: R317 million.

CHAIRPERSON: R317 million.

MS NGOYE: Well Chair I do not know and maybe I should say also you know from a regulatory process.

CHAIRPERSON: Hm.

MS NGOYE: PRASA just cannot go out and request loans or enter into those type of transactions without the necessary approvals being granted by National Treasury being one of the – the institutions that would have had to consider PRASA you know asking for a loan. The reality is that PRASA is a subsidised entity obviously gets its money from you know government and it is – so there was restrictions really around borrowings and so on. So PRASA would have had to comply. So I do not know you know when and how PRASA would have been able to justify that loan that it had made.

- 10 **CHAIRPERSON:** Did the contract or the funding model provided not indicate as to when Siyangena would be paid? Because I guess that we are calling it a loan they may have had another term for it but we are saying effectively it is a loan to PRASA.

MS NGOYE: It is a loan ja. I cannot recollect Chair if – if – but we can check it. We can check what...

CHAIRPERSON: You do not even remember whether...

MS NGOYE: That was even in...

CHAIRPERSON: Whether you saw it or?

MS NGOYE: No I cannot recall seeing it Chair.

- 20 **CHAIRPERSON:** I am just wondering if in terms of how long it would take for them to be able to pay that kind of money if they had R300 and something million in the budget. And I mean first the fact that the FCIP and Board saw fit to approve Siyangena's price at R1.9 billion when there was R1.3 million from ...

MS NGOYE: Protea Coin.

CHAIRPERSON: Protea Coin on the face of it says but how is that possible and then of course you explain that without the funding model even Protea Coin would not – even if they wanted to give the contract to Protea Coin they – they would not be able to because they did not have the money?

MS NGOYE: That is correct Chair.

CHAIRPERSON: So they had to go to somebody who – who was going to give them a funding model and Siyangena was providing that. But still you have to – you have to say when would they be required to pay?

10 **CHAIRPERSON:** In – on what terms because it might not make sense to say you are going to pay this amount in a years' time, in two years' time or whatever I am not sure. So if that is the case then it compounds the confusion.

MS NGOYE: That is correct Chair.

CHAIRPERSON: You know the questions just (inaudible) to say what was going on.

MS NGOYE: Yes Chair.

CHAIRPERSON: How could the FCIP not pick up this conundrum?

MS NGOYE: Hm.

20 **CHAIRPERSON:** What was their solution to it? What about the Board? Because before you can approve they have got to say what is my answer if somebody says how are you going to pay this back? You must be able to say, this is our answer and it is doable.

MS NGOYE: Yes Chair. I guess well we can find the document Chari.

CHAIRPERSON: Yes.

MS NGOYE: From the model.

CHAIRPERSON: Ja we...

MS NGOYE: There is a lot of paper.

CHAIRPERSON: Yes.

MS NGOYE: That is involved in this (indistinct).

CHAIRPERSON: Ja we need to look at that because one needs to know whether to the extent that there may be wrong things that may have happened one needs to know who was – who may have been involved. In what way. Was it negligence? Was it incompetence? Or
10 was it intentional? Was it criminal?

MS NGOYE: But Chair when you look at the – how the matter unfolded and how the payments were made you know monies was coming out of PRASA to pay this. So effectively you know in relation to this first phase of the project PRASA had paid a substantial amount of money out of its own coffers to Siyangena. So then when you look at it really at the end of the day this funding model did not even benefit PRASA because it still paid you know.

CHAIRPERSON: Of course that might not affect the Board.

MS NGOYE: No that is correct.

20 **CHAIRPERSON**: I assume it might affect the management.

MS NGOYE: The management ja.

CHAIRPERSON: Who – who made those payments.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Now that was Phase 1 of the contract and was that

the end of Phase 1 or where – was there another twist to Phase 1?

MS NGOYE: There was another twist to Phase 1 Chair. So Phase 1 was then extended again where from 69 twelve more stations were then included. So effectively Siyangena just got given twelve more stations to say add on. And the bat as well the expectation would be you need to follow procedure you know it (indistinct). It was just an addition to the 69 that it had already had. So once again you can safely see that we were not doing things in accordance with how they are supposed to be done.

10 **ADV VAS SONI SC:** And just to illustrate the – the growth of the – the contract. It starts off with two where Siyangena is a sub-contractor. It then ends up with seven as the main contractor. There is becomes 69 and now with this extension it becomes 81.

MS NGOYE: It is 69 plus 12 – 70.

ADV VAS SONI SC: 81.

MS NGOYE: Is it?

ADV VAS SONI SC: Yes 69.

CHAIRPERSON: No I am not counting so I am looking at 92.

ADV VAS SONI SC: It is 81 Chair.

20 **MS NGOYE:** Okay Chair.

CHAIRPERSON: 81?

MS NGOYE: It is 81 Chair.

CHAIRPERSON: It is 81.

MS NGOYE: Yes.

ADV VAS SONI SC: And how much did this – these twelve additional

stations or – ja did they cost PRASA?

MS NGOYE: It was R350 million Chair for the additional twelve.

CHAIRPERSON: Is that on top of the R1.9 billion?

MS NGOYE: R1.9 billion.

CHAIRPERSON: So it now becomes about R2.2?

MS NGOYE: R2. – ja. R2.2 billion.

CHAIRPERSON: Ja. When it was – when the contract was originally given to the entity to which Siyangena was the sub-contractor how much was the price then?

10 **MS NGOYE:** I just (indistinct) because it was two stations.

CHAIRPERSON: Ja.

MS NGOYE: At the time you know the amount would not even have been...

CHAIRPERSON: Ja.

MS NGOYE: I cannot remember exactly what the amount was but it was not (Chair speaking over Ms Ngoye).

CHAIRPERSON: But it was two stations ja?

MS NGOYE: It was only two stations that were required to be done at the time.

20 **CHAIRPERSON:** Yes okay.

CHAIRPERSON: Ja.

MS NGOYE: Ja.

CHAIRPERSON: Okay. Okay no thank you.

ADV VAS SONI SC: And in regard to this extension you make the point that it was – that there was an irregularity and could you identify that

irregularity?

MS NGOYE: It is around the procedure Chair. You do not just extend. Even if there was a tender say you do not extend the scope of the contract without following process again. So you know naturally it just does not work like that. You have to – if you want to extend the scope of the contract you would have to take it out to tender again. So this was not – this was not done.

CHAIRPERSON: No all of these extensions involved in – that we are talking about here would they have been sponsored as it were by the
10 Chief Procurement Officer?

MS NGOYE: He was part of it Chair. So he would have...

CHAIRPERSON: He was part of it?

MS NGOYE: So he was part – so effectively between the Chief Procurement Officer and the Group CEO.

CHAIRPERSON: Yes.

MS NGOYE: You know all these things would be sponsored and they would have to be done.

CHAIRPERSON: Yes. So it would be it is either both or one of them?

MS NGOYE: It had to be both.

20 **CHAIRPERSON**: Ja it had to be both.

MS NGOYE: Because – that is it Chair yes.

CHAIRPERSON: Okay. And – and at the time – at the time of these contracts – these extensions you were not yet Head of Legal Department?

MS NGOYE: No I was at Intersite Chair.

CHAIRPERSON: You were at Intersite?

MS NGOYE: At Intersite ja.

CHAIRPERSON: How long had you been with PRASA at the time with Intersite PRASA?

MS NGOYE: Intersite I was at 2011 until 2014 – August.

CHAIRPERSON: Ja.

MS NGOYE: And then I went across to PRASA.

CHAIRPERSON: But when did you come to PRASA for the first time?

MS NGOYE: PRASA is in the...

10 **CHAIRPERSON**: PRASA including Intersite?

MS NGOYE: 2011.

CHAIRPERSON: 2011?

MS NGOYE: Yes.

CHAIRPERSON: Okay.

MS NGOYE: But I would not have been involved because ...

CHAIRPERSON: You would not have been involved?

MS NGOYE: And also at the time Chair Intersite was no longer doing what the previous Intersite was doing.

CHAIRPERSON: Ja.

20 **MS NGOYE**: So in this – in my case Intersite was an asset investment company.

CHAIRPERSON: Ja.

MS NGOYE: And the focus was different.

CHAIRPERSON: No that is fine. Do you know how long Mr Mbatha had been at PRASA around this time?

MS NGOYE: Well if I recall Chair I mean there was a time when Mr Mbatha indicated that he had been at PRASA for more than 20 years.

CHAIRPERSON: Yes.

MS NGOYE: Ja. So he had been at PRASA for a long time.

CHAIRPERSON: And at the – do you know how long he had been Procurement Officer as at that – this time?

MS NGOYE: No I would not know Chair.

CHAIRPERSON: You do not know?

MS NGOYE: I do not know.

10 **CHAIRPERSON:** Yes. But are you able to say I mean him being Chief Procurement Officer he must have known what procedure is required.

MS NGOYE: Of course.

CHAIRPERSON: Or required to be followed if they were to be extensions?

MS NGOYE: Of course Chair.

CHAIRPERSON: Ja and the – and the CEO would have known also?

MS NGOYE: Of course.

CHAIRPERSON: Yes.

MS NGOYE: Yes.

20 **CHAIRPERSON:** Okay.

ADV VAS SONI SC: Just finally on the extension if no process had been followed would it have gone through the BEC, BAC and the FCIP?

MS NGOYE: No Chair. You know I mean this was just an additional twelve stations to – to Siyangena. If it went back Chair there would obviously be – have been you know concerns that would have been

raised you know by the – by the BAC and the DEC again. It should have been you know especially where the BAC is concerned considering that they have not approved.

CHAIRPERSON: Well I am looking at Mr Soni I am not sure whether it is what he was looking for it – just my understanding. What I would like to know is what would have been the process?

MS NGOYE: The procedure.

CHAIRPERSON: To be followed if there was to be an extension?

MS NGOYE: Well if there was to be an extension Chair of – of the
10 contract again we talk to the scope increase you know and this issue is also regulated by National Treasury to say you cannot vary the contract and increase the scope to more than a particular percentage of the contract. So one would have expected that it would have had to go back to the BAC and then to the SCIP for consideration.

CHAIRPERSON: Would it not have been necessary to – to issue a request for its – in other words start right from the beginning.

MS NGOYE: That too Chair.

CHAIRPERSON: Because...

MS NGOYE: You do not know if...

20 **CHAIRPERSON:** You could have a situation where you decide to give the contract in regard to other train stations to ask somebody.

MS NGOYE: Yes Chair.

CHAIRPERSON: And – and if you do not invite other people you – you are denying them an opportunity to bid for those train stations and you do it by saying we are just extending this existing one.

MS NGOYE: Yes Chair. The value of the extension Chair would play a role as to whether the matter goes back to procurement – a process to advertising or not. So...

CHAIRPERSON: Oh.

MS NGOYE: Because in terms of – in terms of the Treasury Regulations.

CHAIRPERSON: Yes.

MS NGOYE: If I recall I think the percentage is increased now to 15%. So if at the time it was more than 10% of the value of the contract the
10 variation then you would have to go out to tender. So that – the contract value and what it is that would have been paid here would determine.

CHAIRPERSON: Yes.

MS NGOYE: Whether that process would have to be followed.

CHAIRPERSON: Yes.

MS NGOYE: So it depended (inaudible).

CHAIRPERSON: No, no that does make sense because you do not want to invite too much for a very small.

MS NGOYE: That is correct Chair.

20 **CHAIRPERSON**: Amount in value but once the value goes beyond a certain amount you might then be justified in saying let us hear what other people can tender.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: And for the record the amount being R350 million would be exactly more than 10% of the R2 billion or almost R2 billion

extension con – Phase 1 contract?

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Sorry just on that score Ms Ngoye the R350 million would that not have had to have Board approval given that Mr Montana could only contract up to R100 million?

MS NGOYE: That is correct Chair. Mr Montana's authority in terms of the delegations of authority was limited to R100 million. It would had you know things done properly and gone to the – to the Board for approval.

- 10 **ADV VAS SONI SC:** But from what you know did this extension did not go to the Board?

MS NGOYE: No it did not go to the Board Chair.

ADV VAS SONI SC: So that would be a further basis to impugn really the award of the extension to Siyangena?

MS NGOYE: That is correct Chair. I mean if you look at how things were done you know it was like does it matter? Let us go ahead and do it.

ADV VAS SONI SC: Would that have been reflected in the financial statement of PRASA at the end of that year that is say 2011/12?

- 20 **MS NGOYE:** Sorry what reflects it? What is it reflecting?

ADV VAS SONI SC: The amount of the extension or the amount of the contract?

MS NGOYE: I do not want to venture into that Chair because I am not sure. I have not necessarily looked at the – the financials so I did not want to say yes they were. I cannot recall if the amount was reflected.

ADV VAS SONI SC: I suppose what we would have to do is to look at the – the financial statements and see whether in fact these matters are reflected as set out in your affidavit?

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Then Ms Ngoye you go into Phase 2 of the project.

MS NGOYE: That is right Chair.

ADV VAS SONI SC: Chairperson I see it is five to one. I am not sure we will finish this in the next five minutes. I do not mind continuing but...

10 **CHAIRPERSON:** Yes, no I think – I think I may have thought that we would be able to finish with her before lunch but I think we – we have been doing what needs to be done.

ADV VAS SONI SC: Absolutely.

CHAIRPERSON: So we will have to come back after lunch.

ADV VAS SONI SC: As it pleases.

CHAIRPERSON: And continue and finish.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja. Okay so I think let us take the lunch adjournment and we will come back at two. We adjourn.

20 **REGISTRAR:** All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let's continue.

ADV VAS SONI SC: As you please Chairperson. Ms Ngoye we'd finished now with phase one and the extension to it and we were going

to start with phase two, you remember...[intervenes].

MS NGOYE: That's correct Chairperson.

ADV VAS SONI SC: Will you tell us what – well will you tell the Chairperson what phase two is about?

MS NGOYE: Chairperson, phase two is about another award, this time the number of stations was 161 number of stations that were awarded to Siyangena. So phase two deals with the process to appoint Siyangena, ultimately, as the preferred bidder.

CHAIRPERSON: So the number was 161?

10 **MS NGOYE:** 161 Stations that...[intervenes].

CHAIRPERSON: This is separate from phase one?

MS NGOYE: Separate from phase one.

CHAIRPERSON: And it's also for Siyangena?

MS NGOYE: That's correct.

CHAIRPERSON: Okay.

ADV VAS SONI SC: You remember that we said that the earlier phases including phase one and all the extensions brought to 81, that's 161 you are talking about is another 80 or another 161?

20 **MS NGOYE:** It's 161 separate from what Siyangena had been...[intervenes].

CHAIRPERSON: Yes so phase one has got its own train stations, phase two has its own train stations?

MS NGOYE: That's correct Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Now was it a smooth process, the award in

respect of phase two?

MS NGOYE: It was also not a smooth process Chair, however, in respect of phase two at least this time we had a RFP that was issued as part of the tender process, so the starting point, I suppose was, you know, kosher in terms of how things are supposed to be done.

ADV VAS SONI SC: And was it a fair process?

MS NGOYE: No once again, it was not a fair process Chairperson because instead of PRASA, in its request, for suppliers to tender asking for functionality it specified a particular brand that the suppliers
10 or the bidders would have had to comply with or be able to support and that particular brand was a brand only associated with Siyangena.

CHAIRPERSON: Before you proceed let me just ask this question in relation to phase one. Such non-compliances as we may find in phase one with procurement processes would there be any basis for any official within PRASA who was involved in making any decision to say, it was just negligence, I didn't pay attention but it was not deliberate?

MS NGOYE: I find it difficult Chairperson for anybody to say that, the processes are clear, we had a supply chain management, you know policy that required us to do things in a particular way and anybody,
20 especially in that area, because it was a procurement area, would then want to come and say, you know we're negligent, would not be truthful.

CHAIRPERSON: And – so are you in a position to say any non-compliance is – where procurement process is a requirement under phase one, could only have been intentional and deliberate?

MS NGOYE: That's correct Chair.

CHAIRPERSON: Thank you.

ADV VAS SONI SC: May I follow up on that, your answer is an emphatic, no it couldn't have been non-deliberate, you're emphatic it was deliberate?

MS NGOYE: Yes Chair.

ADV VAS SONI SC: Now is – do you say that on account of the various irregularities together with the nature of the irregularities or is there some other basis on which you're making that assertion?

MS NGOYE: It's all the [indistinct] that really were present
10 Chairperson, you know, the simple issue of saying put something out to tender and let it be competed upon properly, we all understand, you know, as a State owned entity and our governance in relation to what we should do in relation to tenders, Section 217, no-one can say who works for a State owned enterprise, that they don't understand the provisions of Section 217, fair processes, equitable and so on. You can't say that, you know, so if you decide to then have a process that does not comply with that which is rigged, in my opinion, you know, then clearly you know exactly what you're doing.

ADV VAS SONI SC: And if you look at all these contracts and the
20 extensions starting with the first – well after the first two to Enzo and Rainbow was there any open process that was followed throughout the phase one aspect.

MS NGOYE: No Chair, there wasn't, there was no RFP issued, you know, there was no open tender issued. Even when, you know, those eight suppliers were called into that meeting, when they themselves

asked for a RFP we couldn't produce one. We then said to them, develop something that would work for PRASA, you know, how does one explain that any further.

CHAIRPERSON: I've heard evidence in regard to other parastatals where it would appear that somebody would say – well I didn't follow this procedure because the procurement provisions and the Supply Chain Management Policy permits that we don't follow these procedures under certain circumstances and those circumstances are A, B, C, D, E and in my view this was an A or B or C situation but those
10 who look at the whole thing and say, no it was like self created urgency or they say, well there is just no way anybody could have said this fits in to this situation but nevertheless they are able to put up something, whether you believe it or not is another thing. Are you aware of anything that those who may not have complied with certain procedures in relation to phase one that they are putting up or have put up in the past to try and justify why they didn't comply?

MS NGOYE: No Chair there was just no justification and there was not even urgency, you know, at least in the case of urgency you would say, look we had to deal with things very quickly and therefore we had to –
20 the procurement policy would have provided for that but when you look at, you know, the work that was done you can't actually read urgency to that you can't even attribute the fact that this particular company was a sole supplier was a single source, you know where in terms of the policy you would be able to do certain things and justify it. In this respect you know, the fact that, in the phase one process you invited

eight suppliers to come in. It's a clear indication that you appreciate that there would be competitors out there who would want to participate in an open tender process. So I can't see any justification from anyone within PRASA who would be able to then say, yes we had to do this because of urgency because Siyangena, for instance is a sole supplier and sole source there was just no justification for that.

CHAIRPERSON: In regard to phase one and a special reference to the various extensions would the main people be Mr Montana and Mr Mbatha.

10 **MS NGOYE:** Yes Chair.

