

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

29 JUNE 2020

DAY 226



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 29 JUNE 2020

CHAIRPERSON: Good morning Mr Soni, good morning everybody. Before we start I would like us to all rise and I observe a moment of silence in remembrance of all those who have passed on as a result of Covid-19 in this country and elsewhere in the world but also to honour the doctors, nurses and other health workers who are in the front line in the fight against the pandemic. Thank you.

10 Good morning Mr Molefe thank you very much for coming back to the commission to continue with your evidence. We appreciate your commitment to helping the commission. I think you are coming to the commission probably for the sixth time. We really appreciate it, we understand that it might mean some inconvenience in terms of your other work but we appreciate that you continue to show your commitment to supporting the commission.

MR MOLEFE: Thanks Chairperson I am on pension.

CHAIRPERSON: Thank you very much. You may be seated Mr Molefe. Oh, I think there – there will need to be the 20 swearing – the oath first because it has been a long time but before that I do not know Mr Soni might wish to say something. I have been advised that it is acceptable that whenever I speak or you speak Mr Soni as well as the witness, we take off the mask and then we put it back when we are not speaking. Of course, we intend observing the

social distance but I do not think there is enough space between Zwelihle here. Just one chair in between I do not think is enough. I think you need to move further – further up otherwise I am looking around I think there is – otherwise enough social distancing. Thank you very much. Mr Soni.

ADV SONI SC: Thank you Mr Chairperson I would like to place according to...(microphone off).

CHAIRPERSON: Please put on your microphone.

ADV SONI SC: Sorry Chairperson. That is according to the
10 advice we have received as well Mr Chairperson. Mr Molefe (intervention).

CHAIRPERSON: Okay alright then we can do the oath. Thank you.

REGISTRAR: Please place your full names for the record?

MR MOLEFE: My name is Popo Simon Molefe.

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

MR MOLEFE: I do not.

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

MR MOLEFE: I do.

REGISTRAR: Do you swear that the evidence you will give will be the truth; the whole truth and nothing else but the truth if so please raise your right hand and say, so help me God.

MR MOLEFE: So help me God.

CHAIRPERSON: Thank you very much. Yes Mr Soni.

ADV SONI SC: Thank you.

CHAIRPERSON: You might need to just re-orientate everybody where we left off.

ADV SONI SC: Yes.

CHAIRPERSON: With Mr Molefe's evidence

ADV SONI SC: Yes.

CHAIRPERSON: In the past and where we are continuing
10 there.

ADV SONI SC: Mr Chairperson you will recall that the last
issue that we canvassed with Mr Molefe was the meeting on
the 20 August 2015 at which former President Zuma
attempted to persuade Mr Molefe to ask his board to take Mr
Montana back after he had resigned and this was about six
weeks after he had left the organisation on the 15 July 2015.
Then you will also recall Mr Chairperson that Mr Molefe in
dealing with that matter dealt with a meeting that he had
held with the top six asking them to create some semblance
20 of normality at PRASA on account of the attacks that Mr
Montana had been making against Mr Molefe and the board.

CHAIRPERSON: Just one second. The air conditioner
seems to be on it does not feel like it is a heater it is like it
is making us cold so I think somebody will attend to that.
Okay.

ADV SONI SC: Mr Chairperson may I ask if I can just really briefly deal with that matter because you will recall that one of the questions I asked and you also asked Mr Chairperson was whether it – it made sense that the board was being asked to take Mr Montana back given the background circumstances of which everybody knew. And you will recall that Mr Molefe said that it had been widely reported in the media. We have since then Mr Chairperson and we have augmented the file and at pages 222 to page 258...

10 **CHAIRPERSON:** Let us just indicate...

ADV SONI SC: Oh sorry yes Mr Chairperson.

CHAIRPERSON: Which number that file is?

ADV SONI SC: Yes. It will – Bundle D Exhibit SS6.

CHAIRPERSON: And what page?

ADV SONI SC: So this is the articles are at 222 to 258 Mr Chairperson.

CHAIRPERSON: And that would be the same file that Mr Molefe has got in front of him, is that right?

ADV SONI SC: That – that is so Chairperson yes.

20 **CHAIRPERSON:** Okay. Page 222 that is where they start.

ADV SONI SC: That is so.

CHAIRPERSON: Yes. But the instance when I was looking at this file they did not seem to be arranged according to dates.

ADV SONI SC: The – the articles themselves are not.

CHAIRPERSON: The article (intervenes).

ADV SONI SC: Chairperson.

CHAIRPERSON: Why not? I thought that they would go front the earliest up to – when you read – when you try to follow the story.

ADV SONI SC: Yes.

CHAIRPERSON: Hm. I had to try and see which one is supposed to – you see for example at page 222 you have got an article of 7 August 2015 and at page 238 you have got an
10 article of 6 July 2015. I mean that is 26 and then at page 243 you have got an article of 23 July 2015.

ADV SONI SC: Yes.

CHAIRPERSON: They should have been arranged according to dates.

ADV SONI SC: They should have been arranged chronologically yes.

CHAIRPERSON: Yes. So that one could see the build-up. This is how the reporting started.

ADV SONI SC: Yes.

20 **CHAIRPERSON:** And how it – how it built up.

ADV SONI SC: Yes.

CHAIRPERSON: Up to the date of the meeting.

ADV SONI SC: Yes.

CHAIRPERSON: In terms of what everyone must have been seeing in the – in the media.

ADV SONI SC: In the media, yes.

CHAIRPERSON: Hm.

ADV SONI SC: Chairperson can I...

CHAIRPERSON: I do not know whether it can be changed?

ADV SONI SC: It will be done.

CHAIRPERSON: Yes.

ADV SONI SC: Mr Chairperson because with respect it – you are absolutely right that is how it should have been done.

10 **CHAIRPERSON:** Hm.

ADV SONI SC: I did not...

CHAIRPERSON: Okay the only – the only problem of course is that when you refer to the articles now if you mention the page numbers and the page numbers are going to change.

ADV SONI SC: Yes.

CHAIRPERSON: It will be problem with the transcript. But it may be that – it may be that later on when the – when this has been changed arrangements can be made for you to place on record what the latest number – page numbers will
20 be. Okay, alright.

ADV SONI SC: I apologise Chairperson.

CHAIRPERSON: Hm. Okay. It is quite dark where I am. I do not know whether there is anything that can be done about it. I know that last time there was that same issue but we will continue in the meantime.

ADV SONI SC: Yes. Yes Chairperson. Chairperson may I say in regard to the articles.

CHAIRPERSON: Hm. Just one second. It may well be if that – if there are problems in getting – need to have better lighting here it may well be that a gas light might help so that when I want to read I can see the words.

ADV SONI SC: Yes.

CHAIRPERSON: Clearly. So – ja, okay alright.

ADV SONI SC: Chairperson the – it is not my intention in
10 referring to the articles to go into any depth. The idea is merely again to emphasise the point that it just made no sense and it was in the public arena that there was this incompatibility between Mr Montana and the board.

CHAIRPERSON: Well apart from any incompatibility I think for me what is most important is the fact that the question whether the articles which were in the media made it reasonable for us to – to make it reasonable for us to expect that people who normally read what is in the media would have been aware that at PRASA there are all these very
20 serious allegations of corruption.

ADV SONI SC: Yes.

CHAIRPERSON: That was alleged to have been taking place so that whatever proposals or decisions people were making they were making them being aware of all of these things.

ADV SONI SC: Absolutely.

CHAIRPERSON: Ja.

ADV SONI SC: Yes.

CHAIRPERSON: Okay.

ADV SONI SC: Mr Molefe.

CHAIRPERSON: I think that it would help me a great deal if Mr Molefe is able and your questioning can be directed that he is able to say based on what I told the Top 6 anyone who was in that meeting would have known the following features
10 of corruption at PRASA because I told them.

ADV SONI SC: Yes.

CHAIRPERSON: 1, 2, 3, 4 at least some of the important ones.

ADV SONI SC: Yes.

CHAIRPERSON: It may be that it is something that he might be able to do without going back to refresh his memory.

ADV SONI SC: Yes.

CHAIRPERSON: It may be that it is something that he would prefer to refresh his memory before mention – saying it.

20 **ADV SONI SC:** Yes.

CHAIRPERSON: So if we do not deal with it now because he might not have – he might need to refresh his memory we can deal with it later when he has a time – he has had a chance to refresh his memory.

ADV SONI SC: Yes.

CHAIRPERSON: But I would like – I would like that – that kind of evidence that makes it quite clear that here are some of the features of corruption or allegations of corruption at PRASA that anyone who was at that meeting was told about.

ADV SONI SC: And – and Chairperson with respect the – it was not just allegations of small corruption this was billions of rands. For example among...

CHAIRPERSON: Exactly.

ADV SONI SC: So – so perhaps I should ask Mr Molefe
10 whether he would like time to look at it.

CHAIRPERSON: Yes.

ADV SONI SC: Or he can talk about it now.

CHAIRPERSON: Yes, no that is fine. Mr Molefe you have heard the exchange between the Chairperson and myself and you understand the – the issue that rises because the whole question is should something have been done other than calling a meeting on the 20th to say take Mr Montana back? But I – do you want to go through the articles or do you know them sufficiently?

20 **MR MOLEFE:** Chairperson I – I do not intend to go through the articles unless Counsel would like me to do so and refer me to specific ones. I mean at the time I read a lot of them and I did refer earlier on in my evidence to this campaign to vilify the board and to attack the Chair of the Board and following the – the fact that in November of 2014 the Board

had become aware that there was a big tender that was – that had been adjudicated upon and the Chair of the Finance Capital Investment Committee who had been the previous Chair of the Board had wanted the Board that I was chairing to quickly approve that tender for the modernisation of Braamfontein Depot and of course the procurement of the rails and turnouts as part of the preparation for the trains that were going to be coming from Brazil which were being manufactured in Brazil. And the Chairperson would recall

10 that during my evidence I said that the Board had been misled by the former GCE Mr Montana who had said that he had a probity report when we had asked for the probity report because we needed assurance that the process was proper and was clean. It turned out that that report did not exist and he knew it did not exist but he lied to the Board. So that is one aspect now we exposing and we stop that tender process for that time. It involved well over R2 billion. And then the next time is when we discover and actually insist that Mr Montana gives a report that in fact the Public

20 Protector was not only investigating PRASA but had been asking for comments of PRASA on the interim report that she had given to PRASA. The Chairperson would recall that Mr Montana then gave me a file containing that report around March 2015. Now the series of media reports come after we exposed what appears to be corruption at the time. And of

course we were already saying we have got to investigate because the Auditor General also complains about the audit of the financial year. Now there are dots that one can connect Chairperson. Chairperson will recall that I – I had also referred to the – what I said was PRASA in turmoil and I said it was a – a report by Mr Montana. In fact, PRASA in turmoil was a section in the report of Mr Montana. The real thing is that Mr Montana had written a detailed report on the 27 July addressed to Minister Jeff Radebe who was in the
10 Presidency. I did say that I had gotten a copy from the whistle-blower but I was struggling to find it. I regret that Chairperson I am not computer savvy. I have found it last night.

CHAIRPERSON: Oh.

MR MOLEFE: And I read it but I tried to send it where I could – I could print it.

CHAIRPERSON: Hm.

MR MOLEFE: Then it looks like I have lost it so I would need to get some computer experts.

20 **CHAIRPERSON:** Yes.

MR MOLEFE: There to assist it but it is the report to Minister Jeff Radebe on the Board of PRASA.

CHAIRPERSON: Hm.

MR MOLEFE: Recent events at PRASA.

CHAIRPERSON: Hm.

MR MOLEFE: It is a very long report.

CHAIRPERSON: Hm.

MR MOLEFE: When one reads that report there is a – there is a link and connection between a series of media articles and what that report was saying. Because a lot of what we read in these media articles are also contained in that report. And quite clearly the target in that report and as can be seen in the articles as well is the Chairman of the Board is a problematic person. Of course, to some instance in
10 some of – instances the Minister of Transport was also you know targeted for attacks. So I will look for that report and then it will assist the Chairperson. Now ...

CHAIRPERSON: Maybe before you – before you leave the report, I must just say I know that Mr Soni is very happy to hear that the report has been found. I am very happy that it has been found. I have been very concerned about whether we will ever find it.

ADV SONI SC: Yes.

CHAIRPERSON: They will make arrangements to make IT
20 people available to you because obviously we also want to have the report. You want us to have the report so if – if you – if the commission can assist with IT people that they will be made available to you and then we should have it.

MR MOLEFE: I will be pleased to hear that. But Chairperson Minister Jeff Radebe has got the report. If he

wants to help the commission he too...

CHAIRPERSON: Yes.

MR MOLEFE: Can make the report available for the commission.

CHAIRPERSON: Well I was actually thinking as you were telling me that – as you were telling me that the report was addressed to him then it occurred to me that then we could ask him if he has – if he still has it.

MR MOLEFE: Ja.

10 **CHAIRPERSON:** But of course, if you can find it let – that will enable us to have it quicker but the former Minister may have to – to assist with issues relating to some of the matters that have come here.

MR MOLEFE: If he wants to help the commission.

CHAIRPERSON: Yes – no, no I am – I am confident that he – he will make himself available.

MR MOLEFE: Now Chairperson when I – I am going to come to the meeting of the – the Top 6.

CHAIRPERSON: Yes.

20 **MR MOLEFE:** But when I read the report last night.

CHAIRPERSON: Hm.

MR MOLEFE: It occurred to me that there is an explanation to the question that the Chairperson asked when the Chairperson said, you mean you could start the meeting at 6 and finish at 2? It is a long report and only Mr Montana

knew what the meeting was about. Him the President and Mr Radebe. Because he spoke for a long time referring.

CHAIRPERSON: Hm.

MR MOLEFE: And talking from the notes which now turned out that it – it was in fact that – that report which of course Minister Radebe in the meeting denied to have received it. Mr Montana did not say, I wrote this report to Mr Radebe. I had told Minister before he went to that meeting that I had received this document leaked to me by a whistle-blower and
10 so she wanted Mr Radebe to give her copy and he denied that he had it in that. But it explains why that meeting was ...

CHAIRPERSON: Just one second. Just one second Mr Molefe I want to understand that part. Are you saying that at the meeting Mr Montana indicated that he had sent the report to the Minister?

MR MOLEFE: No, no.

CHAIRPERSON: Oh no.

MR MOLEFE: He did not say so but he was saying things
20 that are contained in that report. No, no Mr Montana was saying things that were contained in the report. And some of the questions that the President also comments he was making it is clear are contained in that report. And you will see the link between that and these articles. The essence was that I am Lucky Montana, I am the best Group CEO of

this organisation. I can build PRASA. This board does not want to give me the opportunity to do that they are destroying me. There is nobody else who can run this organisation but me. And I told them that although I said I do not want extension on my contract I have changed my mind now. If you want me I can come back. And which is what the President was trying to do to say no, no.

CHAIRPERSON: And my recollection is that in your evidence last time you actually said the President also said
10 Mr Montana is the best guy to do this job.

MR MOLEFE: And as I read the report and of course when you read these articles you see what South African Commuters Organisation says even somewhere and he is saying in the article and what Zenzo Mahlangu I refer to him in my evidence earlier on he had been the General Secretary of SATAWU whose union was also doing business of course with the – with PRASA through I think a company called Blackstar but they had a trust called Bashume which belonged to the union. When you – so it is a common
20 message so around which all of these forces were being mobilised against the Board to some extent against the Minister of Transport as well. So – so now was corruption widely known at the time? We had already dealt with the Braamfontein Depot and we stopped it. We made it clear that we are stopping it because it was irregular and it

involved billions of rands. When I briefed the Top 6 of the governing party – my party I referred to the fact that our investigations show that we have been misled. There was this tender that was about to be issued which was irregular and we stopped it. And we are conducting several other investigations which I reveal a massive corruption within the organisation there. So – so it was known at that time that there was this massive corruption but the speed in which the media campaign mass mobilisation demonstration and all
10 these other forces are being mobilised against the Board clearly to me was intended to stop those investigations. So to get these people out of the way before the investigations are fully concluded. Now Chairperson if you look at what we have seen in this process of State Capture itself and I did say so at the beginning of my evidence as well that for it to succeed systems in organisations must be broken, must be weakened. And I did say that good people were being removed from positions and substituted by people who were compliant who would carry out the agenda whose objective is
20 the looting of the public purse and this central message being that one of State Capture. So – so here to suddenly people feel that this Board is a problematic board. Corruption cannot continue for as long as these people are in office. But the most problematic one is this one called Popo Molefe who is the Chairman of the Board. Ja. Get him

out of the way and then we can go back to – to our business as usual. So – so really that – that was the agenda. You see vilification I mean lies that are being told here about me being corrupt, me being doing this and that. And the judgment in court were evidence arising out of our investigation were presented confirmed the correctness of the positions that we took and proves a lie of what Mr Montana and all of these people were saying. Because I mean it went right up to the Constitutional Court, and our
10 position as the board of PRASA was repeatedly confirmed. So, Chairperson, yes, it was public knowledge, the leaders knew about that corruption.

CHAIRPERSON: No, thank you, Mr Molefe, why what was known in the public domain and what you told the top six at that meeting is important is because the top six are the top leaders of the governing party and most of them would have been in government as well and for me, the question arises, if they are told by the Chairperson of a board of an
20 government entity such as PRASA that there is a lot of corruption that we see has been happening, or that we think has been happening, and we are taking steps to investigate, I want to know what they did after that about what you told them.

I want to know what they did, not from you because you told me already that they never came back to you for

anything, but I want to know when they come here, I want to know what they did about that.

We are all aware of what is in the public domain about PRASA, even now. We are all aware about what is in the public domain about other SOEs about which there have been a lot of evidence of corruption in this Commission, SAA, Eskom, Denel and it would appear that these things do not start just now, these things seem to have started a long time ago and it is only proper that this
10 Commission should ask the question to some of those people, where were you, what did you do about this? Did you not have a responsibility to do something? So that is why it is important to me to know, apart from what was in the media.

We have the advantage that you had a meeting with the top six and you told that you alerted them and are there no steps that they ought to have taken, maybe which would have made sure that PRASA is not where it is today in terms of its financial position and that is part of
20 accountability and part of what we have to look at.

I mean, you were here last time when we touched on the issue of parliamentary oversight. I asked the same questions about parliament.

Where was parliament when all of these things – all of this corruption appears to have been happening all

these years, what were they doing about it?

They have a right to call the President and say what is going on under your government? What is going on with your minister so and so who is not doing his or her job?

They can call the minister, they can call the DGs, they can follow up, they can put that alliance and say if you do not fix this by such and such a time, we will pass a vote of no confidence in the whole cabinet.

MR MOLEFE: Chairperson, at the – if counsel agrees at
10 the end of my evidence, I would like us to do – well, counsel can tell us when to do it, but I would like us to do what we will call do connecting of the dots.

CHAIRPERSON: Yes. Yes.

MR MOLEFE: Because in all of that we can go right to the various ministers, the portfolio committees of parliament.

CHAIRPERSON: Yes.

MR MOLEFE: Speaker of Parliament.

CHAIRPERSON: Ja.

MR MOLEFE: You know, the efforts.

20 **CHAIRPERSON:** Yes.

MR MOLEFE: And then letters we wrote.

CHAIRPERSON: You wrote, yes, yes, yes.

MR MOLEFE: All of those things and then we can say but what does this mean?

CHAIRPERSON: Ja.

MR MOLEFE: And then when we are busy with this sort of thing and the minister stands in parliament says I am dissolving this board.

CHAIRPERSON: No, no, certainly that is a very important part.

MR MOLEFE: So we will have to connect all of those at some point.

CHAIRPERSON: Ja, yes.

MR MOLEFE: Because they give a picture.

10 **CHAIRPERSON**: Yes.

MR MOLEFE: Of – and I may want to ask a tough question as well which is similar to what the Chairperson is saying.

CHAIRPERSON: Yes.

MR MOLEFE: That ...[intervenes]

CHAIRPERSON: No, no, we will do that and I will leave it to counsel to see where the right time is. It might be at the end when you have all the evidence to then raise the issue.

20 I have said publicly that I have spoken to the Speaker of Parliament and the Chairperson of the NCOP and said that I think that parliament may need to start working on the issue of how it has carried out its oversight functions over the past x number of years and be able to come before the Commission at some stage and indicate

what is revealed by an exercise of checking.

And, in particular. I am looking at the SOEs, specific SOEs about which we have heard a lot of evidence here but also certain government departments and other functionaries to say what did they do? Did they do their job properly because it may well be that if they had done their job the way it should be done, maybe certain things might not have happened.

But it may well be that they are able to come here
10 and say look, these are our limitations in terms of mechanisms that are available to us and these are our limitations in terms of resources, we went as far as we could.

If we are in the future going to be expected to do more, certain changes must be made to enable us to do that, then that is fine but I do not think that this Commission can be said to have properly finished its job without hearing what parliament did. Thank you.

ADV SONI SC: Thank you, Chair. Mr Molefe, may I just
20 say that I am pleased you raised the issue of right at the end connecting all the dots because I just want to make this comment before we go on with the rest of your evidence.

You are in a unique position, as I see it, you have the communication with the President in regard to the

matters you have described already which does not make too much sense and we have debated that.

Then your board is dismissed. As you have said, instead of parliament exercising oversight over the minister, the minister goes to the portfolio committee and announces the dissolution of the board before then and she is not asked why did you do – I want to raise all those things.

And then you go to the police and say but look, we
10 have got people who are involved in fraud amounting to billions of rands and they do nothing about it.

That is all contained in here and so I am pleased you have raised this question because I was going to do that but I am pleased in the sense you have also looked at the big picture.

But before we go on with your evidence, there are three matters I want to raise with you in relation to what you have said this morning.

You said the matter – one of the matters went to the
20 CC, that is the Swifambo matter, am I right?

MR MOLEFE: Yes, it did say.

CHAIRPERSON: You must tell him when you say CC, you mean Constitutional Court.

ADV SONI SC: I beg your pardon, yes. The Constitutional Court, yes. Yes, is that the judgment you

are referring to?

MR MOLEFE: That is correct.

ADV SONI SC: And we have been through the fact that both the High Court and the Supreme Court of Appeal said there was corruption and they fingered two people, Mr Montana and Mr Mtimkulu and I mention them because you mention them later in your evidence.

The second thing I want to ask you was, earlier on you said that the former Chairperson of the board wanted
10 to hasten the Braamfontein tender. Do you recall saying that a little while ago?

MR MOLEFE: Yes, I did say that.

ADV SONI SC: Who is the Chairperson because, I mean, I know – I just wanted a name to it.

MR MOLEFE: The Chairperson or my predecessor was – is currently one of the Deputy Ministers, Mr Buthelezi, Sifiso Buthelezi.

ADV SONI SC: Mr Sifiso Buthelezi.

MR MOLEFE: But at the time in November when he
20 brought the submission, he was the Chairperson of the Finance and Capital Investment Committee.

ADV SONI SC: And he, at the same time that Mr Montana said he was leaving right at the outset of your tenure as Chairperson, he also told you he was resigning from the board.

MR MOLEFE: He actually give me his resignation letter, that is in the – when the board was meeting and he was making the submission for the Braamfontein – on the Braamfontein depot modernisation.

ADV SONI SC: So he was pushing this through before he left the board?

MR MOLEFE: He was – that was the last thing, you know, contract he wanted approved before he left. Whether there was reason for him to have delayed it or – I do not know.

10 Of course, when I read Mr Montana's report to Minister Jeff Radebe, he blames the board for having delayed that tender whereas we were seeing it for the first time at that meeting in November.

But, be it as it may, he wanted it approved as he was leaving. Whether there was any motive or not, I do not know, and I do not want to impute any motive to that.

ADV SONI SC: No, I understand. Finally, at the meeting of the 20 August, Minister Dipuo Peters asked Minister Radebe about the PRASA internal report. Asked for a copy
20 of the report.

MR MOLEFE: Yes, but I did say that the title of the report is not PRASA Internal, it is the report of Minister Jeff Radebe on the board of PRASA and it set out what it says are recent events. And somewhere in the report of course there is a section that refers to PRASA in turmoil.

CHAIRPERSON: Yes, I just want to – I know you are looking both at me and counsel whereas you answer – remember to look more at me than him. Yes, thank you.

ADV SONI SC: Now on your understanding, Minister Radebe had the report because it was addressed to him.

MR MOLEFE: He had it.

ADV SONI SC: When Minister Dipuo Peters asked for the report what was Minister Radebe's response?

MR MOLEFE: He said he did not have it.

10 **ADV SONI SC:** Did that surprise you?

MR MOLEFE: Well, I – Chairperson, I knew he had it because it came – the whistle blower brought it from his office and it was addressed to him and clearly the manner in which the meeting was conducted found its basis in that report because it was about what Montana was saying largely.

CHAIRPERSON: Just to refresh my memory, this report, you had – did you have a – had you seen the report at the time of the meeting yourself?

20 **MR MOLEFE:** I had seen it much earlier.

CHAIRPERSON: Yes.

MR MOLEFE: But because it was such a sensitive document...

CHAIRPERSON: Yes, yes.

MR MOLEFE: ...I ...[intervenes]

CHAIRPERSON: It was not official.

MR MOLEFE: It was not official.

CHAIRPERSON: Yes, okay, okay.

MR MOLEFE: So but what ...[intervenes]

CHAIRPERSON: But it existed long before the meeting, that is the point you can make?

MR MOLEFE: The report was written on the 27 July, Chairperson.

CHAIRPERSON: Ja, yes.

10 **MR MOLEFE:** The meeting took place around the 20 August.

CHAIRPERSON: Okay, okay, thank you. And it was addressed to Minister Radebe?

MR MOLEFE: Ja.

CHAIRPERSON: Ja, okay.

ADV SONI SC: I take it before the meeting you would have told Minister Peters about this report.

20 **MR MOLEFE:** I did Chair. Not that day of the meeting, much earlier. I did say to her, you know, I have seen this kind of a document. Of course, I had given it to the lawyers also to keep. Now I have been trying to get it from them, they do not know what they have done to it. Ja.

CHAIRPERSON: Okay.

MR MOLEFE: Ja, but I had told Minister Dipuo Peters and that is why in that meeting he said ...[intervenes]

CHAIRPERSON: She asked for it.

MR MOLEFE: She asked for it.

CHAIRPERSON: Ja, okay.

ADV SONI SC: Finally, in regard to the report, Mr Molefe, I reiterate the invitation of the Chairperson to make use of facilities at the Commission. I am confident that if you gave them the laptop or computer where that was, they would find it.

MR MOLEFE: H'm.

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

ADV SONI SC: It has taken a long time to get here, Mr Molefe, but may I then ask that we go back to ...[intervenens]

MR MOLEFE: Did I talk too much?

ADV SONI SC: No, no, no, sorry, we have been asking questions outside the ambit because, as the Chairperson pointed out, this is pivotal to the work of the Commission.

MR MOLEFE: Yes.

20 **ADV SONI SC:** Certainly in regard to PRASA. Can I then ask, you have this meeting with the President and in the next topic you discuss is the dismissal of the board. Now can you tell us – we know that on the 8 March 2017 the Minister dismissed the board.

CHAIRPERSON: I am sorry, Mr Soni, I may have I misunderstood you but I thought your plan was to take Mr

Molefe to the media articles briefly before you go to the meetings to highlight all the certain features.

ADV SONI SC: Yes.

CHAIRPERSON: Or do you think that – I think it is important, he may have mentioned some of the things but it is important like maybe to simply highlight some of the features in the articles before we go to the meeting or is your plan to ...[intervenes]

ADV SONI SC: I was hoping that I would use the key
10 interval to pick out about five of the articles.

CHAIRPERSON: Oh, okay, that is fine, that is fine, that is fine.

ADV SONI SC: But I could do it now, it is just that it may take a little longer because I could identify ...[intervenes]

CHAIRPERSON: No, it is fine, we can do it later, ja.

ADV SONI SC: So we know that the Minister on the 8
March 2017 purported to dismiss the board and I say
purported because that dismissal was set aside. But what
were the reasons that led to that decision? You deal with
20 from paragraph 93 of your affidavit, Mr Molefe.

CHAIRPERSON: What paragraph?

ADV SONI SC: Paragraph 93, Chairperson, page 24.

CHAIRPERSON: Yes thank you.

ADV SONI SC: Well, it starts off with the question of appointing a replacement for Mr Montana after he left on

the 15 July 2015.

MR MOLEFE: Counsel, you are asking what were the reasons for the dissolution of the board? Is that the question?

ADV SONI SC: Yes. Well, ja, and what were the circumstances leading up to it.

CHAIRPERSON: And insofar as you are asked what the reasons were, Mr Molefe, you must feel free to indicate what reasons were given by the Minister for her decision
10 and to say what, on your analysis of the situation, the reasons were, whether you agree that those were the reasons or you say the reasons were different for this and that that reason. So I just alert you that even though the question is put like that, there may be a difference – you might have a different view about what the reasons were to the reasons that were given by the Minister.

MR MOLEFE: The first point, Chairperson, is that Mr Montana leaves because his contract is ending and he says he does not want extension but in reality, he wanted
20 extension. He wanted another contract and clearly, the Minister herself – it will be coming perhaps when you connect those dots you will now see that the Minister is ...[intervenes]

CHAIRPERSON: But I think – I am sorry, Mr Molefe. If, as you give your evidence or as you answer any question,

there is an aspect of connecting the dots that you think is appropriate to do there and then, feel free to do it, not wait until later but later on we can wrap up.

MR MOLEFE: Yes.

CHAIRPERSON: But – so if it is convenient, connect the dots as you go along.

MR MOLEFE: Will do so, Chairperson. The board, as Montana left, wanted to appoint a new group CEO and it had gone through an elaborate process of interviewing and
10 had identified a person for that position.

Now in terms of the shareholders' compact and the memorandum of incorporation, the board needs to recommend to the Minister and then of course has got its own protocols, she has then to take it to the President and to the relevant committee of the cabinet and come back. Cabinet must approve because the cabinet approves appointment of group CEOs, Directors General, Commissioners, Chairpersons of board and directors, board of directors, ja. She was reluctant. She had told me
20 that she agrees with me, she is not going to change anything, she is going to present it as it was but there was no movement.

And the next thing then, she wanted us to appoint in an acting capacity a person who was a Chief Financial Officer in the Department of Transport, Mr Collins Letsoalo.

CHAIRPERSON: Before you proceed, Mr Molefe, you said, I think, the board had conducted interviews and had identified a person that they believed could be Group CEO and had made a recommendation to the Minister, is that correct?

MR MOLEFE: That is correct, Chairperson.

CHAIRPERSON: It may help, but you – if there are reasons – maybe there are reasons you might be reluctant, might have to look that, it may help if we know who was
10 recommended. I say that because I have had evidence in regard to other SOEs where a board recommended a candidate for the position of Group CEO and the board – and the Minister at the time gave evidence here and said she was in support of that candidate but she said the former President made it clear to her that he wanted a certain person and no one else to take that position.

Of course, the former President has denied saying that and that will be dealt with later on. He must still come to give further evidence.

20 So I am – and I have, in regard to that matter, I asked whether this was a credible candidate and whether the former President, if he was not keen to have this person appointed, whether he questioned the qualifications or experience of that candidate and I was told by the Minister – or gave that evidence that no, there was no

questioning of the qualifications or experience of the candidate that was proposed.

So it becomes important – it may become important to say here is a candidate that was recommended, he is a credible candidate, has got all the qualifications, has got all the experience, what was the problem with going with that candidate?

So I mention that because it might be helpful but if you have some reasons that make you reluctant to
10 disclose, that is fine.

MR MOLEFE: No, I will disclose it, Chairperson, it was a lady. I did not know her before that and I was not even in the panel that interviewed. Her name was Lauriette Modipane Sesoko. She had previously worked for Metrorail. Now ...[intervenes]

CHAIRPERSON: Let us just get the spelling, Lauriette and the surname?