CHAIRPERSON: Should they have made sure there was compliance?

MS NGOYE: That's correct.

CHAIRPERSON: Yes and in regard to Mr Mbatha are you aware of any opportunity where he has – any occasion where he has had an opportunity to put up a justification, if he has one?

MS NGOYE: No I'm not aware Chair Mr Mbatha...[intervenes].

CHAIRPERSON: You're now aware, nobody confronted him or anything?

20 **MS NGOYE:** Well we did Chair, the organisation did as part of the process of dealing with consequence management and subjecting Mr Mbatha to a disciplinary process, that process was not completed to have allowed him to put that justification forward. In fact, I guess because of other issues and the reasons he gave for not being able to attend the disciplinary process, you know. An unfavourable judgement was being taken against him because he didn't present himself to the

hearing so one would not, then understand, what Mr Mbatha...[intervenes].

CHAIRPERSON: But if he wanted to put up his justification, that was an opportunity.

MS NGOYE: Correct Chair

CHAIRPERSON: He might have elected not to use it.

MS NGOYE: Yes Chair.

CHAIRPERSON: Yes, what about Mr Montana?

MS NGOYE: Well Mr Montana was out of the picture at the time.

10 **CHAIRPERSON:** Ja he was out ja.

MS NGOYE: Ja.

CHAIRPERSON: Okay, alright, but the one thing you are sure of is the non-compliances that you have pointed out in relation to phase one, could never have been based on negligence or ignorance of the requirements, they were deliberate?

MS NGOYE: That's correct Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: And just finally if I could follow up on what the Chairperson has pointed out, the phase one including the pilot phase
20 involved amounts exceeding R2billion?

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: As I understood your evidence, the only process that was followed – not the decision making process, the process that was followed was those eight people being invited?

MS NGOYE: That's correct Chair. The eight people that had been

invited, but once again, I still contend that it was just selecting eight people and not necessarily putting it out, you know, as a tender process.

CHAIRPERSON: So actually what was required was to put the whole thing out to tender...[intervenes].

MS NGOYE: That's correct Chair.

CHAIRPERSON: It was not done?

MS NGOYE: No it was not done Chair.

CHAIRPERSON: The situation – the procurement policy, the
10 procurement provisions did not require that you just pick and choose whoever you want to invite?

MS NGOYE: No Chair not in this circumstance, you know, there might be other circumstances but not this one Chair.

CHAIRPERSON: Yes, okay.

ADV VAS SONI SC: And just to finalise the point, that was the only decision in which the BEC and the BAC played their role?

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: And the FCIP?

MS NGOYE: And the FCIP yes.

20 **ADV VAS SONI SC:** So all the other decisions and all the other contract – or the contracts that we concluded were done by PRASA officials without any of this being subject to some scrutiny?

MS NGOYE: That's correct Chair.

CHAIRPERSON: Now you spoke – you referred to the amounts having been above Mr Montana's delegated authority, is that correct?

MS NGOYE: That's correct Chair.

CHAIRPERSON: In regard to the extensions?

MS NGOYE: That's correct Chair.

CHAIRPERSON: And is that the position with regard to all the extensions that are involved in phase one that he was involved in?

MS NGOYE: The – all the amounts was above his delegations – all the amounts in relation to phase one and the extension thereof was above his delegation.

CHAIRPERSON: All the amounts?

10 **MS NGOYE:** All the amounts.

CHAIRPERSON: Yes.

MS NGOYE: Yes.

CHAIRPERSON: And you said his limit was R100million?

MS NGOYE: R100million Chair.

CHAIRPERSON: So obviously they were far above that?

MS NGOYE: That's correct Chair.

CHAIRPERSON: And once again that could not have been out of oversight, he would have known his limit?

MS NGOYE: That's correct Chair.

20 **CHAIRPERSON:** And if he approved this extensions, he did so knowing that he was acting outside of his delegated authority?

MS NGOYE: That's correct Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Now in relation to phase two now, you say that there was a RFP but the complaint made was that they had asked for

certain brands of equipment to be used?

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: And ...[intervenes].

CHAIRPERSON: I'm sorry Mr Soni, please don't forget your next question. In terms of the Supply Chain Management Policy and in terms of other instruments and prescripts as you know them at PRASA are there circumstances under which the Group Chief Executive Officer would be – or was authorised to exceed his delegated authority on certain conditions?

10 **MS NGOYE:** No Chair there were none.

CHAIRPERSON: Not at all?

MS NGOYE: Not at all.

CHAIRPERSON: Yes.

MS NGOYE: If there was anything above his delegation of authority, even in terms of signing of contracts that are above his delegation of authority he would have been given that permission by the Board, to say, we then authorise you Group CEO to then enter into this contract after the Board would have, obviously, considered the issues and have had supported the submissions that were made to it but otherwise he

20 just wouldn't...[intervenes].

CHAIRPERSON: Yes, it wouldn't happen.

MS NGOYE: No.

CHAIRPERSON: He would have to refer that to the Board?

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: Now in respect of the fact that certain brands had

been identified to be used to comply with the tender requirements, what is PRASA's policy?

MS NGOYE: Chair our policy, you know, does not support the mentioning of brands when we go out into the public requesting for tenders to be – for people to participate in our tenders. So that issue is not there, you can't mention a brand in a tender process because then it makes it un-competitive.

CHAIRPERSON: When you talk about mentioning, you mean, in the documents that you issue to the public?

10 **MS NGOYE:** That's correct Chair, you can't specify a brand.

CHAIRPERSON: Yes, yes you can just specify what you need.

MS NGOYE: That's correct Chair but not a brand.

CHAIRPERSON: Ja.

ADV VAS SONI SC: And was this a complaint that was made by any of the tenderers?

MS NGOYE: Yes it was Chair, in fact, two of the bidders, you know, had a problem with it because the brands that were specified favoured Siyangena to the detriment of the other bidders.

20 **ADV VAS SONI SC:** Now when you say the brands – those brands were identified in the RFP.

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: And in respect of favouring Siyangena, why do you say that the use of that brand would favour Siyangena?

MS NGOYE: Chair the way this process started, in fact, was that there was an unsolicited proposal, effectively, that was made by Siyangena in

relation to phase two. So in there it was very clear that their brands are the brands that support the Babylon and Delmaya system and that was then, what was used effectively, you know, to take the matter out to tender reflecting those two brands and it followed from the unsolicited proposal that was made by Siyangena in relation to phase two.

CHAIRPERSON: And who would have been responsible for the inclusion of the brands?

MS NGOYE: Well the Supply Chain Management area, in this regard
10 the CPO, the Chief Procurement Officer at the time was a gentleman by the name of Mr Jasapet Konghula [?], so he ran with this process, you know, from a procurement perspective.

CHAIRPERSON: Had he replaced Mr Mbatha?

MS NGOYE: Yes Chair.

CHAIRPERSON: Oh okay, thank you.

ADV VAS SONI SC: And in relation to the issue of this RFP how long before the issue of this RFP had Mr Konghula replaced Mr Mbatha?

MS NGOYE: I can't remember the times Chair but what I know is that at the time that this particular process was involved Mr Mbatha had no
20 longer been the CPO, Mr Konghula had confirmed the [indistinct].

CHAIRPERSON: Now did Mr Mbatha resign when there was a disciplinary hearing or what had happened?

MS NGOYE: No Chair, he got moved to another area within the organisation.

CHAIRPERSON: He's still there?

MS NGOYE: Well he left now because the disciplinary process that continued in his absence, found him guilty and therefore he was dismissed.

CHAIRPERSON: Yes okay was that disciplinary process Chaired by an outsider by any chance?

MS NGOYE: Yes Chair.

CHAIRPERSON: A lawyer?

MS NGOYE: Yes.

CHAIRPERSON: And would that a be recent decision that he or she
10 made?

MS NGOYE: Yes Chair.

CHAIRPERSON: Okay do we have that?

ADV VAS SONI SC: We will get it.

CHAIRPERSON: Okay ja, so it's important that we have that and he didn't take the issue any further, Mr Mbatha?

MS NGOYE: Well he went to the CCMA Chair to challenge the dismissal, you know, so that process has still not been completed.

CHAIRPERSON: It's still going on?

MS NGOYE: Yes.

20 **CHAIRPERSON:** Okay.

ADV VAS SONI SC: So just so that Chairperson has an idea of timelines, Mr Konghula replaces Mr Mbatha?

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: At the time – at that time...[intervenes].

CHAIRPERSON: The timeframe, maybe to say, Mr Mbatha was moved

from procurement more or less at that time in that particular year and then Konghula came in, do you remember when that was?

MS NGOYE: If anything, I think Mr Mbatha, if I recall Chair Mr Mbatha was removed as the CPO perhaps end of 2011/2012.

CHAIRPERSON: Oh okay.

MS NGOYE: Yes, because this process is a 2013 process, the second phase.

CHAIRPERSON: But the disciplinary hearing would have taken place when?

10 **MS NGOYE:** It's not long ago Chair, remember this is a subject of an investigation so what had happened is that – because also the Public Protector had picked this up. Now as part of the remedial actions PRASA obviously had to follow consequence management processes to make sure that those people that had been identified in the...[intervenes].

CHAIRPERSON: So the disciplinary process is a recent...[intervenes].

MS NGOYE: It's not...[intervenes].

CHAIRPERSON: A year or two ago.

MS NGOYE: It's last year actually Chair.

20 **CHAIRPERSON:** Okay.

ADV VAS SONI SC: But in between, after Mr Mbatha had been removed, you say he was removed, he moved to another section of PRASA?

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: And he remained at PRASA until the disciplinary

inquiry.

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: So from about 2012 to about 2018/2019 he remained at PRASA?

MS NGOYE: That's correct he was the Chief Information Officer.

CHAIRPERSON: Was he removed by Mr Montana?

MS NGOYE: No Chair, it was the recent – the last Board that had the Board...[intervenes].

CHAIRPERSON: Ms Kwinana?

10 **MS NGOYE:** Ms Kwinana's Board that initiated the disciplinary proceedings.

CHAIRPERSON: Yes.

MS NGOYE: And appointed a law firm to run with those processes, so it was last year.

CHAIRPERSON: Oh his removal as CPO was also a recent thing?

MS NGOYE: Yes Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: [Indistinct] moved from CPO...[intervenes].

20 **MS NGOYE:** No sorry Chair, CIO, Chief Information Officer. So CPO being the Chief Procurement Officer...[intervenes].

CHAIRPERSON: No I understand but initially I was under the impression that he was removed as CPO around 2011 maybe 2012, maybe 2013 but then I thought you were saying it only happened recently.

MS NGOYE: No Chair CPO as the Chief Procurement Officer was

around 2011/2012.

CHAIRPERSON: When he was removed from there, it would have been during Montana's time.

MS NGOYE: That's correct Chair.

CHAIRPERSON: But you say he was not removed by him?

MS NGOYE: No he was not removed – he was removed by him as a CPO but he was not dismissed by Mr Montana...[intervenes].

CHAIRPERSON: No I mean from the position of CPO.

MS NGOYE: That's correct, he was removed by Mr Montana, that's
10 correct Chair.

CHAIRPERSON: Yes okay no that's fine.

MS NGOYE: Yes, sorry we're at cross purposes.

CHAIRPERSON: Ja that's fine.

ADV VAS SONI SC: Was there any reason given for Mr Mbatha to be removed from the position as CPO to CIO?

MS NGOYE: I wouldn't know the reasons Chair, I mean, I think the practice at PRASA was that you found ourselves being moved ever so often so one never understood the rationale of, you know, moving people, it happened to a lot of us that we were moved. At one point, I
20 think as employees we would make fun of the slogan of PRASA to say be moved, referring really to the employees within the organisation.

ADV VAS SONI SC: Within PRASA what would be a more prestigious position, being the Chief Procurement Officer or the Chief Information Officer?

MS NGOYE: I would say...[intervenes].

CHAIRPERSON: Or was it a parallel?

MS NGOYE: That was a parallel move.

CHAIRPERSON: More or less ...[intervenes].

MS NGOYE: Ja it's got no salary increase, it was a parallel move because, you know, ja.

CHAIRPERSON: Oh okay.

MS NGOYE: Because at one-point Chairperson the CPO was an Executive position right and that's what Mr Mbatha was, he's always been an Executive in the organisation. When Mr Konghula came on
10 board it was then a GM position, a General Manager position so he did not have the same status as that of Mr Mbatha. So there were changes to the operational structure that did no place Mr Konghula at an Executive level, however, Mr Mbatha from being moved from the CPO at Executive level went to the CIO which was still an Executive appointment.

ADV VAS SONI SC: Now one of the things you say in the – if you could read the last sentence of paragraph 34, Mr Ngoye.

MS NGOYE: Yes I'm saying there it's not surprisingly given that the specs were tailor made for Siyangena, it was awarded the contracted.

20 **CHAIRPERSON:** Well I don't know who drafted the affidavit, specs, I guess should have been specifications.

MS NGOYE: Oh sorry it was an urgent process Chair.

CHAIRPERSON: Okay, alright.

ADV VAS SONI SC: But in the Swifambo matter relating to the purchase of the locomotives that's – one of the reasons that the SCA

expressly said the tender was invalid because specifications for the locomotives had been tailored made for Swifambo, do you recall the judgement?

MS NGOYE: Yes Chair.

ADV VAS SONI SC: When you used the word “tailor made” in your affidavit did you have that in mind?

MS NGOYE: Yes Chair, I mentioned earlier that the – it was an unsolicited proposal that was made by Siyangena to PRASA for the rest of the stations. So effectively, you know, tailor making it was making it
10 to suit the proposal that Siyangena had made.

ADV VAS SONI SC: So the specifications that were put out in the RFP, how were they related to what was offered in the unsolicited proposal from Siyangena?

MS NGOYE: Well the mention of the brand Chair is a give away you know, in the circumstances, because only Siyangena could support Delmaya and Babylon and therefore the other bidders were excluded from participating.

CHAIRPERSON: What brand was this that was mentioned?

MS NGOYE: It's a brand, it's called Dalmaya and the one was
20 Babylon.

CHAIRPERSON: And why would Siyangena be the only one that could access it?

MS NGOYE: I guess because they were the- they were regarded, like the OEM, the original, you know...[intervenes].

CHAIRPERSON: Oh okay, manufacturer?

MS NGOYE: That's it.

CHAIRPERSON: Yes.

MS NGOYE: Ja, so they're the ones that supported – they were the only ones that could support that brand.

CHAIRPERSON: Mmm okay thank you.

ADV VAS SONI SC: So can you recall what the amount of that – of phase two was, more or less?

MS NGOYE: It was over R2billion Chairperson.

CHAIRPERSON: Over R2billion?

10 **MS NGOYE:** Yes.

CHAIRPERSON: Phase one was initially R1.1 then R1.9 but ultimately R2.2 or there about.

MS NGOYE: Yes with the inclusion of the R250.

CHAIRPERSON: Ja.

MS NGOYE: Ja.

CHAIRPERSON: And then phase two was?

MS NGOYE: Over R2billion.

CHAIRPERSON: Over R2billion.

MS NGOYE: Yes it was 161 stations Chair.

20 **CHAIRPERSON:** Yes.

MS NGOYE: Ja.

CHAIRPERSON: Okay, but just to – you were talking about – we were talking about the brand now and you were making the point that only Siyangena could come up with the brand that was required. So is the position that, in regard to phase one, only Siyangena was told that they

needed to include a branding model in the [indistinct] or in their proposal?

MS NGOYE: Yes Chair because they are the only ones.

CHAIRPERSON: And the other ones were not told?

MS NGOYE: Yes Chair.

CHAIRPERSON: In regard to phase two then the brand was put in that ensured that only Siyagena could win.

MS NGOYE: That is correct. That is correct, Chair.

CHAIRPERSON: So, under phase one because the others did not know
10 about the funding modal they stood no chance of winning?

MS NGOYE: That is correct, Chair.

CHAIRPERSON: So, under phase two is [intervenes].

MS NGOYE: The brand.

CHAIRPERSON: Is the brand or there is a requirement of a popular brand. They also stood no chance of winning.

MS NGOYE: That is correct, Chair.

CHAIRPERSON: Yes.

ADV VAS SONI SC: So if I could just go back to phase one, when you
say that Siyagena was told, is it something you know or something you
20 assume because they had included there funding modal.

ADV VAS SONI SC: What I understand Chair is that as part of the discussions that happened you know when there was I mean you know I started by saying it was a subcontractor and from a subcontractor you know they got to be given the seven You know and they were communicating with people within PRASA, you know and discussing how

best it is to assist PRASA in doing this project. And therefore, you know with those discussions came the issue of the funding modal to say no we will help you out. If you cannot afford it we will help you out and therefore they are the ones that knew that knew that you know that would be received very well by PRASA because they had been interacting with the people in PRASA, Chair, to the exclusion of obviously all those other eight.

CHAIRPERSON: Otherwise how would they have known that PRASA would not have the budget to fund this?

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

CHAIRPERSON: Ja.

MS NGOYE: The discussions were happening internally.

CHAIRPERSON: In the quiet. Ja, Okay.

ADV VAS SONI SC: And you say that on the basis of the investigation that you did in preparing for the founding affidavit in the review matter?

MS NGOYE: That is correct, Chair.

ADV VAS SONI SC: Alright, then as seems to be the practice there is the phase two and then there is something added to it. Could you tell the Chairperson about that addendum to that phase two contract?

20 **MS NGOYE**: Chair, the addendum was a mystery to PRASA.

CHAIRPERSON: I am – I am sorry Miss Ngoye. That is so difficult for me to understand. How anybody could think that a job for two billion – over two billion could really not go out to an open tender in circumstances where there is no justification or a light upon that is provided for in Procurement Provisions and Supply Chain Management to

say we are justified in not doing - following this procedure. It is just so [intervenes].

MS NGOYE: Bizarre, Chair.

CHAIRPERSON: It took me big amounts and obviously there will be questions about that. If we are talking small amounts maybe it might not notice. If you are talking big amounts you have to know that people will want to find out.

MS NGOYE: Yes, Chair.

CHAIRPERSON: And people will ask questions. So, I just do not
10 understand what are the answers that you think you will give when you are asked questions? You – you understand

MS NGOYE: I – I get you Chair. I do. And I think you know that is why the investigations revealed you know the amount of corruption and maladministration and all sorts that and fraud that were happening in these – in these processes. Noncompliance with legislation and that is why at the time PRASA, the Board of Doctor Popo Molefe decided he needs to have these contracts set aside because the investigations revealed these issues that could not be explained, Chair.

CHAIRPERSON: Well I do not want us to forget Mr Soni before we finish
20 on phase two. Let me go back to the question of deliberate, intentional welting of processes and procedures as opposed to oversight, ignorance or anything like that to make sure she covers all of those as she sees things and so the facts that emerged from various investigations. It is important that those be dealt be with head on to say if somebody is going to come and defend noncompliance they must know that the – the – the

suggestion is that it was intentional, it was deliberate, it was no oversight. Yes.

ADV VAS SONI SC: Absolutely. Yes, and they must have all the documents available.

CHAIRPERSON: All the documents available. Yes. Ja.

ADV VAS SONI SC: Now, sorry, we were talking about the addendum and you were saying there was a strange aspect to this. Please can you explain the Chairperson what happened?

MS NGOYE: Chairperson, when the Board of PRASA at the time of
10 Doctor Molefe decide what was you know looking at these contracts we were given an instruction by the Board to say tell Siyagena to stop working because we are not going to pay them because of these irregularities. And Siyagena brought an interdict against PRASA, the High Court in Pretoria and as part as their papers they produced this addendum. Now nobody at PRASA knew about the addendum. We searched and the business unit that was managing the contract of Siyagena was not even aware that there was addendum. We searched, you know, the documentations within PRASA looking for this addendum it was not found. So this addendum was produced by Siyagena for the first
20 time at the meeting, at Court in fact and we were alarmed because we did not know what the document was for and we searched, you know, vigorously effectively to try find this document and we just could not find it in the records of PRASA. But this document was signed by Mr Montana.

CHAIRPERSON: And have we got it here?

ADV VAS SONI SC: We do not have that document that Mr Chair, but we will obviously [intervenes].

CHAIRPERSON: It is critical.

MS NGOYE: it is part of the bundle, Chair, for Court but we will have to bring it also here.

CHAIRPERSON: I know I think Mr Soni you were trying to avoid bringing too many documents into the commission but some of them are critical. Ja. So, if it is going to be important to go through again and maybe revise your selection. Okay, now what do you remember what kind of
10 date that addendum would have been signed?

MS NGOYE: Let me just – let me just, if I am not mistaken if I recall Chair, it was April 2014.

CHAIRPERSON: Yes.

MS NGOYE: Yes.

CHAIRPERSON: Yes, okay. I guess you Mr Soni is still going to ask you about what - about its contents.

ADV VAS SONI SC: Yes, well can I just start off by making this point that around the 31st of March 2014 Mr Montana had formally said that he was going to leave PRASA.

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

ADV VAS SONI SC: So, this document is signed after that time?

MS NGOYE: That is correct, Chair.

ADV VAS SONI SC: And Mr Montana signs on behalf of PRASA?

MS NGOYE: That is correct, Chair.

ADV VAS SONI SC: Now, what – what was the – the –the, what services were Siyagena to provide in respect of that addendum?

MS NGOYE: Chair, it was effectively a type of a maintenance contract, you know, where Siyagena in relation to phase one would replace, you know, certain equipment with others because from a – from a – from a phase one I think at the time had run for a period of three years and so if Doctor. if there needed to be a change to the equipment then Siyagena would then again come in and be able to provide the maintenance.

But, what we found interesting also about this addendum was that
10 you would have expected there would be service level agreement to say this is how you are going to do things and this is you know the process that you would follow. We could not find that Service Level Agreement that related to the - to that addendum. But what we understood was the requirement at the time was that PRASA will then have to pay Siyagena an amount of I think it is 10 million.

ADV VAS SONI SC: A month

MS NGOYE: A month. Ten million a month for those services. So, so when Siyagena was suing PRASA through the arbitration process for monies owed it would include this ten million.

20 **CHAIRPERSON:** Now, we are dealing with phase two. Phase two is related to an additional a hundred and sixty-two – sixty-one.

MS NGOYE: A hundred and sixty-one, Chair.

CHAIRPERSON: A hundred and sixty-one train stations.

MS NGOYE: Yes.

CHAIRPERSON: And there is an addendum.

MS NGOYE: An addendum.

CHAIRPERSON: Ja. The addendum is for maintenance. Maintenance of what of the train stations?

MS NGOYE: Okay, of the equipment that Siyagene would have

CHAIRPERSON: Used.

MS NGOYE: Yes, so if it needed to be changed that is right.

CHAIRPERSON: Yes.

MS NGOYE: So that addendum related to them having to that work.

CHAIRPERSON: And do you remember how long what the duration was
10 intended to be for that - for those services to be provided by Siyagena?

MS NGOYE: I cannot remember, Chair. I cannot remember.

CHAIRPERSON: Over a few years?

MS NGOYE: Yes, it would have been. Remember that the phase one project was actually near completion at the time.

CHAIRPERSON: Yes.

MS NGOYE: And then this addendum came out.

CHAIRPERSON: The addendum related phase one and phase two?

MS NGOYE: I think it was phase one and two Chair, but I stand to be corrected I will have to check on it.

20 **CHAIRPERSON:** But phase one definitely?

MS NGOYE: But phase one definitely.

CHAIRPERSON: Yes.

MS NGOYE: Yes, Chair.

CHAIRPERSON: And you say they were to be paid ten million rand a month?

MS NGOYE: That is correct, Chair.

CHAIRPERSON: Which means in twelve months that will be one hundred and twenty million?

MS NGOYE: That is correct, Chair.

CHAIRPERSON: Yes, and nobody knew about this addendum that is why you had to look for it?

MS NGOYE: That is correct, Chair. We saw it for the first time when Siyagena's attorneys produced it, we knew about it.

CHAIRPERSON: Yes.

10 **ADV VAS SONI SC:** When you say they produced it that surely would have been part of the papers they presented to Court?

MS NGOYE: That is correct, Chair. When they served us the papers [intervenes].

CHAIRPERSON: [indistinct]

MS NGOYE: That we had papers in support of the incident. That is correct.

ADV VAS SONI SC: Can I just raise this, that maintenance agreement was in relation to equipment that had been supplied in phase one?

20 **MS NGOYE:** That is correct, Chair. Definitely phase one as I say I cannot remember if it extended to phase two.

ADV VAS SONI SC: That equipment this given the times because this is 2014 that equipment would be at least two or three years old?

MS NGOYE: That is correct, Chair.

ADV VAS SONI SC: Let me just ask you this and I will just ask as a general proposition, this was electronic equipment, would I be correct?

MS NGOYE: That is correct, Chair.

ADV VAS SONI SC: But surely in those two years equipment would have evolved so much that that equipment would effectively have been almost ancient when one looks at technological development?

MS NGOYE: Yes, Chair. It is possible.

ADV VAS SONI SC: Has anybody examined where there is such a contract that is worth entering into in other words spending 10 million rand to maintain equipment that might now be outdated technologically speaking?

10 **MS NGOYE:** Chair, that is why, you know, one is saying it was just a bizarre situation we were faced with. Especially, with the business that was managing the particular contract was not even aware that there was this addendum that related to maintenance of the equipment. So, you know, we were all surprised to see this document and we just did not know how it came about. You know, so it for us it was just in fact we thought that this document was created outside.

CHAIRPERSON: And do you remember whether somebody within PRASA had witnessed Mr Montana's signature on the addendum?

MS NGOYE: No, Chair.

20 **CHAIRPERSON:** There was no witness, or you cannot remember?

MS NGOYE: I cannot remember. Ja, I cannot remember this witness. But definitely it was [intervenes].

CHAIRPERSON: But probably you would have remembered that somebody you knew that witnessed, that is it.

MS NGOYE: That is it. Ja.

CHAIRPERSON: But you cannot remember when it was?

MS NGOYE: No, no I cannot recall. But I know that the document was all I remember Chair is that the document was signed by Mr Montana.

CHAIRPERSON: Yes, and some of us are not so good with technology, Miss Ngoye, but in terms of the old language I want to say when you went through the file to PRASA's file where all documents, agreements and correspondence relating to that project were supposed to be there was no that memorandum was not there.

MS NGOYE: No, Chair.

10 **CHAIRPERSON**: You probably did not go to a physical file and you [intervenes].

MS NGOYE: We looked we even one of the companies that we had employed during the investigation Fax Consulting could basically - remember I spoke about our computers being imaged? So could basically go into the information of PRASA and pull out you know anything that we requested.

CHAIRPERSON: Yes. So, it definitely was not there?

MS NGOYE: It was just not there, Chair.

CHAIRPERSON: Yes, okay.

20 **ADV VAS SONI SC**: Now the interesting thing that [intervenes].

CHAIRPERSON: I am sorry. I am sorry. Sorry. I am terribly sorry please do not forget the point you on. Now you say that the investigators had imaged your computers, PRASA's computers and they did not find this addendum, is that right?

MS NGOYE: That is correct, Chair.

CHAIRPERSON: So, in other words as far as you understand the Constitution, that addendum was never entered into any PRASA computer?

MS NGOYE: No, Chair.

CHAIRPERSON: And therefore, it could not have been created from a PRASA computer?

MS NGOYE: That is correct, Chair.

CHAIRPERSON: It could only have been created from outside of PRASA?

10 **MS NGOYE**: That is what – well, that is the conclusion we came to, Chair.

CHAIRPERSON: Yes, because otherwise all documents that are created within PRASA.

MS NGOYE: Would have been found.

CHAIRPERSON: Would be found within PRASA computers.

MS NGOYE: That is correct, Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Now, the interesting thing about and I know you have mentioned other interesting things, but the interesting thing about
20 this addendum is, it is called an addendum to phase two, am I right?

MS NGOYE: That is correct, Chair.

ADV VAS SONI SC: But it is actually related to phase one.

MS NGOYE: To phase one because you could not have had phase two was just beginning, you know, phase one would have been the one that would require changes to their equipment. But, ja, that is why a lot of

things did not make sense when we looked at it. Our conclusion with their investigating team and our attorneys was that there was clearly something I missed here. It did not make sense.

ADV VAS SONI SC: Well in any case, phase one had phase one then it had an extension then it had an addendum all in the space of about 6 months?

MS NGOYE: Effectively, Chair. It is correct.

ADV VAS SONI SC: And then three years later it will be odd to say then that this is a further addendum to phase one?

10 **MS NGOYE:** That is correct, Chair.

CHAIRPERSON: Are you suggesting in any way that the reference to in the addendum to phase two, which was wrong from what you have said, was deliberate?

MS NGOYE: It was premature, Chair. You could not have made reference to phase two because in terms of, remember also one understands that there is warranty periods, you know in relation to the equipment that would have been provided to PRASA. So, phase two - they were still in the process I mean phase two was only completed in fact last year.

20 **CHAIRPERSON:** Yes. No, what I am asking is it is strange that you have said the addendum is written phase two because phase two is just starting, at that time?

MS NGOYE: That is correct, Chair.

CHAIRPERSON: Phase one got completed three years before. Is that right?

MS NGOYE: Yes, Chair.

CHAIRPERSON: So, I am asking the question whether you think the person who wrote phase two on the addendum did so intentionally or it might have been an oversight?

MS NGOYE: I think it was an oversight Chairperson.

CHAIRPERSON: Hmm?

MS NGOYE: I think it was an oversight.

CHAIRPERSON: You think it was an oversight?

MS NGOYE: Yes. Ja. I think it was an oversight.

10 **CHAIRPERSON:** Okay, no that is fine. I do not think that somebody may have thought it is going to be strange for a document that comes up 3 years after the completion of phase one will be written phase one in terms of maintenance and then wrote phase two because phase two is just starting so it would be ...[indistinct] you think that is unlikely. You think that because phase one had just – phase two had just started what was being talked about was phase two and in the process and somebody wrote phase two?

MS NGOYE: Well, Chair the whole thing just did not make sense to us. You know, here we are in the midst of the phase two work still being
20 done, you know, it has not been completed and you then you know create this addendum for purposes of phase two instead of you call it phase two but you refer to phase one which was supposed to be completed at the time. It just did not make sense I mean I my view [intervenes].

CHAIRPERSON: It may be over – oversight, you say.

MS NGOYE: My view is that you know in a haste you know you then do not check what it is you have put on the document.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Well, can that be correct and I am saying this in this the document headed Addendum to Phase Two but the substance the work to be done is in relation to phase one.

MS NGOYE: Yes, Chair and that is why I am saying, you know because we could not make sense we could not find this document the only thing that we could deduce was that you know, things were done in a rush and
10 therefore people did not apply their minds when they were putting the documents together.

CHAIRPERSON: But counsel is saying in effect it would look strange that somebody who knows that this document relates to work that belongs to phase one would write at the top phase two because of oversight.

MS NGOYE: Yes, Chair.

CHAIRPERSON: When he knows the old document is about phase one.

MS NGOYE: Phase one. Ja. Yes, Chair.

CHAIRPERSON: There must be so much to remind him that this is about phase – phase one and therefore for him to change this if it was
20 oversight.

MS NGOYE: Yes, Chair. Look I do not understand really what happened and if one can explain it as I said you know this is just pounced on us.

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

ADV VAS SONI SC: I suppose that all that one can do is draw insurances from all the facts put together?

MS NGOYE: That is correct, Chair.

ADV VAS SONI SC: Including the fact that this about the time Mr Montana and his leaving.

MS NGOYE: That is correct, Chair.

ADV VAS SONI SC: Now, just finally on that in respect of that addendum whether it is correctly called Addendum to phase one or phase two had any claims been made by PRASA between April 2014 to the time that Siyagena sued for the money owing in terms of that contract?

MS NGOYE: Are we talking to phase one?

10 **ADV VAS SONI SC:** No, no this addendum here. That is [intervenes].

MS NGOYE: No, there was no payment in relation to the maintenance. Remember this was maintenance. So, we did not because we did not know about this so nothing could have been attributed to the payment in relations to the maintenance. So, the payments that was done in relation to the work that Siyagena had performed for PRASA was in relation to the contracts themselves and not the maintenance portion.

ADV VAS SONI SC: Miss Ngoye you are making a slightly different point. This agreement is concluded in April 2014?

MS NGOYE: That is correct, Chair. Well, it is purportedly. I do not
20 know want to say that it is concluded because I do not know.

ADV VAS SONI SC: That is what we had before.

MS NGOYE: That is correct, Chair.

ADV VAS SONI SC: Now, that agreement says PRASA must pay Siyagena 10 million rand a month for maintenance of phase one equipment?

MS NGOYE: Yes, Chair.

ADV VAS SONI SC: Now, that ten million rand a month becomes due at the time the agreement kicks in.

MS NGOYE: It should.

ADV VAS SONI SC: Well, I mean [intervenes].

CHAIRPERSON: At the time of signature or soon thereafter?

ADV VAS SONI SC: Indeed, Chair.

CHAIRPERSON: Is that so?

ADV VAS SONI SC: Yes.

10 **CHAIRPERSON**: Okay so it was signed in April twenty ...[intervenes].

MS NGOYE: Fourteen

CHAIRPERSON: Fourteen. The actual performance of the maintenance work by Siyagena was supposed to start immediately?

MS NGOYE: But it could not have started immediately, Chair.

CHAIRPERSON: Hmm?

MS NGOYE: It could not have started immediately because [intervenes].

CHAIRPERSON: Because they were busy with phase two?

MS NGOYE: Well, you got warranties, you know, that would help you at least with you know changing ...[intervenes].

20 **CHAIRPERSON**: Maintenance.

MS NGOYE: Maintenance issues in relation to the phase one so it would then have to kick in after the warranty period lapsed.

CHAIRPERSON: Yes.

MS NGOYE: Yes.

CHAIRPERSON: But do you remember up to when the warranties would have been valid?

MS NGOYE: I do not recall, Chair. I do not remember.

CHAIRPERSON: It is the position that you do not know whether at the time of the signing of the addendum the warranties [intervenes].

MS NGOYE: The warranties ...[intervenes].

CHAIRPERSON: Had kicked in were no longer operational?

MS NGOYE: I cannot recall, Chair. I do not want to make submissions to that.

10 **ADV VAS SONI SC**: See because that too creates a problem about the propriety about entering into that contract. Mr Montana is about to leave, if the warrant is only going to expire 6 months from then, what is the need to enter into the contract before he leaves?

MS NGOYE: That is correct, chair. I mean I will say again you know we found it interesting that this document was just produced at the time that it was produced and the fact that we could not find it and that is why I am saying Chair internally in relation to the payments for maintenance we could not find, you now, the fact that PRASA had paid for maintenance anywhere in relation to the phase one contract. The business unit that
20 was responsible for this contract if they knew about it would have known that they would have had to pay this maintenance as well but because they did not know you know there would not have been any justification from them to pay.

CHAIRPERSON: What is the unit at PRASA that ...[intervenes].

MS NGOYE: It was PRASA Cress. It was the Corporate Real Estate.

CHAIRPERSON: Yes, yes. They did not know anything about it.

MS NGOYE: No, we asked the CEO at the time was, Taran Ngubani, and she looked with her team and they did not know about it. We asked procurement ...[intervenes].

CHAIRPERSON: They never asked for anything like that, as far as you know?

MS NGOYE: No, when we asked, we asked as we received the document, so we went back and said we need to check ourselves whether this document exists. We went to procurement and procurement did not
10 have a record of the document. We went to the business unit that was managing the project to ask if they knew about this document and they did not know as well.

ADV VAS SONI SC: But the grace, oh sorry Chair.

CHAIRPERSON: Maybe you ask him, and I will come back.

ADV VAS SONI SC: I do not mind. I know my question.

CHAIRPERSON: Just to complete the picture now, I am taking you to something else, he made by PRASA to Siyagena of the work done with regard to phase one over the 3 years before this addendum was find was did PRASA pay anything?

20 **MS NGOYE**: Yes, we did Chair. I think we paid over 1 billion.

CHAIRPERSON: Oh, had you in the meantime found money?

MS NGOYE: Yes, we had money. We paid over 1 billion. I think in respect of phase one at the time the Board requested us to stop paying Siyagena, we were owing Siyagena about six hundred million.

CHAIRPERSON: You would have paid about 1.6 billion.

MS NGOYE: For phase one.

CHAIRPERSON: For phase one.

MS NGOYE: Ja.

ADV VAS SONI SC: What is also intriguing is the first time you get to know about this document is when PRASA tells Siyagena to stop working.

MS NGOYE: That is correct, Chair.

ADV VAS SONI SC: Now, if Siyagena, if there was such an agreement, I am coming back to the point you made. We must accept we do not know if there was any but if there was such an agreement then one would
10 expect that if money is due in terms of an agreement Siyagena would have asked for payments in terms of that.

MS NGOYE: They would have invoiced. Definitely, Chair.

ADV VAS SONI SC: And had there been any [intervenes].

CHAIRPERSON: I am sorry. I am sorry. Just will you not just repeat that question, please? I did not follow.

ADV VAS SONI SC: So if there was such a contract then one must assume that at the time you told him to stop, money is owing to Siyagena because that is why they do not want to stop.

MS NGOYE: That is correct, Chair.