MR MOLEFE: Sesoko Modipane. Modipane.

CHAIRPERSON: Okay.

20 **MR MOLEFE:** M-o-d-i-p-a-n-e.

CHAIRPERSON: Okay.

MR MOLEFE: Sesoko is S-e-s-o-k-o.

CHAIRPERSON: Yes, yes, okay.

MR MOLEFE: She had worked for Metrorail.

CHAIRPERSON: In what capacity?

MR MOLEFE: She had been the CEO of Metrorail or general - the chief of Metrorail, CEO, Metrorail.

CHAIRPERSON: CEO, ja.

MR MOLEFE: Ja.

CHAIRPERSON: Okay.

MR MOLEFE: You know, which is the train – the operating division of PRASA which moves passengers.

CHAIRPERSON: Yes.

MR MOLEFE: Which is fundamentally the mandate of
10 PRASA.

CHAIRPERSON: Ja. So she had worked in a position that is very much the CEO's position under PRASA.

MR MOLEFE: Yes.

CHAIRPERSON: Yes.

MR MOLEFE: But the Minister never raised any concerns about that except that they delayed, delayed, delayed, they were not moving. I am sure again I can produce several letters to the Minister. In some instances when the Minister would say PRASA is – this board is not doing its
20 job or PRASA is not performing, I would say the board is not operational, it cannot do the job, we need to have proper management team and management team is put together by the Group CEO, approve the appointment of the Group CEO so that we can get going and get our work done.

And she – it was just delaying, delaying and it is there, I am sure, correspondence would show that, that we raised that. So we do not know but I, in hindsight now, when you look at the meeting of August, you look at the report where Montana says and he is writing to Minister Jeff Radebe and the President says I am the best man, I am available, this board does not want me to do my job, he is interfering with me.

So what seems to have been then the reason is
10 that they wanted to bring Mr Montana back but the way to do so is to block the appointment of the CEO and then ultimately to remove the board of directors.

It is linked also to the investigations because when Mr Letsoalo, as you would see, probably later on, comes in to act, he says – and the Minister says Letsoala must now be in charge of the investigations.

Now if you are investigating, the management team that is corrupt, you do not know who is corrupt, who is not corrupt. You do not give it to them to do the job because
20 then you are not going to get the truth out of it and that is why the board wanted this investigation to be done by an entity that is outside PRASA which reports to the - and the chair of the Audit Committee and the chairman of the board and they would report regularly together with the investigators to the Board of Directors and to the Minister of

Transport which... which is what we have done.

But they wanted all of that out of the way uh, clearly to frustrate the investigations so that the investigations, they not produce uh, the truth about what is happening in the organisation.

And I asked the question why would they not want to do that? H'm? If they are interested in getting the state-owned company to function and function properly.

CHAIRPERSON: Well, uh, please uh, I want to... to see all
10 of those letters you are talking about. So I want all of that evidence uh, because you... you are asking that the... the minister delayed for a long time uh, to have a decision made, I guess, on your recommendation at the board.

And uh, at a certain stage, she told you what you said. She told you um, in the regard the matter that was talking about.

Uh, I mean, it is in the public domain. Evidence was given here. It is uh, the feeling of the position of Group CEO for Transnet after the departure of Ms Ramos.

20 Uh,... uh,... uh,... Ms Barbara Hogan gave evidence to the fact that the Transnet Board at the time recommended uh, mister, I think, Sipho Maseko uh, for the position and the board was of the opinion that uh, Mr Siyabonga Gama was uh, uh, not suitable for the position if he was a candidate.

Um, and in any event uh, there were some

allegations of misconduct that they thought was aware of them, but I... I think the evidence was, the board said, “we just took him into account whether he was suitable”. You know, “we have left out of the account”. Even the allegations.

MR MOLEFE: H’m.

CHAIRPERSON: If I must now give evidence to that effect.

MR MOLEFE: Oh, Chairperson. I was in the commission when the minister gave her evidence.

10 **CHAIRPERSON:** Oh, you were here?

MR MOLEFE: I was here.

CHAIRPERSON: Yes. So... so that... that position was not filled for over a year uh,... um,... and uh,... so I am wondering whether now, the delays you are talking about after your board had made a recommendation as to who should fill the position of group... group CEO, reflects a pattern that may have been happening with um, the appointment of Group CEO for some of the SOE’s.

20 So I want... I would like all of that evidence, all of those letters. If you are able to get that, we would like them here.

MR MOLEFE: Thank you, Chairperson.

CHAIRPERSON: Thank you.

ADV SONI SC: [throat clearing] Mister [throat clearing] Molefe, can I just go back to an issue you said or you

suggested what the game plan was, that they would frustrate the appointment of a Group CEO and then eventually Montana would come back as the Group CEO. That is... that is what you said.

MR MOLEFE: H'm.

ADV SONI SC: Well, I just want to say to you that...[intervenenes]

CHAIRPERSON: Well, I am sorry Mr Soni.

ADV SONI SC: Yes?

10 **CHAIRPERSON:** Um, the connecting of the dots is... is quite important. I mean, of course, anybody can come later and say, "no, this committing of the dots that you are talking about is not proper because of the following evidence that you have not add, Mr Chairperson".

That uh, with regard to the group CEO for Transnet, there was that delay uh, for the filling of the position of Gross CEO and the candidate who had been recommended by the board had to uh, make his other plans because he was kept waiting for too long.

20 And then Mr Gama was dismissed after a disciplinary process uh, in uh, at the end of June 2010. The position had become vacant, I think early in 2009 if I am not mistaken. So already by mid-June... by mid-year 2010, there... there was um, still the position, it was not filled.

ADV SONI SC: H'm.

CHAIRPERSON: Then the Minister Barbara Hogan was dismissed from cabinet at the end of October. Uh, another minister was appointed and then the evidence will come later upon and then Mr Gama was reinstated uh, in February uh, or uh, March/April 2011 to become... to go back to his position as uh, CEO of GFR.

And then when... when Brian Molefe left for Eskom, then Gama was made Group CEO of Eskom, the position that uh, was in contest when he was dismissed.

10 So... so I just want to paint that picture because I want to see whether uh, under PRASA, there are crucial things to go along the same lines or not.

MR MOLEFE: Ja. With regard to PRASA, Chairperson. The... that position has been vacant now for close... going onto five years.

CHAIRPERSON: For how long?

MR MOLEFE: Five years.

CHAIRPERSON: Since Montana has left?

MR MOLEFE: Since Montana left. Now...[intervenes]

20 **CHAIRPERSON:** Five years?!

MR MOLEFE: Yes, five years. They... they have been appointing acting people... acting this, acting that. Five years. And that is an organisation that is managing R 173 billion of uh, rail and uh, infrastructure investment.

Um, so... so... so... but the difference between Mr

Gama and Mr Montana's case is that in the case of Mr Gama they were dealing with disciplinary processes. So once they had removed the minister [laugh] and appointed another minister, they could simply lift the... or whatever, suspension, bring him back.

In the case of Mr Montana, they cannot do that without burning their fingers because the investigations have gone so far and so much of the plot had been exposed and there had already been cases in the courts of law which
10 confirmed the correctness of the positions taken by the board of directors.

So you... you need to have extraordinary courage to go against uh, the judgment of the court and uh, appoint a person uh, whose smart in a... in a corruption and there are still other pending cases uh, civil and otherwise.

So... so... it... it would not have been difficult. Uh, it would have been difficult for them to bring him back now after the work we had done. But what I cannot understand...[intervenes]

20 **CHAIRPERSON:** H'm?

MR MOLEFE: ...is why then not appoint a prober board? I must also say, by the way Chairperson, since the departure of my board, PRASA has not had a proper... a properly constituted board.

It had things called interim boards which are not

provided for in the law. Uh, it had all of those things. It now currently has an administrator, you know, no board.

I know that the minister has recently advertised. He will probably appoint the board uh, soon but.. but that is what we are dealing with uh, in a country with high levels of poverty, unemployment uh-uh, crushing uh, transport costs and so on.

Uh, so some of those questions would have to be asked later on. To be explained by those who...[intervenes]

10 **CHAIRPERSON:** H'm.

MR MOLEFE: ...to whom were given the responsibility to govern our country.

CHAIRPERSON: H'm. Well, uh, as I... as I understand it even up to now, it seems there is not been a Group CEO appointed. Is that right? Since Montana left?

MR MOLEFE: That is correct.

CHAIRPERSON: And how many years would be... that position would have been ...[intervenes]

MR MOLEFE: Approximately five years. We...[intervenes]

20 **CHAIRPERSON:** About five years.

MR MOLEFE: We asked Mr Montana to leave in July...[intervenes]

CHAIRPERSON: 2015.

MR MOLEFE: ...2015.

CHAIRPERSON: Ja, so that is... that is... that is... ja, that

is about five years. Ja, that is five years.

MR MOLEFE: H'm.

CHAIRPERSON: And that cannot be for a lack of properly qualified candidates?

MR MOLEFE: No, it cannot be. It cannot be.

CHAIRPERSON: Ja?

ADV SONI SC: [throat clearing] Mr Molefe, I do not know if you were here when Mr Holele gave evidence. And... and just to come back to the point that they wanted to appoint
10 mister uh, Mr Montana again.

CHAIRPERSON: I am sorry. Uh, I think uh, the witness would like some water. Water should have been put uh, placed uh, before him.

ADV SONI SC: Where is mine?

CHAIRPERSON: Uh, actually, we are at quarter past eleven. Maybe we should take a tea-break.

ADV SONI SC: Yes, yes.

CHAIRPERSON: Ja and then, when we come back, just make sure there is water for the... for the witness. I see
20 also, I have no water here. So the...

ADV SONI SC: Yes.

CHAIRPERSON: I think maybe the people concerned thought we do not need water in winter.

ADV SONI SC: [laughs]

CHAIRPERSON: It is too cold. [laughs]. Uh, let... let us

adjourn uh, for the tea-break. It is quarter past eleven. We will resume at half-past eleven. We adjourn.

ADV SONI SC: As it please.

COURT ORDERLY: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Uh, yes Mr Soni. I... I asked that if possible, somebody should try and uh, make sure that it is warmer here.

10 **ADV SONI SC:** Yes. [laugh]

CHAIRPERSON: Because it was quite cold.

ADV SONI SC: Yes.

CHAIRPERSON: Uh, I have asked them to bring me a small heater next to me but um... uh, I have asked that if there is a way of making it warm in the whole room...[intervenes]

ADV SONI SC: Yes.

CHAIRPERSON: ...they should try and do that. Okay.

ADV SONI SC: Thank you, Chairperson.

CHAIRPERSON: Thank you.

20 **ADV SONI SC:** Mr Chairperson, may I ask one question relation to that issue which um, may assist you in joining the dots?

CHAIRPERSON: Yes.

ADV SONI SC: Mr Molefe, I do not know if you were here when Mr Tiro Holele gave evidence. His evidence was in

around February/March in 2017 when they refused to pay an account from Prodigy, which is a company which Mr Roy Moodley has an interest in.

He asked them to pay the account and when they said, “take it to court”, his answer was “well, there are big changes coming and that young man is coming back. Be careful you are not on the wrong side of history”.

So I am just putting it in the context of you are saying that they wanted Mr Montana back.

10 **MR MOLEFE:** H’m.

ADV SONI SC: Uh, I... I am putting that in context to say your theory may not be all that farfetched.

MR MOLEFE: No, it is... it is correct, Chairperson. I did indicate that and I said it is a pity that people would not want to come and give evidence here. That I was advised that there was as teleconference with employees of PRASA and they were encouraged by the Minister, Mr Radebe to... to continue the pressure. Keep up the pressure on the board.

20 Uh, the so-called PRASA in turmoil was in that context. Created that turmoil so that we can justify removing this board. You see. So. [laughs] The... the... it is.. it is exactly that. It happened. Get out of the way, so that the young man may come back.

CHAIRPERSON: So there was a specific reference um, uh, in the context of Prodigy uh, to somebody saying, “the young

man is coming back”. Is that right?

ADV SONI SC: You... you will recall Mr Chairperson that uh, Mr Holele and Mr Letsoalo gave evidence that that is what Mr Moodley said to them when they had refused to pay but the matter is court.

CHAIRPERSON: Yes and that was twenty...

ADV SONI SC: 27 February.

CHAIRPERSON: Seven...

ADV SONI SC: ...March 2017.

10 **CHAIRPERSON:** Yes. Okay, okay.

ADV SONI SC: Um, if I could just put it also in context? They said, “changes are coming” and three weeks later, there was a change in the ministry and the Minister uh, Dipuo Peters was removed as Minister of Transport.

CHAIRPERSON: Oh. Oh, okay yes. So there is... there is a... so Mr Moodley said, “changes were on the way”.

ADV SONI SC: Ja.

CHAIRPERSON: “And you better make sure that when those changes happen, you are on the right side”.

20 **ADV SONI SC:** Yes.

CHAIRPERSON: “And the young man is coming back”.

ADV SONI SC: That is... yes.

CHAIRPERSON: And uh, you said not long after that, the minister was uh, was dismissed.

ADV SONI SC: Yes.

CHAIRPERSON: Yes and how long after that did your board get uh-uh, dismissed or dispended?

MR MOLEFE: How long...?

CHAIRPERSON: How long after... after did... did the Mr Molefe's board get dispended?

ADV SONI SC: H'm...[intervenes]

CHAIRPERSON: Or that much longer ... much later on?

ADV SONI SC: On the 8th of March.

CHAIRPERSON: Okay. That is 2017?

10 **ADV SONI SC:** 2017.

CHAIRPERSON: And uh, this meeting that Mr Holele talked about with Mr Moodley was when?

ADV SONI SC: Uh, February/March 2017.

CHAIRPERSON: So soon after Mr Holele had heard Mr Moodley, Roy Moodley, saying, "changes were about to happen", the minister was fired uh, or before the minister was fired, she fired the board and then she was fired.

ADV SONI SC: She was... [laughs]

CHAIRPERSON: Okay. All right.

20 **ADV SONI SC:** But... but... uh, um, Mr Molefe's evidence is partly with the change in that evidence.

CHAIRPERSON: Yes. Okay, okay. All right. And of course, Mr Molefe, you can confirm any of this insofar as you may know it yourself what... what... what has been a change or the exchange?

MR MOLEFE: [No audible reply]

CHAIRPERSON: Well, you certainly... you certainly uh, have to just that the minister dispended you... announced the disbandment of your board in parliament. Your recollection would be that what... what month of 2017 was that?

MR MOLEFE: That was on the 8th of uh, of March 2017.

CHAIRPERSON: 2017?

MR MOLEFE: H'm.

10 **CHAIRPERSON:** Okay. And um... and you recall uh, how soon... how much later after that she was dismissed as... or not really?

MR MOLEFE: She was dismissed the same month.

CHAIRPERSON: The same month?

MR MOLEFE: The same month that was she was dismissed.

CHAIRPERSON: Oh, okay. Okay. Okay. Thank you.

MR MOLEFE: I say so, because she was too weak. She could not remove the board quickly enough.

20 **CHAIRPERSON:** She... she [laughs] Just repeat that.
[laughs]

MR MOLEFE: [laughs]

CHAIRPERSON: Just repeat that.

MR MOLEFE: [laughs] No, I... I say Chairperson that uh, I think uh-uh...[intervenes]

CHAIRPERSON: She may have been perceived... she was too late?

MR MOLEFE: To have been perceived to have been too late and...[intervenes]

CHAIRPERSON: Ja.

MR MOLEFE: ...and too soft.

CHAIRPERSON: Ja, on the board.

MR MOLEFE: Ja.

CHAIRPERSON: Ja. Okay. Thank you.

10 **ADV SONI SC:** Just one other issue relating to Mr Moodley. When you gave your evidence on the previous occasion, Mr Molefe. You say that Mr Moodley and Mr Montana had met or you had been told by the...