20 **ADV VAS SONI SC:** Now, had - based on the investigations you had done and the team, had it been found out whether Siyagena had sent any invoices in regards to that 10 million rand a month?

MS NGOYE: Chairperson, what happened is that in relation to phase one the contract was obviously not known so there was no submission of an invoice in relation to the maintenance of it. What we then found out was

in relation to the matters pertaining to phase 2 that in Siyangena's invoices there would be reference to this maintenance agreement. But obviously at the time we had put a hold, the board had put a hold on payment of these amounts to Siyangena so no monies would have been paid in relation to this addendum for Siyangena. But they included the amount that PRASA owes them.

ADV VAS SONI SC: Can I ask- oh sorry, Chair.

CHAIRPERSON: I am sorry. Just I need to get my timeframes right. Roundabout when in terms of month and year was PRASA discovering or
10 were you discovering- did you discover that there was this addendum? It was signed in 14- in April 2014.

MS NGOYE: Mm.

CHAIRPERSON: But when did you discover- when was it that Siyangena took you to court?

MS NGOYE: We asked Siyangena to stop I think it was in 2016.

CHAIRPERSON: 2016.

MS NGOYE: The latest 2016, yes.

CHAIRPERSON: Yes.

MS NGOYE: It could be 2016/2017 when the board said, look based on
20 the investigations that we have stop paying Siyangena.

CHAIRPERSON: Yes.

MS NGOYE: So it was ... (intervenes)

CHAIRPERSON: So it would have been around- could have been 2017.

MS NGOYE: 2016.

CHAIRPERSON: 2016?

MS NGOYE: 2016, ja Chair.

CHAIRPERSON: Ja.

MS NGOYE: The board of Dr Popo Molefe was still in place.

CHAIRPERSON: Yes. So that was about 3, 2 and half years or thereabout after.

MS NGOYE: Yes after.

CHAIRPERSON: After the signing.

MS NGOYE: That is correct Chair.

CHAIRPERSON: So during that period PRASA had not made any payment
10 in regard to this addendum?

MS NGOYE: No Chair.

CHAIRPERSON: The maintenance one.

MS NGOYE: Yes Chair.

CHAIRPERSON: It had made payments in regard to phase 1.

MS NGOYE: Yes.

CHAIRPERSON: In terms of the ... (intervenes)

MS NGOYE: The work that have been done.

CHAIRPERSON: The work that have been done.

MS NGOYE: Yes. Because there was a process also Chair.

20 **CHAIRPERSON:** But you say that Siyangena had included references to this addendum and maintenance work in their invoices.

MS NGOYE: After.

CHAIRPERSON: After.

MS NGOYE: After we found out.

CHAIRPERSON: Oh, after you found out.

MS NGOYE: Remember they- ja, they still bill us Chair. They continue to bill us.

CHAIRPERSON: Yes.

MS NGOYE: In fact, what happened Chair with the interdict, we lost the interdict and so they were allowed to continue to work.

CHAIRPERSON: Yes.

MS NGOYE: And so, they continued ... (intervenes)

CHAIRPERSON: So they started billing you for the first time in regard to this addendum.

10 **MS NGOYE:** Yes.

CHAIRPERSON: So they had this addendum, it was signed in April 2014 but did not say anything about payment. Did you know- did you get to know at any stage whether from after the signature, the signing of the addendum, whether they actually did the work in terms of the addendum?

MS NGOYE: No Chair there was not any evidence that showed that ... (intervenes)

CHAIRPERSON: That they did the work.

MS NGOYE: Ja, there was not.

CHAIRPERSON: Ja.

20 **MS NGOYE:** What I know Chair is that the CEO Mr Tara Ngubane- I mean Ms Tara Ngubane when he interviewed her in relation to wanting to understand what actually transpired she indicated the thoroughness of looking at the work that Siyangena would have done before payment and they would question obviously things that they did not agree with.

CHAIRPERSON: Mm-hmm.

MS NGOYE: So speaking to her there was no mention of the fact that this contract was in existence (indistinct).

CHAIRPERSON: And I guess they would not have performed maintenance work without the client knowing ... (intervenes)

MS NGOYE: Of course.

CHAIRPERSON: That they were performing maintenance work.

MS NGOYE: Ja, they would not.

CHAIRPERSON: Okay.

ADV VAS SONI SC: But one thing until the interdict application by
10 Siyangena there is no invoice from Siyangena relating to these 10 million
rand a month?

MS NGOYE: No Chair.

CHAIRPERSON: Just repeat that.

ADV VAS SONI SC: Until the interdict application Siyangena brought,
there is no invoice from Siyangena to PRASA.

MS NGOYE: There is no invoice Chair.

ADV VAS SONI SC: And what would you then deduce from the fact that
there is no invoice in- we are now looking at 2017 when this interdict
application is brought.

20 **MS NGOYE:** It is suspect Chair. One wonders what could have happened
and one is thinking about the issues of once again corruption and ...
(intervenes)

CHAIRPERSON: (indistinct)

MS NGOYE: And all sorts.

CHAIRPERSON: And you- I would think that even if you are very rich if you have done work that entitles you to 10 million rand a month you cannot forget sending an invoice.

MS NGOYE: No. No, you cannot. You cannot- that is why I am saying Chair it was just bazaar for us to say, now there is this other thing.

CHAIRPERSON: Yes.

MS NGOYE: And there is this other expectation from PRASA in terms of payment requirements.

CHAIRPERSON: Yes.

10 **MS NGOYE:** Which we did not seem to see.

CHAIRPERSON: You know Mr Soni or maybe Ms Ngoye as well, if this has not been done, it is necessary to get somebody in the relevant train stations where the maintenance work would have been done. Who would have known the maintenance work was done in the particular train station? That is apart from somebody staying at head office who- it would be made important just to who says, no, I was here during those years. There is no way anybody would have come in here and performed maintenance work without me or my staff knowing and if they had come in my absence my staff would have told me.

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

MS NGOYE: We will request that Chair.

CHAIRPERSON: Ja.

ADV VAS SONI SC: And Mr Chairman if that interdict application now becomes quite important as well ... (intervenes)

CHAIRPERSON: Yes.

ADV VAS SONI SC: Because one would then see what case Siyangena is making in relation to.

CHAIRPERSON: Yes. So we need to get those papers as well.

ADV VAS SONI SC: So just now in respect of these different phases you in paragraph 39 wish to emphasis certain matters. Will you do so please to the Chairperson Ms Ngoye?

MS NGOYE: Chairperson in paragraph 39 I say in respect of all these contracts ... (intervenes)

CHAIRPERSON: I am sorry, what paragraph?

10 **MS NGOYE:** Paragraph 39.

CHAIRPERSON: 39 okay.

MS NGOYE: Of the supplementary affidavit.

CHAIRPERSON: Yes.

MS NGOYE: I state that in all these contracts PRASA was simply not authorised to proceed with the work contemplated in phase 1 and phase 2 and the addendum. These transactions were not budgeted for and no approvals were even obtained from the Minister of Transport.

20 **CHAIRPERSON:** I do not know if you deal with this elsewhere. Under what circumstances would the approval of the Minister of Transport be required?

MS NGOYE: Chairperson there is a materiality issue that applies within state-owned enterprises. So but also ... (intervenes)

CHAIRPERSON: But what is the materiality issue?

MS NGOYE: The materiality in terms of the amount of money that is regarded as material. But what I found at PRASA Chair is that I am not

sure that we are doing the materiality process correctly. Take for example right now the materiality that has been identified in terms of the amount at PRASA is sitting at 58 million. But then you have the authority of the Group CEO at a 100 million.

CHAIRPERSON: Mm-hmm.

MS NGOYE: How I understand these work- these to work especially in relation to my experience from Transnet was that you would agree the materiality with the shareholder. So anything that is above the materiality that you would have agreed with the shareholder would then have to go to
10 the shareholder for approval.

CHAIRPERSON: Mm-hmm.

MS NGOYE: So if you look at these amounts I mean I think at one point PRASA was sitting at 48 million as a materiality framework, a number that was included in our framework.

CHAIRPERSON: Mm-hmm.

MS NGOYE: But the authority of the Group CEO would have been above that. So effectively you could not have- and this is my submission Chair. You could not have a materiality framework of a particular amount and a delegation of authority above that materiality framework. It should not
20 have worked like that. And in any event, anything above a billion in relation to what PRASA would have indicated as a materiality framework would have required the minister's approval.

CHAIRPERSON: So are you saying the position as you understand is that if a state-owned entity is going to commit itself financially beyond a certain amount, it needs the approval of the relevant minister.

MS NGOYE: That is correct Chair.

CHAIRPERSON: And in the case of PRASA that would be the Minister of Transport.

MS NGOYE: That is correct Chair.

CHAIRPERSON: And you say the reference to materiality is really refers to that grey whole ... (intervenes)

MS NGOYE: That is correct Chair.

CHAIRPERSON: That is specified ... (intervenes)

MS NGOYE: In the materiality framework.

10 **CHAIRPERSON:** Yes.

MS NGOYE: Yes.

CHAIRPERSON: And I guess the reference to materiality must simply means once it reaches a certain point the financial commitment reaches a certain point, it matters for the shareholder ... (intervenes)

MS NGOYE: Yes Chair.

CHAIRPERSON: Therefore, you must tell the shareholder and get approval.

MS NGOYE: And also, in terms of a PFMA Chair it would be ... (intervenes)

20 **CHAIRPERSON:** Also, in terms of PFMA.

MS NGOYE: Yes, it would be a major acquisition from- for PRASA which have entered into these types of transactions. So PRASA was acquiring assets that were material.

CHAIRPERSON: But the requirement that you must obtain the approval of the minister materiality instance, is that provided for in the PFMA? Is it provided for in some other legal instrument?

MS NGOYE: The PFMA talks to that the acquisition of a significant asset, right.

CHAIRPERSON: Mm-hmm.

MS NGOYE: And what happens is that for you to be able to determine what is material, you agree the figure with the shareholder.

CHAIRPERSON: Mm-hmm.

10 **MS NGOYE:** So that would be incorporated in the shareholders contract which in the agreement that the minister concludes with the board. So that should the board- should an amount be above that which is agreed with the minister a PFMA would kick in.

CHAIRPERSON: Minister approval must be obtained.

MS NGOYE: The PFMA would kick in as well Chair.

CHAIRPERSON: Well the PFMA talks about a material ... (intervenes)

MS NGOYE: A significant asset, yes.

CHAIRPERSON: A significant asset. Oh okay.

MS NGOYE: Yes. And then materiality would then determine.

20 **CHAIRPERSON:** Yes,

MS NGOYE: Really what would then be regarded as significant in the biggest scheme ... (intervenes)

CHAIRPERSON: Yes.

MS NGOYE: Where the organisation is concerned.

CHAIRPERSON: I think Mr Soni if we can get the relevant ... (intervenes)

MS NGOYE: It is in Section 54.

CHAIRPERSON: Provisions, ja.

MS NGOYE: Ja, in Section 54 of the document Chair.

CHAIRPERSON: Ja okay, thank you. So you say the materiality threshold, if I can call it that in regard to ask between the minister and PRASA was 48 million.

MS NGOYE: At the time Chair.

CHAIRPERSON: At the time.

MS NGOYE: Ja. Because I think we are sitting at 50 odd million rand.

10 **CHAIRPERSON:** So yes, we are talking about billions.

MS NGOYE: They were talking about billions. It is just too big an amount for PRASA not to engage the minister and get his approval.

CHAIRPERSON: Yes. Of course, in regard to- well that is in regard to the whole contract the addendum would or well for the whole year addendum would have been above the- that threshold.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Yes. And these thresholds would have been well known obviously to the Group CEO.

MS NGOYE: Yes Chair.

20 **CHAIRPERSON:** Yes okay.

ADV VAS SONI SC: Then Ms Ngoye in your affidavit you deal with certain financial dealings between PRASA officials and an attorney associated with Siyangena.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: Let us just go back to the point you made earlier as to who was driving the process just prior to phase 1 starting. Who was the PRASA official at the head of that?

MS NGOYE: I speak about Mr Gunjo Chair.

ADV VAS SONI SC: And the decisions that were there ... (intervenes)

CHAIRPERSON: Sorry what was Mr Gunjo's name? Do you know?

MS NGOYE: I do not know.

CHAIRPERSON: I have not seen the name yet. I just see the surname.

MS NGOYE: (indistinct)

10 **CHAIRPERSON:** Okay. Maybe somebody will look for it in the meantime. You can continue. I think ... (intervenes)

MS NGOYE: I know the name but I forgot.

ADV VAS SONI SC: Can I ... (intervenes)

MS NGOYE: I will have to look for it Chair.

ADV VAS SONI SC: I will look for it.

CHAIRPERSON: It can be found later. I will get it.

MS NGOYE: Yes.

ADV VAS SONI SC: Now and who is making all of the decisions in relation to these contracts?

20 **MS NGOYE:** The decisions were made by Mr Montana.

ADV VAS SONI SC: The contracts or the transactions that you talk about and you say they caused a giant shadow over the propriety of these contracts. Whom do they concern?

MS NGOYE: They concern both Mr Gunjo and Mr Montana Chair.

ADV VAS SONI SC: Now in your founding affidavit in the review application you identify those at paragraph 21. Am I correct?

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: If you tell the Chairperson very briefly- well let us start off withy in regards to Mr Montana, how many transactions do you say are matters of concern?

MS NGOYE: Four property transactions Chairperson that were picked up by the investigators.

ADV VAS SONI SC: And in regard to Mr Gunjo?

10 **MS NGOYE:** Mr Gunjo there is one property that was picked up.

ADV VAS SONI SC: So let us start off with Mr Montana. There a four you say.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: But you identified and you do not have to give too many details but if you could just tell the Chairperson what the essence of those contracts are and why they prompt concern.

MS NGOYE: Well Chairperson these- we say they are property transactions because they are related to the houses that Mr Montana had bought at the time. The first transaction ... (intervenes)

20 **CHAIRPERSON:** You said at the time.

MS NGOYE: At the time the Siyangena contract was we were ... (intervenes)

CHAIRPERSON: The original or the addendum?

MS NGOYE: All of it.

CHAIRPERSON: During those years.

MS NGOYE: During those years.

CHAIRPERSON: Okay alright.

MS NGOYE: So ... (intervenes)

CHAIRPERSON: And that is 2011 to 2015 or thereabout.

MS NGOYE: Yes.

CHAIRPERSON: Yes okay.

MS NGOYE: The investigations pick up that there is a number of contracts that property dealings the Mr Montana was involved in. And four of these were identified and what was bazaar Chairperson about
10 these transactions was- is it has been alluded in the affidavit, was that you had an attorney who at the time was a conveyer over the attorney. One would regard him as the attorney for Siyangena. Was the person that was assisting Mr Montana in the procurement of these contracts of these properties. And when you look at the amounts involved Chair you would recognise that they were substantial amounts. For instance, one of the properties was about 11 million rand. And what the investigations picked up was that these properties were not bonded so.

CHAIRPERSON: All four of them?

MS NGOYE: The first one was. He bought the property for a billion- not
20 a billion, it is 1 odd million and he sold it for 6 million. So that one ... (intervenes)

CHAIRPERSON: Ja, I guess that has no issue on.

MS NGOYE: Yes. There was one for about 11 billion ... (intervenes)

CHAIRPERSON: Million.

MS NGOYE: I mean million, sorry Chair, not billion. Million.

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

CHAIRPERSON: Okay, let us answer that.

ADV VAS SONI SC: Let us do it in stages.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Otherwise we all- we are going to be all over the place. Let us start off with paragraph 21.4.

MS NGOYE: Yes Chair.

ADV VAS SONI SC: You call that the first transaction.

CHAIRPERSON: Does not mention again what ... (intervenes)

10 **ADV VAS SONI SC:** SS3.

CHAIRPERSON: Which bundle so that if they pick up the transcript they will know.

ADV VAS SONI SC: Bundle B SS3B Mr Chairperson and at page 359.

CHAIRPERSON: 359?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Oh, I was looking at the- is that B as well?

ADV VAS SONI SC: Yes, there is a B1 and a B2 Chairperson because the Siyangena imperatives are about four other cases ... (intervenes)

20 **CHAIRPERSON:** Well this one has B so it does not say B1 or B2 and this one is B ... (intervenes)

ADV VAS SONI SC: I am going to return to you at once Chairperson.

CHAIRPERSON: Ja, will you change that quickly to make sure. B2 is supposed to be the ones that says Court Applications Continue?

ADV VAS SONI SC: That is so.

CHAIRPERSON: Ja, will somebody just check this thing so that we do not have to always keep on having to correct. So the bundle in which court applications commence will be marked as Bundle B1.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And Bundle or the lever arch file which- in which court applications continue will be marked as Bundle B2.

ADV VAS SONI SC: Yes, that is correct Chairperson.

CHAIRPERSON: Ja, let us get this sorted out.

ADV VAS SONI SC: Yes.

10 **CHAIRPERSON:** Okay at page 359.

ADV VAS SONI SC: 359 Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: At page- paragraph 21.4 Ms Ngoye you deal with the first transaction.

MS NGOYE: Yes Chair.

ADV VAS SONI SC: If you could tell the Chairperson briefly what the concern is relating to that transaction.

20 **MS NGOYE:** Well Chairperson in this transaction Mr Montana, this relates to a property in Parkwood. Mr Montana had purchased a property in 2014 for 1.8 million. He then sells the property to Precise Trade. Now Precise Trade is a company where one of the directors of Precise Trade is the lawyer representing Siyangena, Mr van der Walt.

CHAIRPERSON: Mm-hmm.

MS NGOYE: So one- the issues of conflict arise in that regard. But also, in respect of this property it was valued at just over 3 million.

CHAIRPERSON: He bought it for 1. ... (intervenes)

MS NGOYE: 1.8

CHAIRPERSON: 1.8 million?

MS NGOYE: 1.850 million, yes. And then he sells ... (intervenes)

CHAIRPERSON: I am sorry.

MS NGOYE: It is (indistinct) on file Chair.

CHAIRPERSON: I bought for 1,850 in July 2008, is that right?

MS NGOYE: On the 4th of July.

CHAIRPERSON: 4th of July 2008.

10 **MS NGOYE:** 2008.

CHAIRPERSON: Ja.

MS NGOYE: He pays that.

CHAIRPERSON: And then you say he sold it ... (intervenes)

MS NGOYE: For 6.8

CHAIRPERSON: In 2014.

MS NGOYE: Yes.

CHAIRPERSON: Ja continue.

MS NGOYE: For 6.8

CHAIRPERSON: To the attorney who represented Siyangena.

20 **MS NGOYE:** Yes. The company Precise Trade is a company ...
(intervenes)

CHAIRPERSON: Sold to a company.

MS NGOYE: That is right. Where he is a director.

CHAIRPERSON: Yes.

MS NGOYE: Yes.

CHAIRPERSON: Okay continue.

MS NGOYE: And the purchase price was 6.8 ... (intervenes)

CHAIRPERSON: Yes, that would have been ... (intervenes)

MS NGOYE: There was a profit of 4.

CHAIRPERSON: About 6 years after he had bought it.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Ja okay.

MS NGOYE: The profit for that amount was ... (intervenes)

CHAIRPERSON: And the amount was 6.8 now.

10 **MS NGOYE:** Yes Chair.

CHAIRPERSON: That was- he made quite a good effort.

MS NGOYE: Profit.

ADV VAS SONI SC: 4.95 million Chairperson.

CHAIRPERSON: Yes, and it is over 6 years.

MS NGOYE: Yes.

CHAIRPERSON: Yes and the- I think you were saying, you wanted to tell me what the value of the property was.

MS NGOYE: The market value at the time.

CHAIRPERSON: Mm?

20 **MS NGOYE:** The market value of the property at the time ... (intervenes)

CHAIRPERSON: Ja.

MS NGOYE: Was 3.3 million.

CHAIRPERSON: 3.3 million.

MS NGOYE: Yes. So Precise Trade bought it for much more than what was the market value.

CHAIRPERSON: Yes.

MS NGOYE: Yes.

CHAIRPERSON: And this was 5 May 2014.

MS NGOYE: That is correct Chair.

CHAIRPERSON: And what was- and the addendum was April 2014.

MS NGOYE: That is correct Chair.

CHAIRPERSON: When he signed the addendum- they signed the addendum.

MS NGOYE: That is correct Chair.

10 **CHAIRPERSON:** And that is the addendum that ... (intervenes)

MS NGOYE: (indistinct)

CHAIRPERSON: You could not- PRASA people could not find. Did not know anything about.

MS NGOYE: That is correct Chair.

CHAIRPERSON: And you cannot remember if there was a witness within PRASA?

MS NGOYE: No, I cannot recall Chair.

CHAIRPERSON: From within PRASA.

MS NGOYE: Ja.

20 **CHAIRPERSON:** Okay. Mm-hmm.

ADV VAS SONI SC: So if I can just identify who Mr van der Walt was. Please look at SS3B page 360- bundle B2 SS3B page 361 paragraph 21.10

CHAIRPERSON: I am sorry. I was still trying to look for the name of the purchaser at- in paragraph 21.5

ADV VAS SONI SC: Oh, sorry Chairperson.

CHAIRPERSON: I cannot see the name. You did mention the name of a company but I cannot see it here.

MS NGOYE: It is Precise, Precise Trade Chair.

CHAIRPERSON: Mm? Is it in here?

ADV VAS SONI SC: It is 6 lines from the top of the page ... (intervenes)

CHAIRPERSON: Oh, Precise Trade.

MS NGOYE: Precise Trade Chairperson.

CHAIRPERSON: Yes, thank you. And you said one of the directors ...

10 (intervenes)

MS NGOYE: Is Mr van der Walt.

CHAIRPERSON: Mr van der Walt.

MS NGOYE: Yes.

CHAIRPERSON: Was representing Siyangena.

MS NGOYE: Yes.

CHAIRPERSON: In its transactions with PRASA.

MS NGOYE: Yes Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: And if you could go to paragraph 21.10 you identify

20 exactly Mr van der Walt's role.

MS NGOYE: That is correct Chair. So at the time of this particular transaction that is reflected in 21.10 indicates that Mr van der Walt was the attorney for Siyangena. And Siyangena was performing work on the phase 1 project and then to be appointed to phase 2. So he was involved in advising Siyangena at the time but Siyangena was ... (intervenes)

CHAIRPERSON: Hoping for his running phase 2.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Yes. And you say he was the sole director of Precise Trade?

MS NGOYE: At the time Chair. Yes Chair.

CHAIRPERSON: Is that right?

MS NGOYE: Yes.

CHAIRPERSON: Oh yes, okay.

ADV VAS SONI SC: Now in the review application, who represented
10 Siyangena?

MS NGOYE: In the review application we had a Mr van der Merwe, Gert van der Merwe, representing Siyangena.

CHAIRPERSON: Were Mr van der Merwe from a different law firm? Or is it the same law firm?

MS NGOYE: I do not know if they were together with Mr van der Walt. But what I know is that Mr van der Merwe was the attorney and has been the attorney of Siyangena.

CHAIRPERSON: Was- when you say he was the attorney for Siyangena and you say you do not know whether ... (intervenes)

20 **MS NGOYE:** They were in the same company.

CHAIRPERSON: He was from the same law firm. In terms of correspondence, do you remember whether there was a change of law firms in regard to the interdict? Whether PRASA started to get correspondence from a different law firm or not?

MS NGOYE: No, the law firm that has always represented Siyangena ...
(intervenes)

CHAIRPERSON: Remains the same.

MS NGOYE: Was yes, represented by the lawyer Mr Gert van der Merwe.

CHAIRPERSON: And you- Mr van der Walt or van der Merwe. You say
van der Merwe?

MS NGOYE: van der Merwe was the attorney.

CHAIRPERSON: Ja

MS NGOYE: van der Walt was involved in assisting Siyangena.

10 **CHAIRPERSON:** Ja.

MS NGOYE: But was not the attorney.

CHAIRPERSON: Mr van der Merwe.

MS NGOYE: Yes.

CHAIRPERSON: Was an attorney and was not councilor in the interdict
or is that something you are not sure about?

MS NGOYE: In the interdict it was Mr van der Merwe that represented
Siyangena.

CHAIRPERSON: But as councilor or as the attorney?

MS NGOYE: As the attorney.

20 **CHAIRPERSON:** As the attorney.

MS NGOYE: As the attorney Chair.

CHAIRPERSON: Oh okay. But you say the correspondence remained
with the law firm.

MS NGOYE: That is correct Chair.

CHAIRPERSON: okay.

MS NGOYE: Even to date.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Then the second transaction you deal with at paragraph 21.12 on that same page, page 361. Will you tell the Chairperson very briefly what that transaction was about?

MS NGOYE: This was a ... (intervenes)

CHAIRPERSON: Paragraph 21

ADV VAS SONI SC: 21.12 Chairperson.

CHAIRPERSON: 12, okay.

10 **ADV VAS SONI SC:** Yes Chairperson.

MS NGOYE: This was a sale of property at Waterkloof Pretoria Chair.

ADV VAS SONI SC: And what was the purchase price?

MS NGOYE: The purchase price was 10.5 million.

CHAIRPERSON: And who was purchasing, was it Mr Montana?

MS NGOYE: Well in terms of 21.15 Chair you refer that the purchase price was 10.5. The purchase price had to be paid in cash.

CHAIRPERSON: 10,5 million rand.

MS NGOYE: Yes. It had to be paid in cash into a trust account.

CHAIRPERSON: It was paid in cash.

20 **MS NGOYE:** Yes. Into a trust account of Van Rensburg Inc Attorneys upon signature of the contract. So they were the ones that were doing the convincing of the transaction. This particular contract lacks because Mr Montana failed to pay the purchase price.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Yes but then if you look at paragraph 21.16 the last sentence there.

MS NGOYE: In relation to the same property, yes Mr Montana then agreed to pay a non-refundable deposit of 3.5 million which was subsequently paid.

ADV VAS SONI SC: And then 21.17 tells you who the sale agreement was between.

MS NGOYE: Yes. So the sale agreement Chair was between Anmani represented by Ms De Beer and Minor Property Trust represented by Mr
10 Johan Smith a trustee. The beneficiaries of the Minor Property Trust are the children of Mr Montana. So the purchase price was 11 million.

ADV VAS SONI SC: It went up to R3.5 million that has originally been the expected purchase price.

CHAIRPERSON: Okay I am getting confused.

MS NGOYE: Yes.

CHAIRPERSON: Initially – well there was a reference to R10.5 million being the purchase. And then you said that agreement fell through because Mr Moyane – Mr Montana failed to pay the purchase price. But he had agreed to pay a non-refundable deposit of R3.5 million
20 which was paid.

MS NGOYE: That is correct Chair.

CHAIRPERSON: And now the – 20 – paragraph 21.17 talks about R11 million and a sale agreement. Is that in regard to the same property?

MS NGOYE: That is correct – that is correct Chairperson.

CHAIRPERSON: So there was a new agreement?

MS NGOYE: Yes.

CHAIRPERSON: Okay. The previous agreement had been between Mr Montana and the seller and this one involved trust.

MS NGOYE: Well it – you know.

CHAIRPERSON: You are not sure about that?

MS NGOYE: Well this one because was – the purchaser became the trust.

CHAIRPERSON: ja.

MS NGOYE: And what we found out was that trust belonged to Mr
10 Montana's children.

CHAIRPERSON: Yes.

MS NGOYE: So the connection that is made.

CHAIRPERSON: Yes.

MS NGOYE: Is that you know it was in relation to him.

CHAIRPERSON: Okay. And was there a deposit to be paid for this or
(indistinct).

MS NGOYE: The R3.5 her paid. On 201.18 Chairperson on page 363
we indicate that the balance of the R7.5 million was paid by Precise
Trade.

20 **CHAIRPERSON:** Hang on one second. Am I right to say the R10.5
million was the subject of a certain agreement which involved Mr
Montana as one of the parties?

MS NGOYE: Yes Chair.

CHAIRPERSON: That lapsed?

MS NGOYE: It lapsed because he could not raise the funding.

CHAIRPERSON: And he had paid R3.5 million that was not refundable.

MS NGOYE: When it was revised. The transaction was revised.

CHAIRPERSON: Oh they paid when another – a new agreement was entered into.

MS NGOYE: Yes.

CHAIRPERSON: In regard to the same property.

MS NGOYE: That is right.

CHAIRPERSON: But now not with Mont – Mr Montana as such but with a trust – with his trust.

10 **MS NGOYE**: With his children's trust.

CHAIRPERSON: Where the children were beneficiaries.

MS NGOYE: That is correct Chair.

CHAIRPERSON: And – but was that R3 – so he paid the R3.5 million when they have to deal with the second transaction – with the agreement involving his trust?

MS NGOYE: That is correct Chair. And then at the top the first agreement was for R10.5.

CHAIRPERSON: Yes.

MS NGOYE: And then this one.

20 **CHAIRPERSON**: Was for R11 million.

MS NGOYE: Went up to R11 – yes.

CHAIRPERSON: Oh okay. So – but then 21.18 you say he says the balance – I guess the balance after the R3.5 million.

MS NGOYE: That is right.

CHAIRPERSON: The balance in an amount of R7.5 million was paid by

Precise Trade Mr Smith then requested that the contract be altered to reflect Precise Trade as the purchaser. Okay talk to me about that?

MS NGOYE: Chair.

CHAIRPERSON: What is happening there?

MS NGOYE: These (indistinct) are very complex Chair and I am going to speak to what is contained in the – in the founding affidavit. So – so what if you recall Precise Trade one of the directors in Precise Trade is an attorney for Siyangena.

CHAIRPERSON: Mr Van Der Walt.

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

CHAIRPERSON: Ja.

MS NGOYE: Now when this particular transaction happens Mr Montana can only raise R3.5 non-refundable he accepted it.

CHAIRPERSON: Hm.

MS NGOYE: It becomes bizarre that the balance of the transaction is paid by the Precise Trade entity.

CHAIRPERSON: Hm.

MS NGOYE: Where you know you have the lawyer for – for Siyangena.

CHAIRPERSON: Yes.

20 **MS NGOYE:** Being you know the sole director paying the balance of this price.

CHAIRPERSON: Yes.

MS NGOYE: You know so I mean when you look at it (indistinct) and then also you know then they request to have the property now the purchaser being changed to Precise Trade.

CHAIRPERSON: Yes.

MS NGOYE: Mr Montana paid R3.5.

CHAIRPERSON: The deposit ja.

MS NGOYE: Ja and then you know the balance is paid and that company was – the property was intended for the beneficiary – his beneficiaries.

CHAIRPERSON: Hm.

MS NGOYE: But now you know Precise Trade takes over this transaction and completes it and it is then registered as the purchaser.

10 **CHAIRPERSON:** Hm. So ultimately it was registered as Precise Trade's property?

MS NGOYE: That is correct Chair.

CHAIRPERSON: Okay and I see this was happening in 2014?

MS NGOYE: That is correct Chair.

CHAIRPERSON: Towards the end of the year?

MS NGOYE: Yes Chair.

CHAIRPERSON: Yes Mr Soni.

20 **MS NGOYE:** 21.19 Chair you know indicates that on the 26 November 2014 Ms De Beer met Mr Montana at the property. Ms De Beer and Mr Montana did the walkabout and the keys were handed to Mr Montana of that property where Precise Trade had paid the balance.

CHAIRPERSON: And the property that was – that was now registered in the name of Precise Trade?

MS NGOYE: That is correct Chair.

CHAIRPERSON: The key was handed over to Mr Montana.\

MS NGOYE: To Mr Montana yes.

CHAIRPERSON: Okay.

ADV VAS SONI SC: And just for completeness sake in paragraph 21.18 there is a reference to Mr Smith. Who was Mr Smith?

MS NGOYE: I cannot recall.

ADV VAS SONI SC: He was the trustee. If you look at...

CHAIRPERSON: I think...

MS NGOYE: Oh yes.

CHAIRPERSON: In the previous page.

10 **MS NGOYE:** Ja in the previous page. He was a trustee of the children's trust.

ADV VAS SONI SC: Chairperson I – have you got a reasonable picture of the second transaction here?

CHAIRPERSON: Yes I think so insofar as one can get. Ja so – so it ends – it starts being – it starts with a situation where the purchaser is Mr Montana's trust and the beneficiaries of the trust are Mr Montana's children.

MS NGOYE: Children yes Chair.

CHAIRPERSON: And Mr Montana pays R3.5 million.

20 **MS NGOYE:** Yes Chair.

CHAIRPERSON: And as a deposit and then an arrangement is made in terms of which Precise Trade pays.

MS NGOYE: Pays the balance.

CHAIRPERSON: The balance of R7.5 million.

MS NGOYE: 5.

CHAIRPERSON: And that is registered in Mr ...

MS NGOYE: In Precise Trade.

CHAIRPERSON: In Precise Trade's name.

MS NGOYE: Correct Chair.

CHAIRPERSON: But on the 26 November 2014 ...

MS NGOYE: The keys were given.

CHAIRPERSON: The keys for the property are given to Mr Montana

MS NGOYE: Mr Montana.

CHAIRPERSON: Montana. Now who knows this?

10 **MS NGOYE**: This was picked up.

CHAIRPERSON: Who knows that this is the position?

MS NGOYE: This was picked up by the – by the investigation Chair.

CHAIRPERSON: Yes.

MS NGOYE: When the forensic investigations were done and there was a follow through on these transactions it revealed that this is what had happened.

CHAIRPERSON: Yes no what I want – but what I want to know is, how do they come across is it because they interviewed Ms De Beer and got a statement from her? Is it because they came across a letter in some
20 file where somebody refers to the fact that Ms De Beer and Mr Montana had a walk through inspection and that Ms De Beer handed Mr Montana the keys that is what I want to confirm?

MS NGOYE: Chair it is pos...

CHAIRPERSON: It is unlike the transactions you know purchase agreement that can be found in documents and who the purchaser was,

what the deposit was? Who has this knowledge – personal knowledge of it?

ADV VAS SONI SC: Mr Chairperson can I – I do not want to give evidence but I thought if I could...

CHAIRPERSON: Yes.

ADV VAS SONI SC: Assist.

CHAIRPERSON: Yes.

ADV VAS SONI SC: It will shorten the inquiries.

CHAIRPERSON: Yes.

10 **ADV VAS SONI SC:** In the answering affidavit Siyangena deals with these matters.

CHAIRPERSON: Hm.

ADV VAS SONI SC: Not in detail.

CHAIRPERSON: Hm

ADV VAS SONI SC: And I am going to take the witness to those to be answered. But in addition Mr Montana files an affidavit which is not part of the papers so we will look at that to see what his answer is to each of these allegations.

CHAIRPERSON: Hm. But – well if this is taken from a certain affidavit
20 then it is fine if I am told it is in somebody's affidavit.

ADV VAS SONI SC: Yes.

CHAIRPERSON: It is?

ADV VAS SONI SC: No, no it is...

CHAIRPERSON: It is 21.19.

ADV VAS SONI SC: It is part of the investigation but the point I am

trying to make Chairperson is that we do have Siyangena's versions on these matters.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And you will see that the dispute is quite narrow in respect.

CHAIRPERSON: Yes. Okay. Maybe let me go back to – to you as a witness because this is your affidavit.

MS NGOYE: Yes Chair. But this is (indistinct) affidavit I must say.

CHAIRPERSON: You will say on this date Ms De Beer met Mr Montana
10 at the property.

MS NGOYE: Yes.

CHAIRPERSON: Ms De Beer and Mr Montana carried out a walk through inspection of the house and Ms De Beer handed the keys to Mr Montana.

MS NGOYE: Yes.

CHAIRPERSON: Now this is quite important.

MS NGOYE: Yes Chair.

CHAIRPERSON: In the light of the fact that you have just told us that the house was registered in Precise Trade's name.

20 **MS NGOYE**: Yes Chair.

CHAIRPERSON: After initially the purchaser had been...

MS NGOYE: Mr Montana.

CHAIRPERSON: Mr Montana or his trust.

MS NGOYE: His trust, yes.

CHAIRPERSON: His trust. So now who – do you have personal

knowledge of this?

MS NGOYE: No Chair.

CHAIRPERSON: You do not have?

MS NGOYE: Not personal knowledge.

CHAIRPERSON: Yes.

MS NGOYE: This is – this is what you know was part of the investigation (indistinct).

CHAIRPERSON: This is what is in records that PRASA has.

MS NGOYE: That is correct Chair.

10 **CHAIRPERSON:** That came from the investigators.

MS NGOYE: Following the investigation – the work that the investigators had done.

CHAIRPERSON: Yes. But do you know what their source of information was?

MS NGOYE: The investigators went out Chair to interview you know the various people that they picked up as being people who were mentioned in the documents that they found in relation to the properties you know. So that work allowed them to be able to approach different individuals and ask them exactly what transpired.

20 **CHAIRPERSON:** Okay. It is not satisfactory. So I need somebody to check what was the basis on which the investigators said on this date Ms De Beer and – met Mr Montana at the property and Ms De Beer and Mr Montana carried out a walk through inspection of the house and Ms De Beer handed the keys to Mr Montana.

ADV VAS SONI SC: Yes.

MS NGOYE: And I guess Ms De Beer whoever she is can be interviewed or may have been interviewed to say what does she know about that.