MECHANICAL INTERRUPTION

INQUIRY RESUMES

CHAIRPERSON: Thank you Mr Soni. I understand that the heater will make it warm in due course, it might take a little bit, for sometime in the whole room so that is good news and I am hoping that the electricity people will make
20 sure that we don't have these interruptions that we have been having. Okay let's continue. Your mic?

ADV SONI SC: Sorry, again for context Mr Molefe may I say that at the meeting of the 20th of August you understood that Mr Roy Moodley and Mr Montana had been with the President before you and the Minister were called.

MR MOLEFE: That is correct.

CHAIRPERSON: And actually, your evidence was that you got a report that one of your projectors had seen them in the premises.

MR MOLEFE: Yes, yes Chairperson.

CHAIRPERSON: Thank you.

ADV SONI SC: So let us now get to the resolution of – oh sorry before we do that, you say that Mr Letsoalo was unhappy about the Werksmans
10 Investigations...[intervenes].

CHAIRPERSON: I just want to make sure, I don't lose track of where we are. At some stage before the break you had asked Mr Molefe to deal with the reasons of the dismissals, disbandment of the Board and I highlighted to him that, in doing so, he might wish to tell me what the Minister – what reasons the Minister gave and what reasons, he believes, are the true reasons if he is not in agreement with the reasons given by the Minister. So, you might be playing to it later, I just want to make sure you
20 have not ...[intervenes].

ADV SONI SC: I want to do it because in the application that is brought the Judge deals with that, then.

CHAIRPERSON: Yes, oh okay, thank you.

ADV SONI SC: So, if I could just ask – there was unhappiness about the Werksmans investigation by the

Action CEO whom the Minister had installed, will that be correct Mr Molefe?

MR MOLEFE: That is correct.

ADV SONI SC: Then on the 12th of August you say that Minister Peters herself, wrote to you to suggest that the investigations be stopped.

MR MOLEFE: That is correct Chairperson.

ADV SONI SC: And that appears at Annexure PM7, your affidavit at page 154.

10 **CHAIRPERSON:** For the record, just repeat what file you are still on Mr Soni.

ADV SONI SC: Yes the letter from Minister Dipuo Peters is Annexure PM7 and it appears at page 154 of Bundle D, Exhibit SS6.

CHAIRPERSON: What's the page number again?

ADV SONI SC: 154, Chairperson.

CHAIRPERSON: 1-5-4?

ADV SONI SC: Yes.

MR MOLEFE: That's fine, I remember the letter very well.

20 **ADV SONI SC:** Yes, we don't have to read the whole – if you could explain to the Chairperson what the gist of the letter is Mr Molefe?

MR MOLEFE: The starting point of the Minister was to express concern that the investigation is not ending sooner and that it was costing a lot of money and she was saying

that she thinks that we should be focusing on implementing performance plans ensuring that our performance plans are in order and we're achieving results in that regard. She referred to the decline in performance and then she says, stop this – in fact she uses the word “close it”...[intervenes].

CHAIRPERSON: Yes, you can read that paragraph because it is important, at the end of page 154,

“I therefore ask that you close off”,

10 It's the last paragraph on page 154.

ADV SONI SC: The previous page Mr Molefe.

CHAIRPERSON: At the end.

ADV SONI SC: Right at the end at the bottom of that page.

CHAIRPERSON: Ja.

MR MOLEFE: She's asking that we close it off and present a detailed report to her by – I think she said, by the end of August.

20 **ADV SONI SC:** Yes, should you not read that entire the paragraph into the record?

CHAIRPERSON: Yes.

MR MOLEFE: She says,

“I therefore ask that you close off this investigation process and consider the results or report thereof. Furthermore, the Board is requested to submit a

detailed report indicating the progress and the outcome of the investigation. A determination of any further investigation and a way forward will subsequently be made after studying the report in detail”.

CHAIRPERSON: Yes, I think that – oh if you feel there is something important...[intervenes].

MR MOLEFE: Then she says,

10 “It will be highly appreciated if the report can reach my office by end August 2016”.

ADV SONI SC: Now...[intervenes].

CHAIRPERSON: And just to confirm, you were reading from a letter from the Minister of Transport at the time Ms Dipuo Peters addressed to you, Dr Popo Molefe, Chairperson of PRASA and it’s a letter that she signed on the 12th of August 2016, ja, thank you.

ADV SONI SC: Is that correct?

MR MOLEFE: That is correct Chairperson.

ADV SONI SC: You responded to that letter?

20 **MR MOLEFE:** I did respond, Chairperson.

ADV SONI SC: And what is the date of your response?

MR MOLEFE: The date of my response was the 24th of August.

ADV SONI SC: And is that the letter or is that Annexure PM8 which is at 157 – page 157?

MR MOLEFE: That is correct Chairperson.

ADV SONI SC: Now in your report, if you could – I mean in your response if you could summarise what you said to the Minister, Mr Molefe?

MR MOLEFE: The – in my response, the essence of my response, Chairperson, to the Minister was that we appreciated the concern that she raised but that the concern that she raises, in our view, did not necessarily relate to whether the forensic investigation was necessary
10 or not and I went on to say – and if I may read...[intervenes].

CHAIRPERSON: Yes you can read.

MR MOLEFE: Maybe I should read it properly, let me read that paragraph, Chairperson. The paragraph says, having acknowledged, of course, the letter of the Minister,

“I understand the concern raised, not to relate to whether or not the forensic investigation is necessary. The Minister will, indeed, recall that the need for the forensic investigation was discussed
20 and agreed at a meeting between the Board and the honourable Minister at the airport on 17 July 2015”.

Now the airport here refers to the O R Tambo International Airport and I go on to say that,

“the concerns that I understand to be raised are that the forensic investigation is endless and

without any scope, constitutes excessive spending, is not budgeted for and can be regarded as irregular expenditure. It is also indicated that the Minister's own preference is for the Board to focus on the annual performance.”,

That's what the Minister is saying there, and then of course, Chairperson it will be clearer on page 158, page two of the letter that we go in detail to identify why it is necessary, we articulate why it is necessary for us to
10 proceed with the forensic investigation. Section 50, sub-section 1 of the Public Finance Management Act was obliging the Board to exercise the duty of utmost care, to ensure reasonable protection of the assets and records of the public entity. Act with fidelity, honesty, integrity and in the best interest of the public entity in managing the financial affairs of the public entity. On request to disclose to the Executive Authority and Minister responsible for that public entity or the legislature to which the public entity is accountable, all material facts including those reasonably
20 discoverable, which, in any way may influence the decisions or actions of the Executive Authority or that legislature and the last one we make there is, to seek, within the sphere of influence of the Accounting Authority to prevent any prejudice to the financial interest of the State. Now this is what the law says we should do and

that is what we are doing and we are doing it, Chairperson, against the backdrop of a management that has stolen records of the company, covering up, not co-operating with our investigation. Naturally it will take long for forensic investigators to uncover things because you do mirror imaging of computers, you've got to go to the server, you do thing, that ordinarily, management should have been willing to give to the investigators so that we could do our job quickly. Now the Minister says, no you're taking too long stop. So, the view then, which we took, Chairperson was that whilst we appreciate the concerns raised by the Minister but we would not stop the investigation.

CHAIRPERSON: But before you do that, I think, your reference in your letter at page 158 to Section 51(1) is also important, do you want to just read that part, A and B? Where you say,

“Section 51(1) provides for the following general responsibilities of the Board”.

Do you want to just read that part?

20 **MR MOLEFE:** Yes Chairperson, Section 51(1) provides for the following general responsibilities of the Board and I'm referring here to the Public Finance Management Act.

“Must take effective and appropriate steps to collect all revenues due to the public entity concerned and present irregular expenditure, fruitless and wasteful

expenditure, loses resulting from criminal conduct and expenditure not complying with the operational policies of the public entity and manage available working capital efficiently and economically”.

And then I go on to say,

“The above obligations, that is Section 50(1) and general responsibilities Section 51(1) are precisely what necessitated embarking upon forensic investigations and the litigation that followed it”.

10 **ADV SONI SC:** Then the – then you deal with each of the concerns in paragraph 1 on page 159 you say that the investigation, contrary to what the Minister says, was not irregular, is that the essence of paragraph 1?

MR MOLEFE: That is correct Chairperson. When – before we appointed the panel, the investigators, we asked the Legal Department of PRASA to advise on the law firms that were on our panel and those that had the capacity, also for forensics and they referred us to Werksmans. Of course, it would appear, of course, when they gave us that
20 information, they omitted to tell us that, in fact, they should have established a new panel, the time for that old panel had expired, that they should have invited professional companies and established a new panel but that only became apparent when one read the Auditor General’s report.

ADV SONI SC: Then you deal with her concerns about the scope with the investigation in paragraph 2 you say, the scope had been determined in the first sub-paragraph of paragraph 2 by matters that had been identified by the Auditor General and in the second sub-paragraph you say the matters raised by the Public Protector, would that be correct?

MR MOLEFE: That is correct Chairperson.

ADV SONI SC: And then you make the point that it is the
10 Public Protector who had required that all contracts above R10million should be investigated.

MR MOLEFE: It is so Chairperson.

ADV SONI SC: And that, in the pursuit of those investigations the – PRASA had embarked on litigation, you say that at paragraph 160 you say that...[intervenes].

CHAIRPERSON: On the last page 160.

ADV SONI SC: Yes, the litigation that has flowed from the investigation requires the assistance of forensic investigation team.

20 **MR MOLEFE:** That is correct, yes Chairperson.

ADV SONI SC: And you make the point that, ironically, it is those very people who benefit from – benefitted from the unlawful activities who are using those unlawful proceeds to fight PRASA with.

MR MOLEFE: Yes Chairperson the point we're making

was that we are being told, you're taking too long, stop the investigation but in order for anybody to launch an effective application in a Court of Law, with the possibility of achieving success, we need to have solid evidence and we are saying the people we are litigating against, are actually using the money of PRASA to fight PRASA and that is the irony of the whole thing. So if we stop the investigation, they succeed, you know and – because these matters are been so politicised they'll say, after all, they
10 never had a case, it's just that they want to victimise me as has been the charade of the – the narrative of Mr Montana throughout.

ADV SONI SC: And then you make the point that, right at the end of page 160, that Siyagena had benefited to the tune of R800million and that it had also sought a guarantee, on page 161, of R1.1billion.

MR MOLEFE: That is correct Chairperson.

ADV SONI SC: And at that stage had the Siyagena review proceedings been instituted?

20 **MR MOLEFE:** I do think so Chairperson...[intervenes].

ADV SONI SC: [intervenes], year 2016.

MR MOLEFE: Ja I think so.

CHAIRPERSON: Well maybe it's important to highlight the next sentence at page 160, the next sentence after the sentence that deals with what you've just said Mr Molefe,

namely, that people who had gained money from PRASA unlawfully were using that money to fight PRASA in the Courts. You then say – this is at page 160,

“An example of this is the guarantee, you put guarantee in quotes, that obliges PRASA to pay almost R800million to Siyagena. As we have previously advised the Minister, this document was not known by any PRASA official. We are still awaiting the reply to the letter addressed to your office in this regard. Siyagena have now instituted legal proceedings against PRASA claiming payment of an amount of approximately R1.1billion related to this very guarantee, in quotes”.

MR MOLEFE: So the point we’re making, Chairperson, there is that here is a – we go to Court, suddenly Siyagena produces a document and they say you, PRASA, have given us a guarantee of R800million, here’s where somebody signed and we had never seen that document anywhere, Management of PRASA who might have been there at the time were not helping to defend the interest of the company. So this is what we mean, where people use your money to fight you and at this stage, if I recall well Chairperson, it was just after we had lost a case against Siyagena on a technicality based on the purger rule, which of course later on, following the Gijima Guma matter they

changed.

CHAIRPERSON: There was a change, ja thank you.

ADV SONI SC: Mr Molefe Ms Ngoyi's evidence is this is, that after the review proceedings, the first review proceedings were instituted in 2016, in response Siyagena brought an interdict requiring payment of this money and that was the first time that it had been discovered that there was such a contract, that addendum for R800million, is that what you're referring to?

10 **MR MOLEFE:** That is what I'm referring to.

ADV SONI SC: And that is a contract that was signed by Mr Montana at the end of September 2014, is that your recollection?

MR MOLEFE: I don't have the details of the contract for now but he would have been the one signing as the GCE of the company.

CHAIRPERSON: I know that – I have heard evidence, I can't remember whether from you or from Ms Martha Ngoyi, I've heard evidence of a document that PRASA officials
20 were looking for, or rather were looking for and they couldn't find which had been signed, I think, by Mr Montana, apparently without any knowledge of any PRASA official, do you know whether the document you are talking about which Siyagena produced when they took you to Court is that document or you are not sure which –

because you have said that PRASA officials seemed not to know about that document until then? Would you know whether that's the same document or you might not know?

MR MOLEFE: That would have been the same document, for me it rolls out of the investigations conducted by our investigators.

CHAIRPERSON: Ja, thank you.

ADV SONI SC: Sorry, Chairperson, when we deal with Ms – when we continue with Ms Ngoyi's evidence we will
10 produce that document.

CHAIRPERSON: You spoke away from the mic, so that won't be reflected on the transcript, ja, just start again.

ADV SONI SC: When we produce – when we lead Ms Ngoyi's further evidence that will be one of the documents to which she will be referred.

CHAIRPERSON: Okay, thank you.

MR MOLEFE: Chairperson earlier on I did say in my – one of my interventions that, in one of the letters written to the Minister, I had raised concern about her persistently
20 telling the Board to perform yet the Board did not have the Management team. I see that I deal with that question in this same reply to the Minister and it is at page 163 and it is the last paragraph of ...[intervenes].

CHAIRPERSON: Of that letter.

MR MOLEFE: Of that letter.

CHAIRPERSON: Of that page 163, do you want to read that paragraph into the record?

MR MOLEFE: The paragraph reads as follows, and again it's the paragraph of the letter written by the Chairman of the Board of Directors, myself at the time to Minister of Transport on the 24th of August 2016, it says,

10 “The Minister indicated that, notwithstanding the completion of an independent robust process, to recruit a permanent group CEO, the Minister’s view was that PRASA was not ready for such an appointment. The reason we had consulted the Minister around our recommendation for the position of the group CEO was that we felt that the appointment of a permanent group CEO will assist with stability. We, however, deferred to the Minister’s preference to second the acting group CEO from the Department of Transport”.

20 **CHAIRPERSON:** Now, that too, for the sake of completeness – so you had made a recommendation to the Minister of a candidate for appointment as group CEO and what you are saying in this paragraph, is that the Minister’s response was that PRASA was not ready for the appointment of a group CEO.

MR MOLEFE: She says so but she says so after waiting for a very long time.

CHAIRPERSON: A very long time, yes, yes.

MR MOLEFE: I hoped there could be other matters, where I consistently said to her, we wrote to you, we gave you recommendations, can we please appoint.

CHAIRPERSON: Yes, yes, so it's sounds a very strange response to me, did she clarify why she thought PRASA was not ready for a permanent group CEO, I would have thought that any organisation needs a leader, a permanent leader like, yesterday. I don't understand the idea of an
10 organisation not being ready for a permanent leader.

MR MOLEFE: She didn't explain but clearly as one would see this happens after several meetings including that meeting with the President where an attempt was made to bring Mr Montana back. Of course one of the reasons that they – they tried to use to justify that was contained in this report to Mr Radebe of Mr Montana which we are looking for which says that you know the Organisation for African Unity had adopted a resolution that committed South Africa to becoming a manufacturing hub for rail and rolling stock for
20 the African continent. And they say that you therefore need a person with knowledge of this business like Mr Montana in that thing.

CHAIRPERSON: So that seems to suggest...

MR MOLEFE: So that he does not say it here but I am saying it from my own...

CHAIRPERSON: Interactions.

MR MOLEFE: Interactions with them.

CHAIRPERSON: Ja okay thank you.

ADV SONI SC: Mr Chairperson I just wonder if I can ask the witness to confirm because it may be important Bongani has managed to locate a document that may well be the document that the witness was talking about.

CHAIRPERSON: Oh you want to show the witness the document?