MS NGOYE: Yes Chair.

CHAIRPERSON: Ja.

MS NGOYE: Ja. Chair I would like to say you know because I am the deponent of this and obviously some of the information was communicated to me so I do not have direct knowledge of some of the issues here.

10 **CHAIRPERSON:** Yes.

MS NGOYE: And it would be dealt with accordingly.

CHAIRPERSON: Yes.

MS NGOYE: You know by the lawyers in the matter before court.

CHAIRPERSON: Yes, no you may have said at the beginning of your affidavit that you are not relying on your personal knowledge.

MS NGOYE: That is correct Chair.

CHAIRPERSON: And you rely on some records but if you – if you were able to say, I said this here because in the records that we have at PRASA.

20 **MS NGOYE:** In the documents.

CHAIRPERSON: I came across a statement by Ms De Beer or Mr Montana that said this then I would understand that.

MS NGOYE: Yes.

CHAIRPERSON: Ja.

MS NGOYE: There is copies – there is annexures Chair.

CHAIRPERSON: Yes.

MS NGOYE: To the documents that indicates.

CHAIRPERSON: Yes.

MS NGOYE: You know email correspondence.

CHAIRPERSON: Yes.

MS NGOYE: That was picked up.

CHAIRPERSON: Yes.

MS NGOYE: Through the investigations, yes.

CHAIRPERSON: Is there – is it your conclusion that you reached
10 based on ...

MS NGOYE: Those emails.

CHAIRPERSON: Yes on emails exchanged between who and who? Ms
De Beer?

MS NGOYE: Ms De Beer.

CHAIRPERSON: And Mr Montana.

MS NGOYE: And Mr Montana yes.

CHAIRPERSON: Oh those – those are within the records of PRASA?

MS NGOYE: Yes they are.

CHAIRPERSON: That is the first thing to look for and make available
20 and – and but apart from the emails I think Mr – Ms De Beer should be
approached for an affidavit.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja okay. Thank you. It is just that it is – it is very
strange because now the keys get given to ...

MS NGOYE: To Mr Montana.

CHAIRPERSON: To Mr Montana at a time when in terms of the documents he is supposed to have nothing to do with this house.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Previously if it was at a time when the purchaser was the...

MS NGOYE: The trust.

CHAIRPERSON: Trust then one would understand.

MS NGOYE: That is correct Chair.

CHAIRPERSON: But it has been suggested that Precise Trade.

10 **MS NGOYE:** Precise Trade.

CHAIRPERSON: Should be the purchaser now.

MS NGOYE: Precise Trade now is the purchaser – that is correct Chair.

CHAIRPERSON: Now one expects somebody from Precise Trade to receive the keys.

MS NGOYE: That is correct Chair.

CHAIRPERSON: And not Mr Montana.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Okay. Alright.

20 **ADV VAS SONI SC:** Then at paragraph 21.22 you deal with the third transaction and where is that property situated?

MS NGOYE: This transaction is a property in Sandhurst Chairperson. 199 Empire Place in Sandhurst.

CHAIRPERSON: I am sorry just to round off the – the second transaction. As these things were happening buying of property,

deciding who is going to be the purchaser, Mr Montana's trust or...

MS NGOYE: Precise...

CHAIRPERSON: Precise Trade or who Siyangena was continuing to do work

MS NGOYE: For PRASA.

CHAIRPERSON: For PRASA.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Is that right?

MS NGOYE: Yes.

10 **CHAIRPERSON**: Okay.

ADV VAS SONI SC: And just again in context that was ended in 2016 or 2017 Ms Ngoye? The – that is when the interdict came when he (indistinct)

MS NGOYE: Yes that is when the interdict – that is right.

ADV VAS SONI SC: So 2014 certainly ...

MS NGOYE: Was the – was in the process when Siyangena was doing work for PRASA.

20 **ADV VAS SONI SC**: Now in relation to the third transaction starting at paragraph 31.22 in the third sentence of that paragraph you set out where you got this information from.

MS NGOYE: Yes.

ADV VAS SONI SC: Could you tell the Chairperson where this information is from?

MS NGOYE: So in relation to the Sandhurst property Chair the facts relating to this transaction were contained in a sworn statement by a Mr

Louis Green an estate agent that was employed by Pam Golding Investments who was instructed by Mr Coller and – to sell the property in Sandhurst during about the middle of 2014. So that statement is attached to the papers that are in court.

CHAIRPERSON: Yes.

ADV VAS SONI SC: We will obviously get a copy of that statement. Now in brief what was the issue in regard to this property?

MS NGOYE: Mr Montana made an offer to purchase in Sandhurst in the amount of R13.9 million.

10 **CHAIRPERSON:** And this was – you say in 20 – April of 21.23.

MS NGOYE: Yes.

CHAIRPERSON: In regard to this property on or about 26 October 2014 Mr Montana visited the show day – well you start by saying the Sandhurst property had been placed on show on several occasions.

MS NGOYE: Yes.

CHAIRPERSON: On or about 26 October 2014 Mr Montana visited the show day and expressed an interest in purchasing the aforesaid property. You say Mr Montana made an offer to purchase the Sandhurst property in an amount of R13.9 million.

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

CHAIRPERSON: And the offer was accepted by the seller on the 28 October 2014.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Yes okay continue.

MS NGOYE: Yes.

ADV VAS SONI SC: And then what happened next that is contained in paragraph 21.24?

MS NGOYE: So on the 6 November 2014 Mr Green received an email from Mr Van Der Walt. Mr Van Der Walt is Precise Trade. A letter from...

CHAIRPERSON: Mr Green again is the – that is the estate agent?

MS NGOYE: That is correct. From Pam – Pam Golding.

CHAIRPERSON: From Pam Golding.

10 **MS NGOYE:** So he receives an email from Mr Van Der Walt and the letter is also attached Chairperson. There is a number of emails that are also attached to the – to the affidavit. In the letter the attorneys confirmed that they had R5 million in trust – in a trust account with Investec Bank.

ADV VAS SONI SC: Yes.

MS NGOYE: And on the 7 November Mr Green received a further email. This is the....

CHAIRPERSON: Hang on one second. Hang on one second. This Mr Van Der Walt is that the same as the attorney for ...

MS NGOYE: Siyangena.

20 **CHAIRPERSON:** Siyangena.

MS NGOYE: That is correct Chair.

CHAIRPERSON: So the estate agent in regard to the Sandhurst property receives an email from Mr Van Der Walt on the 6 November.

MS NGOYE: That is correct Chair.

CHAIRPERSON: And – and then there is a trail of emails and in the

letter Mr Van Der Walt confirmed that they had R5 million in a trust account with Investec.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Yes continue.

MS NGOYE: So on the 7 November – so effectively this transaction was dealt with you know...

CHAIRPERSON: I am sorry I think let us go to the emails because I want to know what was the letter saying apart from – or is that all that it was saying that they had that R5 million in that account?

10 **MS NGOYE**: No – in the trust account?

CHAIRPERSON: Ja.

MS NGOYE: Yes Chair.

CHAIRPERSON: Is that the important thing it was saying

MS NGOYE: Well yes that is what we thought was important Chair.

CHAIRPERSON: Oh okay alright.

MS NGOYE: So on the 7th...

CHAIRPERSON: But what – what I am wanting to connect is who is he acting for now when he writes to Mr Green – Mr Van Der Walt?

MS NGOYE: Our view that he is acting for Mr Montana.

20 **CHAIRPERSON**: Yes. Does it say in the letter, in the email or not?

MS NGOYE: Well Chair.

CHAIRPERSON: Do you remember?

MS NGOYE: I cannot remember if it says but if you look at the interest was shown by Mr Montana at the time.

CHAIRPERSON: Ja.

MS NGOYE: In relation to this property and when you look at you know what was happening during the transactions with Siyangena at the time you know the – what became bizarre was that the attorneys now of Siyangena were you know assisting Mr Montana in concluding these transactions.

CHAIRPERSON: Do you have these emails here?

ADV VAS SONI SC: We do not have them here Chair. But we will – they are attached to – or on the...

MS NGOYE: To the papers.

10 **ADV VAS SONI SC:** Attached to the founding affidavit already.

CHAIRPERSON: Ja they are necessary because these bits and pieces they can become very important.

ADV VAS SONI SC: Yes.

CHAIRPERSON: You know but you say you do not remember whether in that email Mr Van Der Walt does say expressly who he is acting for?

MS NGOYE: No I do not recall Chair.

CHAIRPERSON: You do not recall that?

MS NGOYE: No.

ADV VAS SONI SC: What do you say in paragraph 21.25?

20 **MS NGOYE:** There was another instruction on 21.25 on the 7th Mr Green received a further email from Mr Van Der Walt to which was attached a proof of payment. So Mr Van Der Walt sends this email to Mr Green into a trust account of Pam Golding for and on behalf of Mr Montana. So in the next – in the next – the first email I was alluding to the fact that I – I am not sure that he mentioned that he was acting on

behalf of Mr Montana. But when the payment was made you know he then reflects that it is made on behalf of ...

CHAIRPERSON: So it became clear.

MS NGOYE: Yes it becomes clearer now that he is acting on behalf of Mr Montana.

CHAIRPERSON: Okay.

MS NGOYE: So there is attaching the proof of payment.

ADV VAS SONI SC: And then what happens next?

MS NGOYE: And then on the 25 November...

10 **CHAIRPERSON**: You did not get – you did not get a copy of the agreement in regard to this one?

MS NGOYE: In relation to this property?

CHAIRPERSON: I see there has not been a reference to the agreement.

MS NGOYE: No, no.

CHAIRPERSON: Okay. Yes alright.

MS NGOYE: And then again in the same month Chairperson on the 24 November Mr Green the estate agent received another letter from Mr Van Der Walt confirming an instruction from his client Mr Montana so it
20 becomes clearer now that Mr Van Der Walt is also acting for Mr Montana where Mr Montana has asked that the buyer be changed to Precise Trade.

CHAIRPERSON: So – so in regard to this transaction the – the idea that the purchaser should be Precise Trade emerges ...

MS NGOYE: From Mr Montana.

CHAIRPERSON: Again.

MS NGOYE: Yes it does.

CHAIRPERSON: Yes. And now Mr Van Der Walt says that comes from Mr Montana.

MS NGOYE: That is correct.

CHAIRPERSON: In regard to the second transaction it was said to have come from Mr Smith who was a trustee.

MS NGOYE: Yes who was a trustee?

CHAIRPERSON: Of Mr Montana's trust?

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

CHAIRPERSON: Okay.

ADV VAS SONI SC: Just on the question of Mr Montana's interest in this property would you read what paragraph 21.29 says Ms Ngoye?

MS NGOYE:

"Mr Montana"

ADV VAS SONI SC: Of – sorry.

CHAIRPERSON: I am sorry. Well that last sentence of paragraph 21.26 seems important.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON**: Yes. Do you want to deal with that?

ADV VAS SONI SC: Yes Chair.

CHAIRPERSON: The last sentence of paragraph 21.26.

MS NGOYE: So the letter.

CHAIRPERSON: Yes.

MS NGOYE: Drafted by Mr Van Der Walt.

CHAIRPERSON: Yes.

MS NGOYE: Instructed Mr Green who was the estate agent to allocate the deposit paid on behalf of Mr Montana to Precise Trade.

CHAIRPERSON: So the situation is that Mr Montana visited the property during one of the show days, liked it, subsequently made an offer which must have been accepted and he paid an amount of R5 million ...

MS NGOYE: What we are told Chair is that that amount comes – you know the attorneys Van Der Walt.

10 **CHAIRPERSON:** Ja.

MS NGOYE: Is the one that confirms that that amount was sitting in their trust account.

CHAIRPERSON: Yes, yes so – but what I am saying is, this amount is paid either on his behalf or by him but it goes via Van Der Walt?

MS NGOYE: That is correct Chair.

CHAIRPERSON: Attorneys.

MS NGOYE: That is correct.

CHAIRPERSON: But at that stage the payment is being made on behalf of Mr Montana because he is going to purchase the property?

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

CHAIRPERSON: And then later on Mr Van Der Walt says Mr Montana has said the purchaser should be Precise Trade?

MS NGOYE: Correct Chair.

CHAIRPERSON: The company whose sole director is Mr Van Der Walt.

MS NGOYE: Mr Van Der Walt. That is correct Chair.

CHAIRPERSON: And the same company that ...

MS NGOYE: Had been doing work.

CHAIRPERSON: In regard to the second transaction.

MS NGOYE: Ja.

CHAIRPERSON: Had taken over ...

MS NGOYE: That property as well.

CHAIRPERSON: That property as well.

MS NGOYE: Yes.

CHAIRPERSON: And then now Mr Van Der Walt says to the estate
10 agent, that R5 million that – they had already paid it or not?

MS NGOYE: Yes.

CHAIRPERSON: That they had paid already to the estate agent it
should now be taken as a deposit for Precise Trade.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: It is not something one comprehends unless one
reads it over ...

CHAIRPERSON: Yes you have got to...

MS NGOYE: Ja you have got to...

20 **CHAIRPERSON**: Try follow it here.

MS NGOYE: Ja you have to go through it over and over again.

CHAIRPERSON: Yes.

MS NGOYE: To understand what actually happened.

CHAIRPERSON: Okay.

ADV VAS SONI SC: And then at paragraph 21.28 you will see that

there is a reference to the seller Mr Coller.

MS NGOYE: Yes.

ADV VAS SONI SC: And there is communication to – with Mr Montana.

Could you please read that into the record Ms Ngoye?

MS NGOYE: So now the property was signed on behalf of Precise Trade but Mr Coller, the seller right addressed an email to Mr Montana asking him to indicate whether he had any interest in taking occupation of the property before transfer.

CHAIRPERSON: When does this happen in relation to the finalisation
10 of the transaction?

MS NGOYE: The seller of the property?

CHAIRPERSON: Yes, yes is that around the time when Mr Van Der Walt writes and says take that R5 million to be a deposit from Precise Trade or is that months later

MS NGOYE: No it is in the same month Chair.

CHAIRPERSON: It is about the same month

MS NGOYE: Yes Chair.

ADV VAS SONI SC: This is a few days later Chair.

CHAIRPERSON: Okay.

20 **ADV VAS SONI SC:** This is 21.26.

CHAIRPERSON: Okay I think what happened is that you went too much ahead of me.

MS NGOYE: Oh sorry.

ADV VAS SONI SC: Sorry Chair.

CHAIRPERSON: So the full purchase price was R13.9 million for this

property hey?

MS NGOYE: That is correct Chair.

CHAIRPERSON: Yes. Let me just have a look here. Oh that is quite interesting. Yes 28. – 21.28.

ADV VAS SONI SC: Yes.

CHAIRPERSON: So Mr Coller was the seller?

MS NGOYE: Was the seller.

CHAIRPERSON: He writes to...

MS NGOYE: Mr Montana.

10 **CHAIRPERSON:** Mr Montana in an email asking him to indicate whether he had any interest in taking occupation of the property before transfer.

MS NGOYE: Yes.

CHAIRPERSON: So he is wanting to see whether – so that if he wants to come in before the transfers are done.

MS NGOYE: Yes Chair.

CHAIRPERSON: They can talk about occupational interest and so on. Ja.

MS NGOYE: That is correct Chair ja.

20 **CHAIRPERSON:** Okay and then

MS NGOYE: So Mr Montana continues to be involved in the transactions.

CHAIRPERSON: No response is found in the emails to this letter or to this email from Mr Montana?

MS NGOYE: Well he continues to get involved in the transaction so

there was an email.

CHAIRPERSON: Ja.

MS NGOYE: For example the email address Mr Montana that was used was stipulated as – as a contact for the transferee so there was communication between the seller and Mr Montana. In addition because the conveyers who obviously would be acting on behalf of the seller in this regard. So that – that communication was happening when Mr Montana was involved. In addition the conveyances addressed regular progress ...

10 **MS NGOYE:** And these documents are also available in the founding affidavit Chair.

CHAIRPERSON: I think what will be necessary Mr Soni is that all these annexures that are not here but are somewhere they will need to be made available and there needs to be something that tells whoever reads here where to find them.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Chairperson what I am going to propose subject to your approval is we have a special set of documents relating to all
20 these transactions with all the annexures.

CHAIRPERSON: Ja.

ADV VAS SONI SC: There and just a summary of what each of those transactions entail.

CHAIRPERSON: Ja. No that is fine. And it may be – it may be that some way need to be found to have something on each page where an

annexure is referred to which says if you want to see that go to that page or that bundle.

ADV VAS SONI SC: Yes. That would...

CHAIRPERSON: That it is page whatever.

ADV VAS SONI SC: Yes.

CHAIRPERSON: So that – because when you read you immediately want to look...

MS NGOYE: To those annexure.

CHAIRPERSON: Ja you know and you are disappointed when you do
10 not find it.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Ja. Okay alright. I see here it

ADV VAS SONI SC: It is four o'clock. I was just going to tell you
Chairperson.

CHAIRPERSON: A few minutes past – four minutes past four. I think we both underestimated how long we would take. I thought we would finish before lunch but – but no time has been wasted. It has all been very important.

ADV VAS SONI SC: Absolutely.

20 **CHAIRPERSON:** Evidence. Now how far are we from finishing with her?

ADV VAS SONI SC: Chairperson can I just say that it is just the – the one more transaction after this and then Mr Gango's transaction. But what I...

CHAIRPERSON: There is still that first affidavit or not?

ADV VAS SONI SC: We had decided Chairperson that we will deal with that in the second phase and the main reason is it is a matter in which Ms Kweyama has a major interest.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Maybe we should just have all of that evidence.

CHAIRPERSON: Yes.

ADV VAS SONI SC: It is a very self-contained (indistinct)

CHAIRPERSON: Yes.

ADV VAS SONI SC: And one would be able to deal with it in about two
10 and a half hours in all.

CHAIRPERSON: Oh okay.

ADV VAS SONI SC: You know rather than dealing with it in stages.

CHAIRPERSON: Okay so – so to finish here you need about how much time for today?

ADV VAS SONI SC: About – about twenty minutes Chairperson.

CHAIRPERSON: About twenty minutes. No that is fine. Ms Ngoye you can still stay?

MS NGOYE: I can Chair.

CHAIRPERSON: You can? Okay alright. I think counsel for is also
20 alright. Okay I think let us take a short break and then we come back and then we continue and then we finish.

MS NGOYE: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let's proceed.

ADV VAS SONI SC: [Inaudible mic not on].

MS NGOYE: [Inaudible].

ADV VAS SONI SC: [Inaudible – mic not on].

MS NGOYE: So the signed...[intervenes].

CHAIRPERSON: Your mic is off.

ADV VAS SONI SC: My learned friend wishes to be excused because it doesn't involve his client directly Chair.