10 **ADV SONI SC:** I just want to show the witness.

CHAIRPERSON: Ja, ja show the witness.

ADV SONI SC: Because then we can run out copies.

CHAIRPERSON: In the meantime ja.

MR MOLEFE: Then we can deal with it.

CHAIRPERSON: Ja.

MR MOLEFE: This is the report of letter to the Minister. Not the back one.

CHAIRPERSON: Ja they will bring it to you Mr Molefe. They will bring it to you.

20 **MR MOLEFE:** Ja this is the document. [indistinct 00:02:41]. So what do you want me to do? Chairperson this is the document...

CHAIRPERSON: I am sorry your microphone is off. You just switched off.

MR MOLEFE: Chairperson this is the document I was

talking about. A report on recent developments at PRASA and it is – it was addressed to Minister Jeff Radebe.

CHAIRPERSON: Oh.

MR MOLEFE: Who at that time was responsible for monitoring and evaluation in the presidency.

CHAIRPERSON: Yes. Yes. Okay no, at least now we know it is...

MR MOLEFE: I am just worried that we might lose it again.

CHAIRPERSON: Yes, no we must not lose it. I think what
10 Mr Soni has in mind is that once you have confirmed as you
have that it is the document they can immediately start
running – printing it and securing it to make sure that we do
not lose it and making sure they can give you a copy if you
need a copy or you might have your – a copy. And then –
and then Mr Soni you can then see whether you would let
Mr Molefe deal with the document later or when?

ADV SONI SC: Yes. Yes.

CHAIRPERSON: Ja. Ja.

ADV SONI SC: We thought once we have got the copies,
20 we will be able to...

CHAIRPERSON: Ja because you might need to read it as well.

ADV SONI SC: Yes.

CHAIRPERSON: First ja. But at least now that we have got it I think that is very important. Ja.

ADV SONI SC: It – oh it is a big find Chairperson.

CHAIRPERSON: Ja thank you, thank you.

ADV SONI SC: Ms Molefe is there anything else in your let
– oh and there is just one part of your letter that I want to
refer to and that is at 165 where after all those bullet points
in the middle of that letter you say, the Board does not have
any reason to stop the investigation at this point and is
satisfied that stopping the investigation will be harmful to
PRASA. That is the stance of the Board would I be correct?

10 **MR MOLEFE:** I wanted to go ahead here to [indistinct
00:05:10].

ADV SONI SC: Oh sorry, sorry please do I do not want to...

MR MOLEFE: Well of course Counsel can guide me but I
thought on paragraph 5 I do not know if Counsel would
allow me to.

CHAIRPERSON: Remember to look this side. Yes as you
did previously.

MR MOLEFE: Chairperson I wonder if Counsel would not
like to read that?

20 **ADV SONI SC:** Yes. It is a...

CHAIRPERSON: Is that part you would like read in the
letter?

MR MOLEFE: There is a part I would like to read.

CHAIRPERSON: Ja please read it.

MR MOLEFE: The – it is paragraph 5 of the...

CHAIRPERSON: Yes page 164.

MR MOLEFE: Page 164 and it...

CHAIRPERSON: Yes read it.

MR MOLEFE: The caption is whether the investigation should be stopped and a detailed report be submitted to the Minister.

CHAIRPERSON: Hm.

MR MOLEFE: And it goes onto say:

“As we indicated to the Minister at the meeting of 17 July
10 2015 and as clearly indicated from the above excerpts of
the PFMA we believe that the Board has the responsibility
to institute and to continue for the forensic investigations in
its capacity as the accounting authority of PRASA. We are
satisfied that the investigation is necessary, is not irregular,
is cost effective and assist with easing some of the
operational bottle necks created by the past blatant failure
to observe the law.”

I do not know Chairperson if I should stop there and...

CHAIRPERSON: Ja if that was the important part that is
20 fine but if there is another important part you can indicate.

MR MOLEFE: And then...

ADV SONI SC: Yes.

CHAIRPERSON: Our Counsel will indicate if there is
another part he wants you to look at.

ADV SONI SC: Yes. The – and you are quite right Mr

Molefe that is an important point but the point I wanted to make is that when you say the Board does not have a reason what you are saying to the Minister is in terms of Section 50 and 51 of the PFMA.

MR MOLEFE: Yes.

ADV SONI SC: The Board must act according to its own conscience and its own belief and its own understanding about its responsibilities and cannot take instructions from even the Minister. That – would I be encapsulating that
10 problem?

MR MOLEFE: To the extent that the instructions are in conflict with the law the Board is not obliged to take those instructions Chairperson.

ADV SONI SC: And you have mentioned that point [indistinct 00:08:10].

MR MOLEFE: Other point we are making and that is why I went back to that paragraph again because it restates that. And that is why probably the public should understand because sometimes people say but what is wrong with this
20 Chairperson.

CHAIRPERSON: You are disobeying the full [indistinct 00:08:35].

MR MOLEFE: You are disobeying the leadership.

CHAIRPERSON: Yes.

MR MOLEFE: It is the President, it is the Minister why do

you not just keep quiet and do as they tell you? But in the end, I think I have my own responsibility and my own integrity also to – to protect. I might not be holding a high position in society but I have also been heavily done I know the values and principles that have inspired me, guided me and why I am involved in what I am involved in and – and why it is necessary therefore not to equates in anything that violates those values and principles.

ADV SONI SC: And one of the values that the constitution
10 imposes on all repositories of power.

MR MOLEFE: Yes.

ADV SONI SC: Is that they must exercise power in an accountable manner. That is exactly what you were saying to the Minister.

MR MOLEFE: That – that is correct.

ADV SONI SC: And then you say right at the end of that paragraph – at the – sorry perhaps you should read the next paragraph because this goes to the state of knowledge of the Minister where you say we have endeavoured. If you
20 could read that into the record Mr Molefe.

MR MOLEFE: Am I sure? Okay Chairperson thanks and that is page 165.

ADV SONI SC: Yes.

MR MOLEFE: Just above the three bullet points at the bottom there.

“We have endeavoured to keep you abreast of the progress of the investigations. This has been done through amongst others. A meeting with you in Rivonia focussing on the preliminary irregularities found in the Swifambo contract. This meeting was held on 28 August 2015. A meeting at Werksman Attorneys during November after the launch of the Review Application in respect of Swifambo contract. The last written report was on the 7 July 2016.”

And of course we – we go further to say:

10 “It is regrettable that on 1 July 2016 I requested a meeting with the Board for you to address it on a number of issues including this investigation. However, to date we have not yet received a response.”

ADV SONI SC: Yes.

MR MOLEFE: And then I go on, on page 166 Chairperson the paragraph – first paragraph on that page and now speaking on behalf of the Board and I go onto say:

20 “It is my considered view that it will be sad day for the Department as a shareholder and for the citizens of South Africa if this investigation does not reach its logical conclusion. I trust that this clarifies the Board’s stance in this regard. We shall in correspondence to follow by the end of August provide you with a detailed report on the forensic investigations undertaken by Werksmans Attorneys or on the Board’s instructions.”

ADV SONI SC: Now what – sorry you wanted to say something.

CHAIRPERSON: Yes.

MR MOLEFE: I –

CHAIRPERSON: I am sorry I did not hear you Mr Soni just raise your voice.

ADV SONI SC: Sorry I was going to ask a question but I – I understood that the witness want – no, no please Mr Molefe you...

10 **MR MOLEFE:** No, no let me.

CHAIRPERSON: Yes please drink – you may drink water so that we can proceed so there is no problems because advisably adjourn each time.

MR MOLEFE: No Chairperson we – the – that report was given to the Minister and the Chairperson should by now be aware we have regularly reporting to the Minister.

CHAIRPERSON: Hm. Hm.

MR MOLEFE: On a range of sensitive issues. And the Minister obviously accounts to the President and the
20 Cabinet.

CHAIRPERSON: Hm.

MR MOLEFE: I expect that you would have been reporting to the Cabinet.

CHAIRPERSON: Hm.

MR MOLEFE: As well. So it then means that the

government would have become aware.

CHAIRPERSON: Hm.

MR MOLEFE: Of the seriousness of the levels of corruption.

CHAIRPERSON: Hm. Hm.

MR MOLEFE: That were taking place.

CHAIRPERSON: Hm.

MR MOLEFE: In an organisation that is expected to spend R173 billion over 20 years.

10 **CHAIRPERSON:** Hm. Well I – in keeping with what you said and what you have just said I think it is important to look at the last part of page 165 of your letter. You say there:

“It is regrettable”

Writing to the Minister.

“That on 1 July 2016 I requested a meeting with the Board for you to address it on a number of issues including the investigations. However, to date we have not yet received a response.”

20 So I guess it shows that some of the occasions where you were even affording the Minister the opportunity to address the Board on various issues but there were delays in getting a response.

MR MOLEFE: Yes Chairperson.

CHAIRPERSON: Okay thank you.

ADV SONI SC: Now the matter that you referred to the investigation was this Swifambo investigation, would that be correct?

MR MOLEFE: That is correct.

ADV SONI SC: Now that is the one where the Supreme Court of Appeal and the High Court said there was corruption and the Constitutional Court refused to grant Leave to Appeal against the judgment of the Supreme Court of Appeal?

10 **MR MOLEFE:** That is correct Chairperson.

CHAIRPERSON: Hm.

ADV SONI SC: Then – well not soon thereafter this was in the August 24 the next milestone that happened is the Minister dissolves the Board.

MR MOLEFE: That is correct Chairperson.

ADV SONI SC: You say that she dissolves the Board on the 8 March. Now when she dissolved the Board did she give any reasons?

CHAIRPERSON: Maybe just before you answer Mr Molefe
20 just to make sure we get everything in proper sequence. I think you said earlier on the Board was dissolved by the Minister on the 8 March 2017, is that correct?

MR MOLEFE: That is correct Chairperson.

CHAIRPERSON: And did the dissolution take place by way of the Minister making an announcement in Parliament?

MR MOLEFE: That is so Chairperson. The Minister went [indistinct 00:16:32].

CHAIRPERSON: Yes.

MR MOLEFE: And sent the acting Director General in the Department of Transport.

CHAIRPERSON: Yes.

MR MOLEFE: To reach to Parliament the Portfolio Committee on Transport a letter – the announcement that the Board has been dissolved. Of course, on the same day
10 letters were sent to each one of us as Directors.

CHAIRPERSON: Hm.

MR MOLEFE: I was not well on that day so I could not go to Parliament. I had just had an eye surgery. But on the same day I wrote several letters to the Speaker of Parliament.

CHAIRPERSON: Hm.

MR MOLEFE: To the Chair of the Portfolio Committee.

CHAIRPERSON: Hm.

MR MOLEFE: Dealing with what I felt was not the correct
20 way of managing exercising oversight on the affairs of PRASA but also asking the Speaker of Parliament to initiate an enquiry.

CHAIRPERSON: Yes.

MR MOLEFE: On Transport.

CHAIRPERSON: Now so...

MR MOLEFE: Oh behalf of PRASA

CHAIRPERSON: So it is not the Minister who made the announcement in Parliament it is the DG?

MR MOLEFE: It was the acting DG.

CHAIRPERSON: But reading a letter from the Minister?

MR MOLEFE: From the Minister.

CHAIRPERSON: And the DG was reading that letter to the Depart – to the Portfolio Committee of Transport?

MR MOLEFE: That is correct Chairperson.

10 **CHAIRPERSON:** Now before the – this letter was read in – in – before the Portfolio Committee had you already been alerted by the Minister that the Board – your Board was going to be dissolved?

MR MOLEFE: Not at all Chairperson.

CHAIRPERSON: Ja. Yes.

MR MOLEFE: Not at all.

CHAIRPERSON: Yes. Okay. So – and did you get to know about it for the first time when maybe the media report heard about what was happening in the Portfolio Committee
20 before you got the official letter from the Minister or did you get the Minister – the letter – Minister’s letter first then you heard that it had – the letter had been read in Parliament?

MR MOLEFE: I was called Chairperson by one of our directors who was a delegate at the Portfolio Committee meeting.

CHAIRPERSON: Yes.

MR MOLEFE: And he calls me he says: You are no longer my Chairman, you are not Chairman any board because you have got no board now. You are – you have been fired. He explains to me what happened in Parliament and then of course when I checked my email box I found that a letter had been sent to me advising me that I have been dismissed.

CHAIRPERSON: That seems a very strange way of – of –
10 one would have thought that the Board would be informed first or at least to be alerted. So – so unless the letter had been sent first to try and achieve that but because you might not have been alerted that there was a letter – an important letter – urgent letter that you should – were – expect in your emails then you only got to see it later.

MR MOLEFE: My recollection Chairperson is that the date on the letter is the 8 March as well.

CHAIRPERSON: Same day.

MR MOLEFE: But besides – besides Chairperson.

20 **CHAIRPERSON:** Yes.

MR MOLEFE: There is a separation of powers between the legislator and the executive.

CHAIRPERSON: Yes.

MR MOLEFE: The executive is not obliged to go and dismiss the Board in – in a Portfolio Committee meeting.

CHAIRPERSON: Hm.

MR MOLEFE: The Minister should meet with the Board of Directors.

CHAIRPERSON: Hm.

MR MOLEFE: It is casa concerns. Well the Minister appoints and dismisses directors so if she does it properly follows process we would not even have gone to court.

CHAIRPERSON: Hm.

MR MOLEFE: But the precisely because we too could not
10 understand why she chose to act in a manner in which she did. We thought it was improper for us to allow abuse of power, abuse of authority in the manner in which it was done.

CHAIRPERSON: Hm. I know that previously I asked you a question and I think you gave me an answer as to whether this particular Minister, Minister of Dipuo Peters whether if you look at her approach or attitude towards the Board when the Board started and later in the life of the Board whether her attitude towards the Board might have changed.
20 And I think if I recall correctly that – the impression I got was that you thought her attitudes towards the Board changed at a later stage. Is that right?

MR MOLEFE: That is correct Chairperson.

CHAIRPERSON: Yes. Yes.

MR MOLEFE: And my view is that it all centres around the

investigation.

CHAIRPERSON: Yes, yes.

MR MOLEFE: And the fact that the Board is perceived to be stubborn.

CHAIRPERSON: Ja.

MR MOLEFE: When it is told do not do this, do not investigate, it says no, no we will investigate because...

CHAIRPERSON: Yes. Yes.

MR MOLEFE: We have fiduciary duties to be discharged.

10 **CHAIRPERSON:** Yes.

MR MOLEFE: So everything centres around this – you know this investigation. We [indistinct 00:22:28].

CHAIRPERSON: Yes.

MR MOLEFE: That were beginning to emerge.

CHAIRPERSON: Yes.

MR MOLEFE: From that investigation.

CHAIRPERSON: Yes. Thank you.

20 **ADV SONI SC:** Mr Molefe again just expanding on the theme raised by the Chairperson the Minister and – well through the DG, acting DG announces the dismissal of the Board on the occasion at which the Board was appearing before the Portfolio Committee.

MR MOLEFE: That is correct Chairperson.

ADV SONI SC: Now as I understand it you did not go to that meeting but the rest of the Board members went?

MR MOLEFE: Well a significant number of directors we normally feel that you do not have to take the entire board to a Portfolio Committee and expand its money in hotels and air tickets unnecessarily so normally we take a reasonable number with executives – executive management to go particularly the Group CEO, the Chief Financial Officer and the Company Secretary.

ADV SONI SC: And that is quite an expensive...

MR MOLEFE: That is – that is...

10 **ADV SONI SC:** Sorry.

MR MOLEFE: That is what...

ADV SONI SC: But that is quite an expensive business to the Portfolio Committee from Pretoria in Cape Town.

MR MOLEFE: That is correct Chairperson.

ADV SONI SC: Now if the Minister was dismissing the Board and had reflected on this one would imagine that she would have done it before the Portfolio Committee actually met because that would have saved that expense

20 **MR MOLEFE:** That would have been the case or after the Portfolio Committee has met and after the Board had discharged its duties to the Portfolio Committee because that will report had to account. It did not matter if after a week or so she decided now you have done your job go. But then she does it in the manner in which she did then which means actually this is fruitless and wasteful

expenditure.