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

ADV VAS SONI SC: Sorry Ms Ngoye I just wanted to ...[intervenes].

MS NGOYE: That's okay.

ADV VAS SONI SC: We were talking about the property being transferred to [indistinct] Trade.

MS NGOYE: Yes Chair.

ADV VAS SONI SC: Now that happens on the 6th of March, what happens on the 12th of March...[intervenes].

CHAIRPERSON: I'm sorry, are you deliberately skipping 21.30, it seems important.

20 **ADV VAS SONI SC:** Oh, as you please Chairperson I, in fact, intended to do it earlier. I intended to deal with it earlier before ...[intervenes].

CHAIRPERSON: Yes okay.

ADV VAS SONI SC: Would you please, Ms Ngoye, read into the record an email that Mr Montana addresses to the seller of the property on the 3rd of February 2015.

MS NGOYE: Yes Chair.

ADV VAS SONI SC: That's at paragraph 21.30.

MS NGOYE: That's correct, it says

“We were not aware of the delays of the payment of...[intervenes].

CHAIRPERSON: I'm sorry, I think just start from the paragraph itself, on 3 February 2015.

MS NGOYE: On 3 February 2015, Mr Montana addressed an email to Mr Colla [?] regarding the payment of the transfer costs in respect of
10 the property, a copy of the email is attached Chairperson to the documents, before Court, in the email Mr Montana sais that,

“we were not aware...[intervenes]

CHAIRPERSON: And you are quoting now.

MS NGOYE: That's correct I'm quoting sorry Chair, I'm quoting in inverted commas,

“We are not aware of the delays in the payment of fees and
the consequent breach of contract. I'm aware that our
attorneys were busy with the VAT registration of the Trust,
this may have contributed to the delays. I have asked the
20 attorney to abandon the VAT registration for now and ensure
transfer is concluded immediately without further delay. I
have discussed the matter with our attorney, Mr Riaan van
der Walt who has since been in contact with Thalita [?]. He
made an undertaking to settle the fees by today or latest
tomorrow morning”.

ADV VAS SONI SC: So what does that indicate in relation to Mr Montana's association with the property?

MS NGOYE: Well effectively Chair, he must be the person concerned obviously in relation to this particular transaction because he seems to be taking over – he's involved in the communications that are happening even with the Estate Agency but also what is interesting is, he keeps referring to the attorney, Mr van der Walt having to settle the payments for his. So that's what one can deduce from this.

ADV VAS SONI SC: And when he refers to the attorneys in what
10 capacity are the attorneys acting in relation to this property, according to Mr Montana's email?

MS NGOYE: Well they're his attorneys.

CHAIRPERSON: So the reference to our attorneys there, in the email you say is a reference to Mr Riaan van der Walt?

MS NGOYE: That's correct Chair.

CHAIRPERSON: Yes, who is the sole Director of Precise Trade?

MS NGOYE: Precise Trade.

CHAIRPERSON: Ja okay.

ADV VAS SONI SC: But nevertheless on the 6th of March that property
20 is transferred, to whom is it transferred?

MS NGOYE: Its transferred to Precise Trade Chair.

ADV VAS SONI SC: Now after that transfer, to whom is communication relating to the property addressed?

MS NGOYE: It's addressed to Mr Montana.

ADV VAS SONI SC: Will you just indicate what the nature of that

communication is?

MS NGOYE: Paragraph 21.32 Chair on 366 we talk about, on the 12th of March 2015 the sellers of the Sandhurst property addressing emails to Mr Montana, the email was attached to the document as well that's before Court Chair it says...[intervenes].

ADV VAS SONI SC: No sorry can I ask you to read who the email is addressed to?

MS NGOYE: The email is addressed to Mr Montana.

ADV VAS SONI SC: No please read it, if you read...[intervenes].

10 **CHAIRPERSON:** Read [indistinct].

MS NGOYE: Sorry I'm not with you.

ADV VAS SONI SC: Page 367 right on the top.

CHAIRPERSON: At the top.

MS NGOYE: Yes, I was going there Chair, it says,
"Hi Lucky".

ADV VAS SONI SC: And who, in this context, would Lucky be?

MS NGOYE: Lucky is Mr Montana.

CHAIRPERSON: That's his name?

MS NGOYE: That's correct Chair.

20 **CHAIRPERSON:** Yes okay.

ADV VAS SONI SC: And...[intervenes].

CHAIRPERSON: Continue, read.

MS NGOYE: It says,

"I called Eskom today to let them know we have sold 119 and
to try to transfer the electricity account out of Janet's name,

however, the process seems to need both parties. We need to give Eskom a move-out instruction to terminate our account and then the new owners need to give them the move-in instructions to activate the new owner's account. However, when we give them the move-out instruction they will cut-off the electricity supply until the move-in order is given. I obviously don't want to leave you without electricity, the pond and the wine cellar are linked and the wine cellar needs power to pump out water and prevent flooding. Would you please let me know as soon as you are
10 able to do the account transfer with Eskom so that we can co-ordinate the instruction to happen on the same day".

CHAIRPERSON: So this is after the property has been transferred to Precise Trade.

MS NGOYE: That's correct Chair.

CHAIRPERSON: And the sellers are now talking about logistics in terms of moving out and making arrangements with Eskom to ensure that the – they are not billed for the electricity when they no longer live at the house.

MS NGOYE: That's correct Chair.

20 **CHAIRPERSON:** And they sent an email to Mr Montana and not to Precise Trade.

MS NGOYE: That's correct Chair.

CHAIRPERSON: And not to Mr van der Walt who is the sole Director of Precise Trade?

MS NGOYE: That's correct Chair, they speak to Mr Montana.

CHAIRPERSON: They talk to Mr Montana on the basis that he – they understand that he is the person who is going to be living in the house.

MS NGOYE: That's correct Chair.

CHAIRPERSON: Okay, alright.

ADV VAS SONI SC: And then what's the next communication Ms Ngoye, that's at 21.33?

MS NGOYE: So on the 19th of March 2015 Mr Louis Green addressed an email to the seller of the Sandhurst property regarding the repairs to the gate motor, the security cameras and the transfer of the electricity
10 account, and once again that email is attached to the Court Papers Chair, we make that available.

ADV VAS SONI SC: And Mr Green is who?

MS NGOYE: Mr Green was the Estate Agent. So he says, Mr Green, he writes to Janet and I quote Chairperson, he says,

“Hi Janet, I chatted with Lucky, Lucky being Mr Montana, regarding the repair of the gate motor, the security cameras and the transfer of the electricity account. He has confirmed that the appointment at 9h30 on Friday the 20th of March 2015 and has requested they only attend to the gate motor.
20 He will, at his expense re-instate the security video system. He has also requested that you hold off as far as the transfer of the accounts is concerned. He is extremely busy at the moment and undertakes to pay all that is related to the bills until the transfer has been done. He has indicated that, should he be able to attend to it within the next few weeks,

that he should be able to attend to it within the next few weeks. Your indulgence in this regard will be much appreciated. Could you please advise who the gardening and pool services companies are as he would like to continue with their service”,

So this is what – obviously Mr Green relaying this information to, you know – yes.

ADV VAS SONI SC: Now in the next paragraph there is a further reference to Mr Montana’s involvement with this property, could you
10 briefly tell the Chairperson what that is?

MS NGOYE: Is this 21.34?

ADV VAS SONI SC: Yes.

MS NGOYE: So a further thread of emails Chair relating to the Sandhurst property transaction at that time is attached to the founding affidavit, in particular, I wish to draw attention to the email addressed by the seller, the pool service company dated 31st March 2015 in which it said, and I quote,

“Hi [indistinct] , this is just to confirm that we have notified the new owner, Lucky, that the pool cover part has arrived
20 and we are waiting his instructions to carry out the repairs. We have also given the Pam Golding Agent, Louis Green your contact details so that they can get in touch with you directly, if necessary”.

ADV VAS SONI SC: Now at paragraph 21.35 you make an interesting observation.

MS NGOYE: Yes Chair, so it will be noted that Mr van der Walt was sole Director and shareholder of Precise Trade and Invest is not copied on any of the abovementioned emails, the emails are direct to Mr Montana.

ADV VAS SONI SC: And when you say that, what do you intend to convey?

MS NGOYE: Well effectively that, you know, Mr Montana, at the end of the day was the person that the property was bought on behalf of.

CHAIRPERSON: So in this last email you read which is at the top of
10 page 369, this is an email from the seller of the property.

MS NGOYE: Yes Chair.

CHAIRPERSON: Addressed to – who is it addressed to?

MS NGOYE: To the...[intervenes].

CHAIRPERSON: To the pool service company?

MS NGOYE: That's it Chair.

CHAIRPERSON: And it's addressed on 31 March 2015 and he tells the pool service company that the new owner of the property is the person to whom he refers as Lucky?

MS NGOYE: Correct Chair.

20 **CHAIRPERSON:** And you say that person is Mr Montana?

MS NGOYE: Lucky Montana, that's correct Chair.

CHAIRPERSON: Yes and he says to the pool service company he's awaiting Mr Montana's instructions as to the carrying out of repairs.

MS NGOYE: That's correct Chair.

CHAIRPERSON: Yes okay.

ADV VAS SONI SC: Now thereafter there follows a rather infesting communication, would you tell us [indistinct] what that is?

MS NGOYE: So on the 10th of May Chair, 2016 Mr Green sent an email to Mr Montana, Mr Green...[intervenes].

CHAIRPERSON: This is now 2016?

MS NGOYE: This is 2016 Chair.

CHAIRPERSON: So that's a year and 2015 has passed since these other emails?

MS NGOYE: Yes Chair.

10 **CHAIRPERSON:** Okay.

MS NGOYE: So Mr Green advised that he sellers of the Sandhurst property had found two extra keys for the electric pool cover.

CHAIRPERSON: I'm sorry – yes okay, they had found two extra keys for the electric pool cover.

MS NGOYE: That's correct.

CHAIRPERSON: Mr Green sends this email to Mr Montana.

MS NGOYE: Mr Green.

CHAIRPERSON: Mr Green sends it to Mr Montana?

MS NGOYE: That's correct Chair

20 **CHAIRPERSON:** Yes.

MS NGOYE: Mr van der Walt responded, a copy of these emails is also attached, he then says in an email...[intervenes].

CHAIRPERSON: Ja please read the email.

MS NGOYE: He says,

“Hi please explain why you have cc'd Mnr L Montana, I'm just

thinking that Mnr is meneer, in this email, you are well aware of the fact, and as already explained to you last year before the property was even bought by my company that Mnr L Montana has nothing to do with Precise or the property. Please refrain from this action in the future, this is confusing”,

No it's not.

CHAIRPERSON: [Laughter], yes continue Mr Soni.

ADV VAS SONI SC: And I'll tell you why its not
10 confusing...[intervenes].

CHAIRPERSON: Ja it's not confusing at all.

ADV VAS SONI SC: But you then put some context to that Ms Ngoye an that's at paragraph 21.37.

MS NGOYE: Yes Chair, so the papers in the previous application were issued on the 2nd of February 2016, the Sandhurst property transaction was mentioned in those papers, the above email was sent, only after Mr Montana was confronted with allegations contained in those papers and two days before Mr van der Walt deposed to the confirmatory affidavit.

CHAIRPERSON: Ja it's not confusing at all, yes. So Mr van der Walt
20 now says to Mr Green the Estate Agent, what are you doing what does this property have to do with Mr Montana.

MS NGOYE: Mr Montana, ja.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And obviously what you say at paragraph 21.37 appears to have prompted that email.

MS NGOYE: That's correct.

ADV VAS SONI SC: I mean that communication.

MS NGOYE: That's correct, so when the application was made he had to cover up there.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Thereafter we deal, at paragraph 21.38, with the fourth transaction.

MS NGOYE: Yes Chair.

ADV VAS SONI SC: And this involved a property in which suburb?

10 **MS NGOYE:** It's in Hurlingham Chairperson, it's situated at 12 Montrose Road in Hurlingham.

ADV VAS SONI SC: And Mr Green appears to be the Estate Agent again.

MS NGOYE: Yes Chair.

ADV VAS SONI SC: Now very briefly...[intervenes].

CHAIRPERSON: Mr Green is the Estate Agent here as well?

MS NGOYE: Yes Chair.

CHAIRPERSON: Oh.

MS NGOYE: In 21.40.

20 **CHAIRPERSON:** That is with regard to the fourth transaction?

MS NGOYE: That's correct Chair.

CHAIRPERSON: How far apart were these properties, usually Estate Agents are restricted to an area isn't it or certain areas [indistinct] to one another.

ADV VAS SONI SC: They're not too far away, I know because I stay

near...[intervenes].

CHAIRPERSON: Yes, they're not too far apart.

ADV VAS SONI SC: They ordinarily would have been entailed two separate Estate Agents belonging to the same company, they're not too far apart.

CHAIRPERSON: Oh okay, continue.

ADV VAS SONI SC: Yes Ms Ngoye.

MS NGOYE: Must I continue to 21.40?

ADV VAS SONI SC: Yes.

10 **MS NGOYE:** So Mr Green was mandated by Mrs Gavisser [?] to market and sell the Hurlingham property. So the property was placed on show which Mr Montana attended on about October 2014. Mr Montana, having viewed the property, immediately expressed an interest in purchasing the property. On about 15 October 2014 Mr Montana requested that the offer to purchase be forwarded to Mr Smith.

ADV VAS SONI SC: Now this is Mr Smith...[intervenes].

MS NGOYE: The Trustee.

ADV VAS SONI SC: The Trustee.

20 **MS NGOYE:** That's correct Chair of the minor property Trust, his children's.

CHAIRPERSON: What was the purchase price of this property, I'm trying to look for it.

MS NGOYE: Purchase price is R12million.

CHAIRPERSON: Hm?

MS NGOYE: R12million.

CHAIRPERSON: Oh okay that's in 21.41?

MS NGOYE: That's correct Chair.

CHAIRPERSON: Okay.

MS NGOYE: So the minor property Trust...[intervenes].

CHAIRPERSON: I'm sorry, I'm sorry, the first – the second property was paid for through – by Mr van der Walt, is that right?

MS NGOYE: Precise Trading, that's correct Chair.

CHAIRPERSON: That property was also paid for – well the deposit of R5million was said to have been paid by or on behalf of Mr Montana
10 through Mr van der Walt?

MS NGOYE: That's correct Chair.

CHAIRPERSON: And later on when it was – the plans changed Precise Trade must be the purchaser, Mr van der Walt said that amount must be taken as Precise Trade's deposit.

MS NGOYE: That's correct Chair.

CHAIRPERSON: Which means if the R5million had come from Mr Montana he would now be owed money by Precise Trade.

MS NGOYE: That's correct Chair.

CHAIRPERSON: Yes, and then of course, we see Mr Montana being
20 involved quite throughout and correspondence being addressed to him.

MS NGOYE: That's correct Chair.

CHAIRPERSON: That's the third transaction and that was R13.5million.

MS NGOYE: That's correct Chair.

CHAIRPERSON: Ja and the one before was R11million.

MS NGOYE: It was R10.5million and then it went to R11million.

CHAIRPERSON: Yes it went to R11million, so this one we are dealing with here now is R12million.

MS NGOYE: R12million Chair.

CHAIRPERSON: All these purchases are happening in 2014, is that right?

MS NGOYE: That's correct Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Then at paragraph 21.42 the details of who
10 signed the offer and so on are set out, could you please summarise the position for the Chairperson?

MS NGOYE: So the offer was signed by Mr Smith, the Trustee Chair, in his capacity as the Trustee of the minor property Trust, however, both Mr Smith and Mr Montana represented to Mr Green that the property was being purchased by Mr Montana and there's reference to correspondence to that effect Chair.

ADV VAS SONI SC: And then what happens thereafter?

MS NGOYE: And the offer was rejected by the seller.

ADV VAS SONI SC: And after it was rejected?

20 **MS NGOYE:** So on the 23rd of October 2014 the minor property Trust, through an email from Seresa David, Ms David, made another offer to purchase the Hurlingham property for an amount of R13.5million and it was again – proof of that email correspondence is attached to the papers before Court.

ADV VAS SONI SC: Now in the offer to the – by the minor property

Trust it was subject to payment of the deposit of R2.4million and the purchaser obtaining a bond of R9.6million, is that correct, that appears at paragraph 21.41?

MS NGOYE: That's correct Chair – that is correct in 21.41 it says so, the offer was subjected to payment of a deposit in the amount of R2.4million and the purchaser obtaining a bond of R9.6million.

ADV VAS SONI SC: And when the offer was made for R13.5million what happened to the bond finance clause?

MS NGOYE: So that clause was deleted Chairperson and this is
10 referenced in 21.44 which indicated that the offer was a cash purchase, furthermore the sale was subject to payment of a deposit in the amount of R2million, so the bond was no longer an issue here because there was cash available to purchase the property.

CHAIRPERSON: Well you see in paragraph 21.41 you say an offer of R12million was made to the seller by minor property Trust represented by Mr Smith, was subject to a payment of a deposit in the amount of R2.4million and the purchaser obtaining a bond for R9.6million, okay that offer was rejected and then three days later minor property Trust made an offer for R13.5million and that was a cash – that was to be a
20 cash purchase.

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: And an important point is, it's no longer subject to a bond being approved.

MS NGOYE: Yes Chair.

CHAIRPERSON: Yes, yes.

ADV VAS SONI SC: Then there is a development on the 3rd of March Mr Ngoye, what was that?

MS NGOYE: A new offer to purchase was submitted where Mr Montana was substituted for the minor property Trust as the purchaser.

CHAIRPERSON: Does this mean this offer of R13.5million was rejected?

MS NGOYE: No Chair, so they make the offer of R13.5million but because it's a cash sale you know and the bond requirement is not an issue anymore and one would surmise that in relation to that
10 transaction the purchaser would have been Mr Montana and that's why on the 3rd of March 2015 they signed a new offer, I suppose it's in relation to the same property Chairperson but they changed the name of the purchaser here to being the Trust and not Mr Montana.

CHAIRPERSON: Now the new offer is for how much?

MS NGOYE: It's the R13.5million Chair.

CHAIRPERSON: It's R13.5million still that one.

MS NGOYE: That's correct Chair, it's the same amount as what was offered.

CHAIRPERSON: Okay.

20 **ADV VAS SONI SC:** The previous offer was from the Trust.

MS NGOYE: That's correct.

ADV VAS SONI SC: Who is this new offer from?

MS NGOYE: The new offer to purchase was submitted by Mr Montana.

ADV VAS SONI SC: So Mr Montana is now substituted for the Trust as the offeree?

MS NGOYE: Yes, what 21.45 says Chair is that the new offer to purchase was submitted in which Mr Montana was substituted for the minor Trust property as the purchaser.

ADV VAS SONI SC: And then – now in relation to this – to that offer certain payments were made and these are reflected in paragraph 21.46, what were those payments?

MS NGOYE: So on the 24th of March 2015 Precise Trade Chair, paid the deposit of R2million into the Trust account of Janine Bredekamp, a conveyancer attending to the transfer of the Hurlingham property and
10 there's proof of that.

ADV VAS SONI SC: Alright and then 21.47 there is still obviously an amount of R11.5million.

MS NGOYE: Yes Chair.

ADV VAS SONI SC: When is that paid?

MS NGOYE: So there were various delays Chair, as reflected in 21.47 relating to the payment of the balance of the purchase price in the amount of the R11.5million and a copy of a letter between Mr van der Merwe, Mr van der Merwe is the attorney for Siyangena...[intervenes].

ADV VAS SONI SC: Van der Walt.

20 **MS NGOYE:** Sorry Mr van der Walt sorry and Ms Bredekamp...[intervenes].

CHAIRPERSON: Maybe van der Merwe as well but the one who deals with Siyangena the most is Van der Walt.

MS NGOYE: Correct Chair so Mr van der Walt wrote in quotes he says:

“We herewith confirm that we hold instructions from our client to confirm in writing that his delay in rendering a guarantee is not due to his *mala fides*, but due to unforeseen circumstances pertaining to the sale of one of his properties of which the profits out of the sale is earmarked to be utilised for payment of this property.”

That is the rendering of the guarantee and he further on says:

10 “It was conveyed to our officers that such funds will only be available during the last week of May 2015 to be transferred to our offices where after our offices will invest the funds in an interest bearing account with Investec to enable our offices to render a guarantee as stipulated in your letter of 30 March 2015 through Investec.”

ADV VAS SONI(SC): And was that amount then paid?

MS NGOYE: Yes, the outstanding purchase price was eventually paid, Chairperson on the 15th of May 2015.

20 **ADV VAS SONI(SC):** Now, in your affidavit, in your founding affidavit in the review papers you do not indicate that that purchase by Mr Montana had actually been finalized because remember Mr Montana is now substituted as the offer reads in place of the trust.

MS NGOYE: That is correct, Chair. That was his quest.

ADV VAS SONI(SC): But on the information at your disposal that sale did take place?

MS NGOYE: That is correct, Chair.

ADV VAS SONI(SC): And Chairperson we will obviously make the necessary enquiries from our side, see who the owner of the property is on the official record. So those are the four transactions relating to Mr Montana?

MS NGOYE: That is correct, Chair.

ADV VAS SONI(SC): Now, there is one transaction relating to Mr Gansho?

MS NGOYE: That is correct, Chair.

- 10 **ADV VAS SONI(SC)**: Now, could you explain to the Chairperson in summary form how this took place?

MS NGOYE: Well, Mr – in 2011 Chairperson Mr Gansho approached a certain Mr Murphy regarding a property which was situated in Durban. The purchase of that property in the Point Precinct in Durban and Mr Murphy had to depose to an affidavit searching out the sequence of events that led to the sale of that unit and a copy Mr Murphy's affidavit was also attached to the papers, Chair.

ADV VAS SONI(SC): Now, Mr Murphy had nothing to do – was he the owner of that property?

- 20 **MS NGOYE**: Well, Mr Murphy had placed a unit including the furniture and fittings, I think he was the owner, Chair. Approached Mr Murphy, if I recall Chair.

ADV VAS SONI(SC): Oh, sorry. It was owned by the scattered Murphy Family Rrust.

MS NGOYE: That is right, sir he was ...[intervenes].

ADV VAS SONI(SC): What was Mr Murphy's role in that?

MS NGOYE: Let me just find it here, Chair.

ADV VAS SONI(SC): I suppose given the names he would have been associated with his trusts.

MS NGOYE: Well, yes.

ADV VAS SONI(SC): Yes. What was the selling price of this property?

MS NGOYE: It was three million and fifty thousand.

ADV VAS SONI(SC): Now, that was placed on sale?

MS NGOYE: That is correct, Chair.

10 **ADV VAS SONI(SC)**: And what did Mr Gansho do in relation to that property?

MS NGOYE: Mr Gansho approached Mr Murphy and indicated an interest in purchasing the property, Chair. As well as the furniture, some furniture that was in the property.

ADV VAS SONI(SC): And did he visit the property, Mr Gansho?

MS NGOYE: Yes, he visited the unit on several occasions Chair.

ADV VAS SONI(SC): And eventually the negotiations were concluded, what did Mr Gansho do at the conclusion of those negotiations?

20 **MS NGOYE**: So, Mr Gansho for the first-time informed Mr Murphy that he was not in fact the purchaser of the property. Mr Gansho advised Mr Murphy that Mr van der Walt would contact Mr Murphy and provide further details.

ADV VAS SONI(SC): Then what happened next?

MS NGOYE: So, Mr Murphy was the contacted by Mr van der Walt who advised that the purchaser was to be an entity called Grand Tower Trade

and invest all four (Pty) Ltd. Mr van der Walt is the sole Director and shareholder of Grand Tower and confirmation to that he has attached to the papers, Chair, of directorship from the auditors of Grand Tower.

ADV VAS SONI(SC): Alright. If the sale was negotiated between Mr Gansho and Mr Murphy, am I right?

MS NGOYE: That is correct. That is correct, Chair.

ADV VAS SONI(SC): And in regard to the payments who made the payments?

MS NGOYE: The chance relating to the payments of the purchase price
10 when he negotiates and agreed with Mr van der Walt, Chair, as a representative of Grand Tower.

ADV VAS SONI(SC): And was there then an agreement that was concluded?

MS NGOYE: That is correct, Chair. So, Mr Murphy and the Grand Tower concluded their agreement for the sale and purchase of that unit and furniture and fittings and the agreements are also provided, Chair. How can they not provide it?

ADV VAS SONI(SC): In regard to, so we know now the property was not in Mr Gansho's name but in the name of Grand Towers.

20 **MS NGOYE**: Yes, Chair.

ADV VAS SONI(SC): What is the link though that the investigations were still able to establish between Mr Gansho and that property on the Waterfront?

MS NGOYE: But, Mr van der Walt has been the link, Chair.

ADV VAS SONI(SC): Now, in relation to Mr Gansho and the property, if you look at paragraph 21.56 and property.

MS NGOYE: Yes. There was an e-mail that was addressed by Mr Gansho to the Reverend Maromo and in that e-mail Mr Gansho wrote,

“Visit the following link for information on your accommodation my apartment is C7 to 10. Enjoy every moment if any questions or need anything just call me.”

ADV VAS SONI(SC): What would that appear to indicate? That e-mail?

10 **MS NGOYE**: Well, that effectively Mr Gansho you know was the owner because you do not lease somebody else’s property Chair or invite people to occupy somebody’s property if you are not necessarily the owner thereof.

ADV VAS SONI(SC): Now, after the investigation started, was Mr Gansho interviewed by PRASA or the investigators?

MS NGOYE: Yes, Chair.

ADV VAS SONI(SC): And what did he say during that interview?

MS NGOYE: Mr Gansho in fact on the 12th of August 2016 he says when I first saw the apartment [intervenes].

20 **ADV VAS SONI(SC)**: Oh, sorry. Before I go into that. Was the interview with Mr Gansho recorded?

MS NGOYE: Yes, Chair. The investigators and this is you know obviously during the forensic investigation that was done by Wilsons.

ADV VAS SONI(SC): And now what you are now reading is what?

MS NGOYE: A transcript of the interview with Mr Gansho which was held on the 12th of August 2016.

ADV VAS SONI(SC): What does he say then?

MS NGOYE: Read into the record.

“You see, when I first saw the apartment, we were busy with our 2010 projects at the time so at some point [intervenes].”

ADV VAS SONI(SC): Sorry, the 2010 projects being what?

MS NGOYE: Would be those projects, the development of the stations,
10 Chair, in relation to phase one of the project and the extension of the pilot phase.

ADV VAS SONI(SC): Yes.

MS NGOYE: So, he says – he says at some point we would be made missing. Sorry, at some point we would be made missing our flights coming back because of the durations of the meetings and all that. One of the colleagues in Durban said at the waterfront where people can stay we used to sleep in different apartments there. So we slept there and at one time I went there with the family and then he looked at the place the I got curious, I asked which one of these apartments are selling. Mr
20 Murphy said he is selling in that I think it is C10. We went in there, we looked at it, if we came there on a Thursday or a Friday we sleep over on Saturday then we will invite some of the guys who we were with at the meetings. One of the guys who was – who wants went there whose Mr it does not show. It does not reflect it is not audible I do not know his name is he is Alvin. He is from Siyagena. In one instance I think it is

Mr Mellerkamp, so you really got interest in this particular apartment and then I approached Mr Murphy to say I would like to buy this then this Alvin guy said he is also interested, their company is also interested and he said you look very much interested in this and I said yes I am but I think it is too steep for me to be acquiring it. He said okay, but do you like this flat? And I said yes I do, then he said okay that is fine and then I approached this guy Murphy. I said Craig I am really interested in this apartment. So we went into the whole nitty-gritty's of it. The next thing I hear Alvin saying you can get that flat. Then when you are ready said
10 okay you can buy the flat and then we get it to be acquired by the company he said, it will not be a problem for us as the company acquire the flat and then maybe at some point when you are ready for it we can talk. I said okay that is fine.

ADV VAS SONI(SC): So, putting the whole whatever he said in that interview in context what seems to have happened?

MS NGOYE: Mr, what seems to have happened also here Chairperson is that Mr Gansho was the assistant in purchasing that property as well.

ADV VAS SONI(SC): But the Property was purchased in the name of Grand Canyon?

20 **MS NGOYE:** That is correct, Chair. He showed interest in the property and yes.

CHAIRPERSON: And who was the owner of this Grand Tower?

MS NGOYE: It does say.

CHAIRPERSON: Do we know?

MS NGOYE: I do not.

ADV VAS SONI(SC): Mr van der Walt, Mr Chairperson you will see that at 21.55.

CHAIRPERSON: Five - five?

ADV VAS SONI(SC): 21.55, yes, Chairperson

MS NGOYE: Grand Tower, yes.

CHAIRPERSON: Okay. Grand Tower. Mr van der Walt was the representative of Grand Tower.

MS NGOYE: Was the representative of - Chair, yes.

CHAIRPERSON: But, is there something that tells us whether he was a
10 director or just acting for them? Do you know?

MS NGOYE: We can check that, Chair.

CHAIRPERSON: van der Walt was a director of Grand Tower or whether he was just acting as an attorney for them?

MS NGOYE: We will check that, Chair. I cannot seem to remember.

CHAIRPERSON: Okay. But the transaction relating to Mr Gansho unless its - it connects with PRASA or somebody at PRASA, why would it be relevant? Or does it – does it connect? Let me ask the witness.

MS NGOYE: Yes, Chair. What we deduced from this transaction you know the involvement of Mr van der Walt in assisting Mr Gansho in
20 obtaining this property and also the fact that this was during that time where Siyagena was really involved in the transactions in PRASA and you will recall Chairperson as part of the evidence that we gave that Mr van der Walt I mean Mr Gansho was the one that was really pushing the transactions was for Siyagena to be concluded with PRASA. So connection was then made you know in relation to his participation in the

Siyagena transaction and in the involvement of Mr van der Walt in this respect.

CHAIRPERSON: How much was this last property again? With respect to the price?

ADV VAS SONI(SC): About three million.

MS NGOYE: Three million Chair.

CHAIRPERSON: About?

ADV VAS SONI(SC): Three million.

CHAIRPERSON: Three million. Yes, but I am not sure that I understand
10 why it is relevant.

MS NGOYE: Well [intervenes].

CHAIRPERSON: If it does not connect anybody from PRASA to it or PRASA.

MS NGOYE: It connects to Siyagena to a person through Mr van der Walt.

CHAIRPERSON: Yes.

MS NGOYE: So that is how you know the way we interpreted this particular transaction that was a form of gratuity that Mr – Mr – Mr ...[intervenes].

20 **CHAIRPERSON**: Gansho.

MS NGOYE: Mr Gansho was receiving in relation to his relationship to Siyagena. So, they assisted him.

CHAIRPERSON: Was it not part of, I thought he was part Siyagena?

MS NGOYE: No, Mr Gansho is an employee at PRASA, Chairperson.

CHAIRPERSON: Oh.

MS NGOYE: Yes.

CHAIRPERSON: Then let me, then I must have missed that part clearly.

ADV VAS SONI(SC): You did, Chair.

CHAIRPERSON: Oh, okay, okay, okay, because he was the one who was asking Mr Montana for approvals of certain, okay no I think I got mixed up at some stage.

MS NGOYE: Yes, Chair.

CHAIRPERSON: Okay. No, no. So, the theory is he is getting his share?

10 **MS NGOYE:** That is correct, Chair.

ADV VAS SONI(SC): And you will see Chairperson at page 376 that where part of the transcript is he talks about a person called Alvin from Siyagena.

CHAIRPERSON: I am sorry. I am at 376.

ADV VAS SONI(SC): Yes, about six lines from the top Mr Chair.

CHAIRPERSON: Yes.

ADV VAS SONI(SC): I do not know his surname he is Alvin, he is from Siyagena, and then about 4 lines later he says that this Alvin guy said he is also interested in the company and he said if you are interested then
20 we can get the property.

CHAIRPERSON: Oh, yes. Yes. Okay. Alright. Thank you. Well, I see, - I see that Mr Gansho was suspended in April 2014.

MS NGOYE: That is correct, Chair.

CHAIRPERSON: Was that after these transactions?

MS NGOYE: Yes, it was after the transactions, Chair.

CHAIRPERSON: But they were discovered.

MS NGOYE: Yes.

CHAIRPERSON: Okay. And ultimately what happened to him?

MS NGOYE: Well, he was dismissed, Chair.

CHAIRPERSON: He was found guilty for what?

MS NGOYE: Yes, he was found guilty of in his conduct and in relation to [indistinct]

CHAIRPERSON: in relation to his powers in his transactions

MS NGOYE: That is correct, Chair.

10 **CHAIRPERSON**: Yes, and was his disciplinary hearing checked by an outsider?

MS NGOYE: That is correct, Chair.

CHAIRPERSON: A lawyer?

MS NGOYE: Yes, Chair.

CHAIRPERSON: And we can get the – see

MS NGOYE: And we can get the transcripts. Yes, Chair.

CHAIRPERSON: Okay, shall we just get that?

ADV VAS SONI(SC): Yes.

CHAIRPERSON: Okay, alright.

20 **ADV VAS SONI(SC)**: Mr Chairperson may I then conclude this with and I know I have overstayed my welcome here but

CHAIRPERSON: Yes.

ADV VAS SONI(SC): I – I as you pointed out Mr Chairperson these are the small things that paint a rather clear picture of what probably happened at PRASA. Going a bit back to your supplementary affidavit.

CHAIRPERSON: I see Mr Soni, I am not the only one who is poor in estimating time. I see we are at five now.

ADV VAS SONI(SC): I know.

CHAIRPERSON: And twenty minutes has become forty minutes.

ADV VAS SONI(SC): This will

CHAIRPERSON: But let us round off that is fine. Let us round off properly.

ADV VAS SONI(SC): That is fine. So, you then make the point which we made earlier in paragraph 48 relating to the link between the Siyagena
10 and Mr Moodley that Siyagena paid five hundred and fifty million rand to Railway Trading which shares is the same address as Royal Security when it was directed to Mr Moodley.

MS NGOYE: That is correct, Chair.

ADV VAS SONI(SC): Two other points that I want to make at this stage is [intervenes].

CHAIRPERSON: When was that payment made? Do you know?

MS NGOYE: No, I – I do not have the date, Chair.

CHAIRPERSON: Do you have the year?

MS NGOYE: No, I cannot remember the year, Chairperson.

20 **CHAIRPERSON**: It is important because you know when you place some of these transactions may be important.

MS NGOYE: I will find out, Chair.

CHAIRPERSON: Okay.

ADV VAS SONI(SC): Now, you make the point that the all these matters including these properties transactions were reported to the police, would I be correct?

MS NGOYE: That is correct, Chair.

ADV VAS SONI(SC): And as far as you know no arrests have been made and no prosecutions have been started?

MS NGOYE: Not yet.

ADV VAS SONI(SC): Well the last point that you make is that you have grave difficulty here and in the High Court in respect of the review
10 application in regard to painting a full picture. Would you tell the Chairperson in essence what the difficulties were?

MS NGOYE: Chair, the challenges that we had in finding information at PRASA were grave because you keno the information was just not there really so we struggled when we took these papers to Court. What we understood had transpired was that a Mr Montana had a special IT services an employee who was really looking after his IT related issues, Mr Tusi, I will get his surname now. His name is ...[indistinct] he was one of PRASA's IT specialists, that is paragraph 52, Chairperson.

CHAIRPERSON: Ja.

20 **MS NGOYE**: Who it was found that he on the instruction of Mr Montana had deleted information at PRASA on PRASA's service relating to anything related to information pertaining Mr Montana and a lot of the information that was required for these transactions. So wilfully what happened was that he was then disciplined as well and he was found guilty and he was dismissed. So you know the struggles with the

information were there because they were destroyed and I think that Chair having reference to Mr – Dr Molofe's information expresses the same you know difficulties as well and frustrations around getting information at PRASA. So, we were also saddled with that problem.

CHAIRPERSON: Well then please make available that decision in relation to Mr Holele Dinsgwayo.

MS NGOYE: Yes, because that disciplinary hearing was also conducted by an external party so the recordings will be there.

CHAIRPERSON: Yes, that is important now.

- 10 **ADV VAS SONI(SC)**: Mr Chairperson that then is the evidence at this stage, the first stage and as I indicated earlier today, Chairperson. The next stage we will try and wrap up all the evidence relating to PRASA including the loose end from here which is why we thought it may be better to ask you if we can then adjourn today.

CHAIRPERSON: No, that is fine. We will find some time in the next few months for a lot to have for to continue with this second session.

ADV VAS SONI(SC): Yes.

CHAIRPERSON: And Miss Ngoye do try to go find information as to when that five hundred and fifty million rand was paid.

- 20 **MS NGOYE**: I will do, Chair.

CHAIRPERSON: Yes, and the of course next time you will still deal with the question of what if anything has changed in PRASA.

MS NGOYE: Yes, Chair. That is definitely. Yes, Chair.

CHAIRPERSON: Since these times.

MS NGOYE: Yes, Chair.

CHAIRPERSON: Okay, thank you very much. It has been a long day

MS NGOYE: It has.

CHAIRPERSON: And it has been two long days for you and we will continue on the days that will be announced so let us leave it at that. Then we adjourn the proceedings for the day.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS *SINE DIE*