CHAIRPERSON: Well I do not know whether Mr Soni was going to ask this question but I want to ask this question. You have had time to reflect on the events that happened throughout your – the term of office of your Board at PRASA. Are you able to say whether on your analysis of the events there was – that the dismissal of your Board happened on the day on which the Board was appearing before the Portfolio Committee was a mere coincidence or
 10 is there some significance in the convergence of the Board's appearance before the Committee and the dismissal and I see you said the date the letters were signed on the 8th on the same day. Is there a certain significance in these two things happening on the same day or the dismissal happening on the day when the Board is appearing before the Committee? Or was it a coincidence or is it a matter you have not had time to reflect or you would prefer not to – to leave it to other people to analyse this?

MR MOLEFE: Chairperson the difficulty one has is that
 20 there appears to be a group of people some of the Ministers including the President and members of Parliament who was in May go to conferences and adopt resolutions on corruption but they do not mean what – what they say. They do not mean to fight this. So the – everything pivots around the investigation, the fight against corruption. So it is a – it

is an all-round mobilisation of various vast instruments at the disposal of those who do not want to confront corruption. And they were found – that Portfolio Committee maybe if Counsel might later take us to the letter I wrote to the Chair of the Portfolio Committee.

CHAIRPERSON: Yes.

MR MOLEFE: That Portfolio Committee itself says we do not want this Board, dissolve it.

CHAIRPERSON: Hm.

10 **MR MOLEFE**: Now it is not their duty to say to a Minister dissolve the Board.

CHAIRPERSON: Hm.

MR MOLEFE: The Minister has got the executive authority. She must decide.

CHAIRPERSON: Hm.

MR MOLEFE: Whether you know the Board is serving its purpose or not. But they saying all of those things. They are not saying to the Minister we want you to account.

CHAIRPERSON: Hm.

20 **MR MOLEFE**: For staying for such a long time without a Group CEO for such an important company.

CHAIRPERSON: Hm.

MR MOLEFE: Company and somebody was reminding me by the way that it was not only the CEO, the Group CEO. The company also did not have a Group Chief Financial

Officer.

CHAIRPERSON: Hm.

MR MOLEFE: It has to put in place financial controls. It must ensure that it manages the finances of the business allocated to it by National Treasury to Parliament properly but there is no Chief Financial Officer. The Oversight Committee that should be demanding this thing is not saying it. It is worried about why are you keeping the Chairperson of the Board? Why are you keeping this
10 Board? Why do you not get them out?

CHAIRPERSON: Hm.

MR MOLEFE: So – so the – the – I think the Minister reached a point where she had to pander to this thing to the demands of the Portfolio Committee. Secondly the meeting we had with the President and Minister Jeff Radebe was sending a clear message that we do not want this Board.

CHAIRPERSON: Hm.

MR MOLEFE: We do not want this Board. We do not want this Chairman.

20 **CHAIRPERSON:** Hm.

MR MOLEFE: So it must go.

CHAIRPERSON: Hm.

MR MOLEFE: So I had said earlier on in my evidence Chairperson that there was something that I have also found strange whilst professional organisations could

investigate all kinds of things vetted through their normal regulatory bodies and so on.

In the case of this investigation there was a demand that National State Security Agency should vet the people who were investigating at PRASA. That investigation had begun to shake the tree so much that there was a lot of discomfort in many quarters which sometimes make you wonder whether many of these people were not aware of the wrongs that were happening at PRASA and whether
10 they themselves were not beneficiaries of what was happening there in one way or the other.

So I think the dismissal of the board was planned, was being discussed elsewhere and it was staged in such a way that it must give maximum publicity and embarrass the directors. I would have expected the Minister to call at least me, as the Chair of the board, to say do not be surprised, I have considered this and that about your board and I have arrived at a conclusion that we should dissolve it.

20 I would probably have said ja, but Minister, let us at least arrange for you to meet with the board so that you can explain to us and maybe then tell us to go at that meeting.

CHAIRPERSON: Is there – to your knowledge was there anything that the Minister or anyone else might have

expected that the board would say before the Portfolio Committee that the Minister or somebody else might not have wanted the board to get the chance to say because the moment you are dismissed I take it that the Portfolio Committee might say you have no – once you are no longer a board we do not – we have no business asking you any questions so you stop this appearance before the Portfolio Committee the moment you announce that the board is dismissed. Do you know whether there was anything that

10 the board may have been expected to say that somebody might not have wanted to board to say before the Portfolio Committee or you would not be sure?

MR MOLEFE: The purpose for the board appearing before the Portfolio Committee is to account for its work of the preceding year. Now naturally given what we had been busy with, the board was going to have to talk about rampant corruption, the litigations that were under way. They would have had to talk about the police refusing to do their job, many reports that we had given to them, civil

20 actions taken and so on.

They would not have loved that to happen and one of the things that would probably had featured there would have been what appears in the Swifambo matter where monies were paid to individuals who came to say look, you are going to get this big contract, you know, you have got

to share that money with somebody, you know?

So all of those things may well have been things that made people restless at the time.

CHAIRPERSON: Thank you. I do not know how everyone feels, it does not feel – it feels like the aircon is – the heater is taking too long to make us warm. I do not know but maybe when we come back after lunch it will be fine. I think you wanted to ask question before we adjourn.

ADV SONI SC: I want to just raise a – Chairperson, you
10 have raised something that I have not thought about and I
had not asked the witness to think about but perhaps we
could raise it because the witness has mentioned two
letters that he had written, one to the Speaker of
Parliament and the other to the Chairperson of the
Portfolio Committee. Certainly the letter to the Speaker of
Parliament is dated the same day as they are dismissed
and it may be after the witness has looked at it, he can
reflect again as to whether there is a connection between
the timing of the dismissal and the issues you have raised.
20 It has only occurred to me now, Chairperson, but if there is
something that I submit needs to be considered.

CHAIRPERSON: It does need to be looked at because it is quite extraordinary.

ADV SONI SC: Indeed.

CHAIRPERSON: That the Minister who I assume would

have known in advance that the board would be appearing before the Portfolio Committee on a certain date does not dismiss the board before that but actually dismisses the board on the day or when they are supposed to appear and I would imagine that if she dismissed the board before the date she would have achieved the same thing if part of her concern was that the board was going to reveal certain things.

ADV SONI SC: Indeed.

10 **CHAIRPERSON:** But it may well be that coinciding the dismissal with the date of the board's appearance before the Commissioner – before the Portfolio Committee, might have been based on some other reason.

ADV SONI SC: Yes.

CHAIRPERSON: And I think Mr Molefe has mentioned that also it might have been intended to embarrass the board and to get a lot of publicity for that.

ADV SONI SC: Clear publicity.

CHAIRPERSON: Ja, so after lunch we can wrap that up.

20 **ADV SONI SC:** Yes.

CHAIRPERSON: Okay, I see it is two minutes past one. Let us take the lunch adjournment and we will resume at two o'clock.

ADV SONI SC: As you please, Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Thank you. And the way it is cold here in Jo'burg, it makes some of us who come from Durban want to go back to Durban. Okay, let us continue.

ADV SONI SC: Mr Chair, may I place on record that we have now retrieved that document and I would like Mr Motlana to hand it up. I mean, Mr Molefe, to hand it up.

CHAIRPERSON: Yes, is that the report which we have
10 been calling the Turmoil at PRASA?

ADV SONI SC: PRASA in Turmoil.

CHAIRPERSON: Well, it may be that it is convenient to call it that even if that is not the heading that appears because we – as long as there is mention of that in the body of this document.

ADV SONI SC: Yes.

CHAIRPERSON: But if you have seen the report, I have not – there is another word that we can use to call it, that is fine, so I am just saying that because Mr Molefe
20 emphasised earlier that he had noticed that it is not what it is called. So that somehow one may end up ...[intervenes]

ADV SONI SC: One of the headings is PRASA in Turmoil.

CHAIRPERSON: H'm?

ADV SONI SC: One of the headings in the report is PRASA Internal.

CHAIRPERSON: Somewhere in the report, you mean not at the top?

ADV SONI SC: One of the headings.

CHAIRPERSON: Not at the beginning.

ADV SONI SC: Yes.

CHAIRPERSON: Ja, I think it is convenient to call it that.

ADV SONI SC: Yes.

CHAIRPERSON: We will know what document we are talking about when anybody refers to the PRASA in Turmoil
10 report or document.

ADV SONI SC: Yes.

CHAIRPERSON: Okay, alright.

ADV SONI SC: So, Chairperson, just for the order we ...[intervenes]

CHAIRPERSON: Ja, I think, Mr Soni, you have confused both me and Mr Molefe about what you wanted – about the reports.

ADV SONI SC: Oh, sorry.

CHAIRPERSON: You said you want him to hand it up but I
20 suppose you wanted him to identify it but I think you left that in between.

ADV SONI SC: So, I was ...[intervenes]

CHAIRPERSON: Okay, I can take it from Mr Molefe. Sorry, let me take it from Mr Molefe. Mr Molefe, I am sorry.

ADV SONI SC: Yes.

CHAIRPERSON: Ja, give it to me. Yes, so that is the document called – or rather, written at the top:

“Report on recent developments at
PRASA.”

ADV SONI SC: That is so, Chair.

CHAIRPERSON: Okay, you want to – have you got – I am sure, Mr Molefe, you have got your own copy?

MR MOLEFE: I do have, Chairperson.

10 **CHAIRPERSON:** Yes. Okay, do you want Mr Soni to let him identify it so that we can admit it?

ADV SONI SC: Yes. We could call it as you suggest, Chairperson, PRASA in Turmoil and we could ...[intervenes]

CHAIRPERSON: Well, we do not have to write down on page 1 at the top PRASA in Turmoil, we can leave it as it is.

ADV SONI SC: Yes, yes.

20 **CHAIRPERSON:** What I meant was, anybody who says the PRASA in Turmoil report, as long as we know which document it is.

ADV SONI SC: Yes.

CHAIRPERSON: That would be fine.

ADV SONI SC: And we could include it at the end of ...[intervenes]

CHAIRPERSON: Do you want Mr Molefe to identify it

first?

ADV SONI SC: Yes.

CHAIRPERSON: Ja, do you want me to take him through it – not through it but to identify it first?

ADV SONI SC: He can identify it first, Chairperson.

CHAIRPERSON: Ja.

ADV SONI SC: Mr Molefe, you have been referring to a document produced by Mr Montana.

MR MOLEFE: That is correct, Chairperson.

10 **ADV SONI SC:** And you referred to it in general terms as a document called PRASA in Turmoil.

MR MOLEFE: That is so.

ADV SONI SC: Is this the document?

MR MOLEFE: Yes, this is the document, Chairperson, which is written:

“Report on recent developments at
PRASA.”

ADV SONI SC: Yes and then the last page ...[intervenes]

20 **MR MOLEFE:** Made at 27 July in the last page and it also states that the report compiled by Tshepo Lucky Montana.

ADV SONI SC: Yes.

CHAIRPERSON: Yes and it has got 11 pages, right?

ADV SONI SC: Right at the end you will see it at the bottom.

CHAIRPERSON: Ja, it is pages 1 to 11 so it is an 11 page

report.

MR MOLEFE: Oh, 11 page report, yes, Chairperson.

CHAIRPERSON: Ja, okay. What do you propose we mark it as exhibit what, Mr Soni?

ADV SONI SC: Let me just find...

CHAIRPERSON: You want it to be inserted? We could have it separate. We could have it separate.

ADV SONI SC: Yes, yes.

CHAIRPERSON: Because unless we add it at the back
10 of...

ADV SONI SC: It may be a good idea, Chairperson, to have it as a separate document.

CHAIRPERSON: As a separate document.

ADV SONI SC: Yes because I have no doubt it will come up again.

CHAIRPERSON: Ja, ja. Okay, then we need to know what exhibit it will be.

ADV SONI SC: Shall we make this EXHIBIT SS6A?

CHAIRPERSON: Exhibit?

20 **ADV SONI SC:** SS6 - Mr Molefe's affidavit is SS6 and we can make this 6A.

CHAIRPERSON: Well, should we not make it SS7 because when you say...

ADV SONI SC: There is already a 7, as I understand it.

CHAIRPERSON: Ja, is there another one because when

you say 6A it will give the impression that it comes before 6.

ADV SONI SC: Yes. I will just check.

CHAIRPERSON: What is the last exhibit we have admitted? Even March, there may be other documents that we admitted or otherwise we could use SS6A, as you say.

ADV SONI SC: Can I make the suggestion, Mr Chairperson, can we have it as 6A provisionally and then when we have worked out what is the last SS number we
10 could then convert it to the number after that.

CHAIRPERSON: My difficulty is that we will refer it with – we will use and then later we change.

ADV SONI SC: Oh, yes.

CHAIRPERSON: Well, this bundle D consists of Mr Molefe's affidavit and annexures thereto, is it not?

ADV SONI SC: Yes. Yes, it does, Chairperson.

CHAIRPERSON: Should we not – and there is no other bundle that has got annexures to his affidavit, it is only this one.

20 **ADV SONI SC:** Yes.

CHAIRPERSON: Then should we not put it at the back so that it becomes simply an annexure?

ADV SONI SC: Yes.

CHAIRPERSON: Well, it is not an annexure because the affidavit – well, the affidavit does, I think, refer to it

although because it was not available it was not annexed.

ADV SONI SC: Yes.

CHAIRPERSON: But I think we can put it at the end and we – it will become in terms of pagination as a PSM331.

ADV SONI SC: Yes.

CHAIRPERSON: So I think let us do – what was the document before that? What was the document before that? Was it PM11? PM12? PM15? Ja, it looks like the last document is PM15.

10 **ADV SONI SC:** Yes.

CHAIRPERSON: So if we – let us make it PM and annexure even though – because it is referred to in the affidavit, is it not?

ADV SONI SC: Yes.

CHAIRPERSON: It is just not given an annexure number.

ADV SONI SC: No.

CHAIRPERSON: So I think let us make it annexure PM16.

ADV SONI SC: Yes.

CHAIRPERSON: Would that be alright?

20 **ADV SONI SC:** Yes, yes.

CHAIRPERSON: So let us mark it PM16 and then in terms of the pagination it will be PSM333 and I write SS6 before PSM. Okay, alright. So if you refer to it as PM16 or PRASA in Turmoil we will know which one you are talking about.

ADV SONI SC: Talking about, yes.

CHAIRPERSON: Okay, alright. Thank you.

PRASA IN TURMOIL DOCUMENT HANDED IN AS PM16

ADV SONI SC: Can we refer to this a little later?

CHAIRPERSON: Yes, later.

ADV SONI SC: I will lead Mr Molefe on it a little later.

CHAIRPERSON: Ja.

ADV SONI SC: Now, Mr Molefe, we were still dealing with the dismissal by the Minister of the board on the 8 March.

10 When the Minister announced her decision, what was your reaction to it? I am talking about active reaction in relation to her decision. But perhaps let me ask more directly. Did you challenge the decision?

MR MOLEFE: I did, Chairperson, I called the rest of the directors and suggested that we challenge the decision. I did also say, of course, regardless of whether they joined me in doing so or not, I was going to challenge it, so – and that is what we did, we instructed Webber Wentzel firm of attorneys to be our attorneys-of-record.

20 **ADV SONI SC:** Yes. You then took the decision to quote ...[intervenes]

CHAIRPERSON: I am sorry, Mr Soni, it is more logical for us to deal with the reasons, if any, that were given by the minister for dismissing the board and what Mr Molefe thought of those reasons before we go to challenging, is it

not?

MR MOLEFE: There should be a letter of the minister, very scanty.

CHAIRPERSON: I am sorry, yes, I did not hear, just repeat, Mr Molefe?

MR MOLEFE: I said there is a letter that simply dismisses us.

CHAIRPERSON: Yes, I was ...[intervenes]

MR MOLEFE: Recollection is that it does not even give
10 much reasons to say performance or something to that effect.

CHAIRPERSON: Yes. No, that is what I would like Mr
Soni to traverse first. We must – because you have told us
that the – you have told us that the acting DG read the
letter of dismissal to the Portfolio Committee. So we do
need to see – to identify the letter, if it is here. If it is not
here then I must be told it is not here because maybe from
it we will see the reasons. Or if the reasons are not there,
Mr Molefe can indicate whether at some stage or another
20 prior to the challenge in court of the decision the Minister
did give her reasons or was asked to give reasons and
what was her response. I think it is more natural if we
cover that first.

MR MOLEFE: That is an issue that is covered in the
judgment, that is why I wanted to go to the judgment.

CHAIRPERSON: Let us deal with it now even if it is in the judgment because when one is listening to the story the first thing when one is told that the Minister dismissed the board, the next thing you want to know is why.

MR MOLEFE: Yes.

CHAIRPERSON: So it is better to hear it now even if the reason the court deals with them later on.

MR MOLEFE: Yes.

CHAIRPERSON: Ja. So, in other words, what I want to
10 know, do we have the letter that was read to parliament where the Minister communicated the – or that was written to the board, to members of the board saying you are being dismissed and these are the reasons, if they were given, and then the reaction to those reasons, I would like to know what he thought of those reasons. Probably did not think much of them, that is why they decided to go to court.

MR MOLEFE: To court, yes.

CHAIRPERSON: But that is the – I am looking at getting the story in a logical way.

20 **MR MOLEFE:** No, I understand. As it unfolded.

CHAIRPERSON: Yes, ja. The court later on – we can say what did the court say about those reasons, but that is later.

ADV SONI SC: I place on record, Chairperson, that the DG's letter is something we have only heard about this

morning for the first time. I had thought until this morning that the Minister had announced it at the Portfolio Committee but that letter is not part of the documents before you, Chairperson.

CHAIRPERSON: Okay and – so even in the court proceedings that ensued it was not part of those...?

ADV SONI SC: No.

CHAIRPERSON: It was not part of this.

ADV SONI SC: No.

10 **CHAIRPERSON:** Okay. Mr Molefe, have you found that letter by any chance? I think you are looking for it.

MR MOLEFE: The letter would be really addressed to each one of the directors by the Minister. It would not be the one read in parliament.

CHAIRPERSON: Oh, okay.

MR MOLEFE: It was not there.

CHAIRPERSON: Okay. The one read in parliament would have been addressed to the Portfolio Committee?

MR MOLEFE: Would have been addressed to the Portfolio
20 Committee advising them that ...[intervenes]

CHAIRPERSON: Of the dismissal.

MR MOLEFE: That the board is being dissolved.

CHAIRPERSON: Oh, okay. But even if you do not find – if you can find the letter that was addressed to you, we can deal with it. If you do not find it you can just tell me what

your recollection is of what reasons it gave, if it gave any.

MR MOLEFE: I will do, Chairperson.

CHAIRPERSON: Yes, okay.

ADV SONI SC: Well, did she give any reasons at the time she dismissed you, Mr Molefe?

MR MOLEFE: I would rather wait to see the letter.

CHAIRPERSON: The letter.

MR MOLEFE: My recollection is that the reasons were really not substantive.

10 **CHAIRPERSON**: Yes.

MR MOLEFE: They simply said poor performance.

CHAIRPERSON: Oh, did ...[intervenes]

MR MOLEFE: That is why in court it was dismissed as an irrational decision.

CHAIRPERSON: What you can do, Mr Soni, of course, is to look at the reasons as were understood in court.

ADV SONI SC: They are quite revealing, Chairperson, that is why I think Mr Molefe cannot give an answer. I will refer you to a paragraph of the judgment.

20 **CHAIRPERSON**: Ja.

ADV SONI SC: Which addresses this very issue.

CHAIRPERSON: Ja. Okay, alright. Let us proceed. If the letter is not there, let us proceed and then we will see how the court deals with it. It is just that it is – when you say somebody has been dismissed in circumstances that

appear to be strange the first thing you want to know is, why was the person dismissed, what was the reaction, before you hear what happened in court later.

ADV SONI SC: But what happens in court actually explains in a sense the fact that no reasons were given.

CHAIRPERSON: Yes, okay. Let us go ahead. If we find the letter later on we can come back to it but that is fine, let us go ahead.

ADV SONI SC: Okay. So, Mr Molefe, may I ask you to
10 look at bundle A and it is the judgment of the court in the matter ...[intervenes]

CHAIRPERSON: You say it is bundle A?

ADV SONI SC: Chairperson, it is bundle A.

MR MOLEFE: Is it this one?

CHAIRPERSON: Well, I do not have – oh, there it is.

MR MOLEFE: Yes, I do have it.

CHAIRPERSON: What page? That is bundle A of EXHIBIT SS1.

ADV SONI SC: That is right, yes. SS2, Chairperson.

20 **CHAIRPERSON:** And what is the page?

ADV SONI SC: Page 83, that is where the judgments are. The report starts page 83 and you will see, Chairperson, it has Mr Molefe and the other board members against the Minister of Transport and members of a newly appointed board.

CHAIRPERSON: Hang on one second?

ADV SONI SC: At page 83, Chairperson.

CHAIRPERSON: You said page 83?

ADV SONI SC: Yes.

CHAIRPERSON: I think the people who were paginating here departed from the norm. You know, these bundles, the numbers, the pagination is supposed to be sequential from page 1 up to the last page.

ADV SONI SC: Yes.

10 **CHAIRPERSON:** But I see that the first document goes up to page 59. The next document starts from scratch.

ADV SONI SC: Yes.,

CHAIRPERSON: On page 1, it starts the pagination afresh. It should not be like that. Okay, page 83?

ADV SONI SC: Of SS2.

CHAIRPERSON: So that is now – ja, will you just make sure that these things are checked beforehand because the numbering, the pagination, there must be consistency with everything.

20 **ADV SONI SC:** Yes.

CHAIRPERSON: Because when I see page 59, I think okay, I am only 20 pages away from 83 only to find that when I think I have reached the twentieth page it is not 83 and I still a long way because the pagination has started afresh. Yes, okay, I have got the judgment.

ADV SONI SC: Now, Mr Molefe, can I ask you in respect of that judgment, could you turn to page 124, paragraph 51?

MR MOLEFE: I am on 124, paragraph 51, Chairperson.

CHAIRPERSON: Did you say paragraph 81?

ADV SONI SC: 51, Chairperson.

CHAIRPERSON: Five one?

ADV SONI SC: Yes.

CHAIRPERSON: Okay, yes.

10 **ADV SONI SC:** Now in the earlier paragraphs the judge deals with the duty to give reasons for administrative action and then at paragraph 51 he sets out what reasons were given. Could you read that into the record please?

MR MOLEFE: Paragraph 51, Chairperson reads as follows:

20 “For the first time the Minister purported at press conference that she held on 13 March 2017 to justify her decision to remove the relevant directors, she did that through the media instead of through the concerned directors. She stated that the board was found wanting relating to, amongst others, the declining performance, lack of good governance, lack of financial prudence and ever deteriorating public confidence due to spats of infighting.”

ADV SONI SC: Okay, if you could just stop there. Was

that the first time you heard the justification for the dismissal of the board on the 13th?

MR MOLEFE: That was the first time.

ADV SONI SC: Yes, so ...[intervenes]

MR MOLEFE: That was the first time, Chairperson.

ADV SONI SC: So you were dismissed on the 8th but the first time you were given a reason so to speak was on the 13th?

MR MOLEFE: The media, the media, the public were
10 given a reason.

ADV SONI SC: Yes.

CHAIRPERSON: Yes, yes. Yes, no, that is an important factor to remind that she was talking to the media.

ADV SONI SC: And not talking to...

CHAIRPERSON: And not to the board and to yourselves.
Yes, okay.

ADV SONI SC: As emphasised by the judge.

CHAIRPERSON: By the judge.

ADV SONI SC: By the judge, Chairperson.

20 **CHAIRPERSON**: Yes.

ADV SONI SC: And then in the next – then the judge says what she had said in her answering affidavit. Could you read that into the record?

MR MOLEFE:

“In her answering affidavit she set out two

fundamental reasons for her decision. Firstly, she claims that the trigger for the relevant directors' removal was their decision to terminate Letsoalo's secondment to PRASA. She states that the board was removed because the board acted in unison in frustrating the actions of Mr Letsoalo and ultimately removing him. Furthermore..."

And I am on now page 125, Chairperson.

10 "Furthermore, she claimed that she substantially complied with the procedural fairness, obligations in respect of this complaint because she wrote to the board on 1 March 2017 and asked it to explain its public spat with Letsoalo and to furnish reasons why she should not intervene in order to restore good governance within PRASA. Secondly, the Minister claimed that she had wide-ranging concerns about the board management of PRASA. She considered it to have been involved in corruption and in irregular expenditure since its

20 appointment. Quite clearly, nowhere does she state that she afforded the relevant directors an opportunity to be heard on these issues before she took the decision to remove them from office."

ADV SONI SC: Mr Chair, Mr Molefe, can I ask you to turn to paragraph 56?

CHAIRPERSON: Does anybody feel like it is warmer than before lunch?

ADV SONI SC: It is slightly warmer.

CHAIRPERSON: It is slightly warmer, okay. Mr Molefe?

MR MOLEFE: It is slightly warmer, Chairperson.

CHAIRPERSON: Okay, alright.

ADV SONI SC: So this, Mr Molefe, is after the judge decides that she was setting aside her decision and this is the third reason he gives. Can you place that on record:

10 **MR MOLEFE:** Paragraph 56 of the judgment, Chairperson, reads:

20 “Thirdly and lastly, the Minister’s decision to remove the concerned directors was so unreasonable and disproportionate as to be arbitrary and irrational. The board took a decision to terminate Letsoala after it had sought and obtained legal advice. The decision to terminate to terminate Letsoalo’s appointment was thus plainly reasonable given the fact that it had a discretion to terminate his appointment at will. The Minister should have accepted that the board’s decision to terminate his secondment rather than disciplining it for it. Her decision was accordingly unreasonable on that basis alone. The decision, however, is rendered wholly disproportionate by the fact that

the Minister appears to have given no consideration to the serious and prejudicial impact of the wholesale removal of the board on PRASA's interest."

ADV SONI SC: Okay, you can stop there. Can I then ask you to look at paragraph 60? If you could just read the first sentence?

MR MOLEFE: Paragraph 60, Chairperson, the first sentence reads as follows.

10 "I have reached a conclusion that the applicants, or should I say the removed directors, have proved that they have a clear right to challenge the decision taken by the Minister and furthermore, to have the decision reviewed and set aside or to obtain an order suspending the operation of the notices of removal. The removed directors..."

Okay, that is the sentence, Chairperson.

ADV SONI SC: Yes. And then if you look at page 135, paragraph 3, the court sets aside the decision to remove
20 the members of the board and in paragraph 6 orders the Minister to pay the costs, is that correct?

MR MOLEFE: That is correct, Chairperson.

CHAIRPERSON: So whatever reasons the Minister furnished to the court for the decision to remove your board were found to be wanting by the court.

MR MOLEFE: That is so, Chairperson. So maybe we will still get to know the real reasons from their side.

CHAIRPERSON: Yes. Yes.

ADV SONI SC: Now after the – after you took the decision to court but before the decision of the court, the change and they have already discussed it, where Minister Peters was removed as Minister of Transport and Mr Joe Maswanganyi was appointed minister. Is that correct?

MR MOLEFE: That is so, Chairperson. That... by the way, I
10 should also say that immediately after she announced the removal of our board, she appointed what she called an interim board.

ADV SONI SC: Yes.

MR MOLEFE: Ja. And uh, of course, shortly after that the president uh, reshuffled the cabinet and she was uh, replaced by Minister Maswanganyi.

ADV SONI SC: Now, what has Minister Maswanganyi's uh, approach towards the board? The... uh, Minister Peters had dismissed the board. You had been reinstated. What was
20 his approach to your reinstatement and your continued existence as a board?

MR MOLEFE: Uh, immediately when Minister Maswanganyi and me was appointed, I wrote him a letter congratulating him and welcoming him and saying that uh, the board would uh, wish that he... he comes and meet with the board. Uh,

and of course, I also advised him that uh, the... the court had reinstated us. Um, he...[intervenes]

CHAIRPERSON: In the meantime, while you are waiting for the outcome of the court application, there was an interim board that was um, uh, in operation or they waited because... for the outcome of the application without putting in place an interim board?

MR MOLEFE: No, the interim board had been put in place. Uh...[intervenes]

10 **CHAIRPERSON:** Yes. Okay.

MR MOLEFE: But it... it...[intervenes]

CHAIRPERSON: It had to go once you ...[intervenes]

MR MOLEFE: It had to go ...[intervenes]

CHAIRPERSON: ...while... while you waiting on the case, ja.

MR MOLEFE: It probably had one or two meetings...[intervenes]

CHAIRPERSON: Yes.

MR MOLEFE: ...and let it go.

20 **CHAIRPERSON:** Okay. I can... did Mr Maswanganyi respond positively to your request for resignation?

MR MOLEFE: Mr Maswanganyi did not respond positively.

CHAIRPERSON: He did not respond at all or he did respond but ...

MR MOLEFE: He... he did not respond to my letter.

CHAIRPERSON: H'm.

MR MOLEFE: Um, and I think I have got correspondence uh, in that...

CHAIRPERSON: Yes.

MR MOLEFE: ...in that regard which we...[intervenes]

CHAIRPERSON: Yes.

MR MOLEFE: ...I can avail to the court.

CHAIRPERSON: Yes.

MR MOLEFE: Uh, he showed me after that, also served
10 notice on us.

CHAIRPERSON: H'm.

MR MOLEFE: A small detail and given reasons, detailed reasons why we should be uh... he... he demanded that... he gave us seven days.

CHAIRPERSON: H'm.

MR MOLEFE: Uh, to show cause why we should not be removed ...[intervenes]

CHAIRPERSON: Yes.

MR MOLEFE: ...as a board for... for failure to perform.

20 **CHAIRPERSON:** Yes.

MR MOLEFE: He has... he has not even met with this board but he wanted to dismiss it.

CHAIRPERSON: Yes. The correspondence you are talking about, if we do not have it here, it will be important to have it.

MR MOLEFE: It... it...[intervenes]

CHAIRPERSON: Between yourself and ...[intervenes]

ADV SONI SC: I was just going to that Chairperson.

CHAIRPERSON: Yes.

ADV SONI SC: It is here now.

CHAIRPERSON: Oh, it is here? Oh, okay.

MR MOLEFE: [Indistinct 00:03:39] ...[intervenes]

ADV SONI SC: Yes, Chairperson.

CHAIRPERSON: Okay.

10 **ADV SONI SC:** Mr Molefe, can I ask you to look at page 176
which is Annexure PM10 to your affidavit?

MR MOLEFE: [No audible reply]

CHAIRPERSON: I am sorry. Are we going back to the
other bundle 3 or are we staying with this one?

ADV SONI SC: Oh, sorry. We are going to bundle...

CHAIRPERSON: Ja. Uh, you just announce if done. so
that uh...[intervenes]

ADV SONI SC: Yes, yes...[intervenes]

20 **CHAIRPERSON:** ...whoever reads the transcript will
understand...[intervenes]

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

CHAIRPERSON: Then now we are dealing with a different
bundle or exhibit. Okay, what page? We are now
...[intervenes]

ADV SONI SC: On page 170, Chairperson.

CHAIRPERSON: We are going back to Bundle D which is...[intervenes]

ADV SONI SC: Page 25...[intervenes]

CHAIRPERSON: Page...[intervenes]

ADV SONI SC: And then Annexure PM10 is page 170.

CHAIRPERSON: [No audible reply]

ADV SONI SC: Yes.

CHAIRPERSON: Yes, page 170. Yes.

ADV SONI SC: So this is the minister's letter to the board in
10 which he gives notice that he intends dismissing the board
and asks you to make representations why you should not.

MR MOLEFE: That is correct, Chair... Chairperson.

ADV SONI SC: Now, in fact, we are just looking forward.
The... he did not go uh, ahead with his threat to... to
terminate the... the board or... or the cleaning of the board.

MR MOLEFE: He did not go ahead with the treat
Chairperson.

ADV SONI SC: Just in brief then, would you
say...[intervenes]

20 **CHAIRPERSON:** I am sorry mister...[intervenes]

ADV SONI SC: Yes, Chair?

CHAIRPERSON: ...Soni. I was trying to look for the date
to see... of the letter to see how soon after he was
appointed, he sent this letter.

ADV SONI SC: Oh.

MR MOLEFE: But I see no date has provided where he signed and I do not see any date on page 1 of the letter.

ADV SONI SC: You are quite right. [laugh]

CHAIRPERSON: H'm.

ADV SONI SC: I must have missed... I did not see that.

CHAIRPERSON: What is your recollection Mr Molefe as to how soon after he had appointed, he sent the board this letter uh, PM10?

MR MOLEFE: [No audible reply]

10 **CHAIRPERSON:** Or is that something you are not able to remember?

ADV SONI SC: If you look at paragraph 99 of your affidavit uh, Mr Molefe at page 25, you will see you give a date there.

MR MOLEFE: Page...?

ADV SONI SC: Page 25 of your affidavit, paragraph 99.

MR MOLEFE: Ja, let me see.

ADV SONI SC: No, your affidavit here uh, Mr Molefe.

MR MOLEFE: I am looking at my...

ADV SONI SC: Oh.

20 **CHAIRPERSON:** Uh, page 25.

ADV SONI SC: Page 25, paragraph 99.

CHAIRPERSON: You give... you gave the date of 5 June 2017.

MR MOLEFE: Ja.

CHAIRPERSON: In paragraph 99 ...[intervenes]

MR MOLEFE: Ja, ja.

CHAIRPERSON: ...as a date when Minister Maswanganyi asked the board to show court why it should not be dissolved.

MR MOLEFE: H'm.

CHAIRPERSON: So then that... that... that is right there. You confirm that that is the date?

MR MOLEFE: That... that is correct, Chairperson.

CHAIRPERSON: Ja, okay.

10 **ADV SONI SC:** And you then responded through PM10 which appears at... ah, sorry. Through PM11 which appears at page 179.

MR MOLEFE: That is correct, Chairperson.

ADV SONI SC: And in essence, again because that much happened as a result of this, you asked for more time so that you could give a more considered response to his invitation?

MR MOLEFE: That is correct, Chairperson.

ADV SONI SC: Now, he did not go ahead with the threat to terminate the chairman of the board but you said he
20 achieved the same result through a different means. What do you mean by that?

MR MOLEFE: He... we asked for time extension and he gave us only day because he said [laughs]... his initial timeline was a year. The 21st uh-uh, of June.

CHAIRPERSON: H'm.

MR MOLEFE: And he said, “okay, I give you until the 22nd”.

CHAIRPERSON: H’m.

MR MOLEFE: Uh-uh, so the... and I am saying he is achieving the uh, seeking to achieve the same objective, the same goal of uh, the previous uh, minister through uh, a different uh, means. And... and he...[intervenes]

CHAIRPERSON: What did he do?

MR MOLEFE: Uh...

CHAIRPERSON: He achieved the same result through
10 different means.

MR MOLEFE: Ja.

CHAIRPERSON: What does he do?

MR MOLEFE: So... so what he did was... by the way, I should say that, when I wrote to the minister, I also advised him that there were vacancies on the board. That the board did not have a quorum. And he needed to speedily appoint uh, directors to those vacancies.

Even if he was not to follow the tedious process of nominations, there were two directors who were working for
20 government. One was in his department. The other one would have come from the National Treasury.

A vacancy there arose because that individual who was a nominee of National Treasury resigned as an employee of National Treasury and that could not continue as a representative of National Treasury on the board.

So I was asking him to fill uh, those posts. And uh, so he did not. Uh, he refused to do so. So achieved the dysfunctionality of the board by simply not discharging his responsibility as a minister to appoint a board so that the board could function properly.

CHAIRPERSON: So uh... ja. Were there two vacancies or were there more than two vacancies?

MR MOLEFE: There... there were four vacancies.

CHAIRPERSON: There were four vacancies?

10 **MR MOLEFE:** Uh, four.

CHAIRPERSON: But you know to create a quorum you needed two... up two appointments?

MR MOLEFE: That is correct, Chairperson.

CHAIRPERSON: And you... you are saying that those two appointments could be somebody of his department and somebody from National Treasury?

MR MOLEFE: That is correct.

CHAIRPERSON: And then the board would be able to function properly?

20 **MR MOLEFE:** That is true.

CHAIRPERSON: Ja, okay. And... but he...[intervenes]

MR MOLEFE: He... he does not do it.

CHAIRPERSON: He did not do it.

MR MOLEFE: Uh...[intervenes]

CHAIRPERSON: Did he respond in any way?

MR MOLEFE: He... he did respond in a very irrational manner. He says, “no, it takes a long time to... to appoint directors”. He has got to follow the process of nomination as required by the law.

CHAIRPERSON: H’m?

MR MOLEFE: And then he says, “with regards to these nominees of the department, even if they come from those departments, I must still take them to the cabinet”.

CHAIRPERSON: H’m?

10 **MR MOLEFE:** [laughs] For the cabinet to... to decide.

CHAIRPERSON: H’m.

MR MOLEFE: Now, the... the cabinet is unlike... it is to say to the Minister of Finance... when the Minister of Finance says, “my nominee ...[intervenes]

CHAIRPERSON: H’m.

MR MOLEFE: ...”to that board is this person...[intervenes]

CHAIRPERSON: H’m.

MR MOLEFE: ...”whom I trust...[intervenes]

CHAIRPERSON: H’m.

20 **MR MOLEFE:** ...”works for this department”. They would not say, “no, no...[intervenes]

CHAIRPERSON: Yes.

MR MOLEFE: ...no, we cannot. We challenge you”.

CHAIRPERSON: H’m.

MR MOLEFE: He, as a result of what... what he is, he does

not... he... he can notify the cabinet...[intervenes]

CHAIRPERSON: H'm.

MR MOLEFE: ...that I have nominated so and so on that board and then we have got this nominee of National Treasury.

CHAIRPERSON: H'm.

MR MOLEFE: Not to say to the cabinet “decide for me whether I can nominate...[intervenes]

CHAIRPERSON: H'm.

10 **MR MOLEFE:** ...”my employee...[intervenes]

CHAIRPERSON: H'm.

MR MOLEFE: ...”who in terms of the law, I am prepared to nominate...[intervenes]

CHAIRPERSON: H'm.

MR MOLEFE: ...”and appoint as a director to that board”.

CHAIRPERSON: H'm. H'm.

MR MOLEFE: But... but he was saying that. So clearly the intention was not bad.

20 **CHAIRPERSON:** But of course uh, if he... I mean, once the board did not have enough directors or members to be quorate, that was an item matter on its own. The filling of those positions was urgent because it meant the board could not sit, is it not?

MR MOLEFE: It was an urgent matter.

CHAIRPERSON: And the ...[intervenes]

MR MOLEFE: The question is whether there was the intention...[intervenes]

CHAIRPERSON: Yes. So...[intervenes]

MR MOLEFE: ...to have a functioning board.

CHAIRPERSON: So... so... so one would have expected that he would have appreciated the urgency and would... and would have known that the cabinet itself would regard the matter as urgent if he says, “the board of PRASA cannot operate because it does not have enough members of the
10 board. I need at least appointed. Here is my nominee. Here is the nominee of the Minister of Finance”.

There is no reason why the... the cabinet performing its duties the way it should, would not have regarded that as urgent now.

MR MOLEFE: That is correct, Chairperson.

CHAIRPERSON: H’m. Okay.

MR MOLEFE: Yes.

ADV SONI SC: Ms Molefe, there you make a slightly different point that in the second sentence at paragraph 100,
20 you say,

“I later found out that the directors were lobbied to resigned from their respective positions on the board”.

Who...[intervenes]

CHAIRPERSON: Sorry, what page?

ADV SONI SC: Sorry, Chairperson.

CHAIRPERSON: Page?

ADV SONI SC: Page 25.

CHAIRPERSON: 25.

ADV SONI SC: Paragraph a hundred.

CHAIRPERSON: Okay. Thank you.

ADV SONI SC: Are you there Mr Molefe?

MR MOLEFE: On what page are we on?

ADV SONI SC: Page 25, paragraph 100, the second
10 sentence.

MR MOLEFE: Oh, the affidavit?

ADV SONI SC: Yes.

MR MOLEFE: Okay. Um...

CHAIRPERSON: I think he should read paragraph 100 in
its entire context.

ADV SONI SC: So that it is on record. Okay, Chairperson.

CHAIRPERSON: Yes, yes. Read that paragraph Mr Molefe.

CHAIRPERSON: “When everything else failed, he
attempted to weaken the board by ensuring that it did not
20 have a quorum”

CHAIRPERSON: And that is the reference to the Minister
Maswanganyi ...[intervenes]

MR MOLEFE: And that is the point I made earlier on.

CHAIRPERSON: That... that... the E is reference to
Minister Maswanganyi?

MR MOLEFE: That is Minister Maswanganyi.

CHAIRPERSON: Yes, continue.

MR MOLEFE: “I later found out that the directors were lobbied to resign from their respective positions on the board. The intention being to isolate me as the chairman so that I could not be effective”.

CHAIRPERSON: H’m.

MR MOLEFE: “Some directors including the representative of the National Treasury did resign”. And I have given the
10 circumstances under which that one resigned.

CHAIRPERSON: H’m.

MR MOLEFE: “They were not replaced. The nominee of the Department of Transport stopped attending board meetings. These developments left the board ineffective as its quorum could not be formed”.

Now, the... I... I was advised by some of my directors um, that they were actually approached and asked to resign.

CHAIRPERSON: Look this side again.

MR MOLEFE: [laughs]

20 **CHAIRPERSON:** [laughs] Look at me. [laughs]

MR MOLEFE: Ja, I am learning the hard way how ...[indistinct 00:16:59] [laughs]

CHAIRPERSON: [laughs]

MR MOLEFE: Refraining to ...[indistinct 00:17:02]

CHAIRPERSON: Yes. Okay, you were advised by some

of...[intervenes]

MR MOLEFE: My... by my directors.

CHAIRPERSON: Yes.

MR MOLEFE: They were lobbied to resign.

CHAIRPERSON: That... that they have been approached and asked to resign.

MR MOLEFE: Yes. Uh, in fact, one of them told me that the acting director general...[intervenes]

CHAIRPERSON: H'm.

10 **MR MOLEFE**: ...promised her that "if you resign, we will appoint you to another board. Do not worry". For now, you know?

CHAIRPERSON: H'm.

MR MOLEFE: He would not... he will appoint you again.

CHAIRPERSON: Yes.

MR MOLEFE: Um, of course uh, the chair of the Audit Committee resigned and the chair of uh, the Human Capital Committee uh, also resigned.

CHAIRPERSON: H'm.

20 **MR MOLEFE**: Um, so it was quite clear that that was a drive to uh, to make this board dysfunctional.

CHAIRPERSON: H'm.

MR MOLEFE: Because of the big job that it was doing...[intervenes]

CHAIRPERSON: H'm.

MR MOLEFE: ...which other people cannot ...[indistinct
00:18:04]

CHAIRPERSON: H'm. Uh, are you able to tell... give us
the names of the board members who resigned around that
time?

MR MOLEFE: Uh, it was uh, Zodo Manwazi(?) [00:18:15]
who was the chair of the Audit and Risk Committee. Um,
and Mr Pitsane, Bernard Pitsane.

CHAIRPERSON: Yes.

10 **MR MOLEFE:** Ja. Uh... well, there... there have been
another director, by the way. I should have said this. Who
had resigned much earlier but it had nothing to do with...
with this uh-uh... um, she is an attorney by trade.

CHAIRPERSON: Yes.

MR MOLEFE: Uh, Ms Kesho. Ja.

CHAIRPERSON: Yes.

MR MOLEFE: Ja. Um, from KZN.

CHAIRPERSON: H'm.

MR MOLEFE: From Kwazulu Natal.

20 **CHAIRPERSON:** H'm.

MR MOLEFE: So uh, that was the position.

CHAIRPERSON: So the... were there two who resigned
roundabout this time when you say it looked like there was
an attempt to render the board dysfunctional?

MR MOLEFE: Correct so.

CHAIRPERSON: And it is two that you have told me about?

MR MOLEFE: Yes.

CHAIRPERSON: Yes.

MR MOLEFE: Yes.

CHAIRPERSON: And there was one, I think one of them...
did you say one of them told you that explicitly that he had
been approached or she had been...[intervenes]

MR MOLEFE: She. She.

CHAIRPERSON: She.

10 **MR MOLEFE:** But she refused to resign.

CHAIRPERSON: Oh, but that one refused to resign?

MR MOLEFE: That one refused to resign.

CHAIRPERSON: Okay, okay.

MR MOLEFE: Ja. The other two resigned but of course,
they all said, “no, we are not lobbied. It is okay”.

CHAIRPERSON: Yes.

MR MOLEFE: Yes. Um, so um, because ...[intervenes]

CHAIRPERSON: Ja.

20 **MR MOLEFE:** ...part of the difficulty uh, Chairperson we
have...[intervenes]

CHAIRPERSON: H'm.

MR MOLEFE: ...is that uh, there are people who are
experience things but would not have the courage to come
and talk here.

CHAIRPERSON: Yes.

MR MOLEFE: That is the problem.

CHAIRPERSON: Yes, yes.

MR MOLEFE: With that.

CHAIRPERSON: Yes, it is a serious problem.

MR MOLEFE: Ja, it is a serious problem because a person would say, “this colleague of mine resigned and he... he also tried to persuade me to resign but I refused”. But if I were to say to that person “come and... the story you told me, go and say to the commission”. Yes, you see? Uh, he might, of course... the Commission has got the power to subpoena...[intervenes]

CHAIRPERSON: There is no way we can... we can compare.

MR MOLEFE: You can do that.

CHAIRPERSON: We can compare. Because it is... it is very important that the Commission understands how it came about that in certain SOE’s, for example, corruption reached the kind of levels that we have heard about in the Commission.

20 **MR MOLEFE:** H’m?

CHAIRPERSON: How did that happen? What was the method used by those people who sought to uh, engage in corruption? Is it true that the sought to remove people who... who wanted to do the right things, who were not prepared to do wrong?

Is it true that they sought to remove them, make it difficult for them to do their jobs so that they could then bring people who would dance to their tunes?

If that is true, the Commission needs to hear that and people who have knowledge of these things, when they do not come forward to tell the Commission, it... it makes it difficult.

And it... what the Commission is doing is trying to see what caused these problems so that it can look at
10 recommendations that it can make to say going forward, what measures should be in place to make sure that um, the country is a better country than uh, a country that is mired in corruption and state capture and so on.

So... so one wishes that there will be more people who come forward and say:

“This is what I know. This is what happened. I... I do not... I know that certain of my friends would not like me to come before the Commission and say this thing.

20 I know my party would not like me to come and say this thing.

I know that my minister or whoever would not like me to... to do this thing but I believe that I owe it to the country to come to the Commission because I love my country more.

I want this country to be made a better country.

I do not want to see it mired in corruption the way the present is mired in corruption”.

So I just wish that there would be more people who would do that because, at the end of the day, if the Commission does not get to get all the information and to understand how these things happened, it cannot come up with good recommendations because it has not been enabled to have proper understanding on how these things happened.

10 So that is why I continue. I continue to be grateful that you... you have been able to come here and share with the Commission all the experiences that you are aware of and that you went through yourself and your board.... your board members.

I hope that other board members um, uh, will be cooperative with the Commission and uh, share what they know. Thank you.

ADV SONI SC: What the Chairperson has said is... goes back thousands of years in Ancient Rome when Caesar’s
20 ...[indistinct 00:23:54] is asked why he said, “because I love...[intervenes]

CHAIRPERSON: Please raise your voice Mr Soni.

ADV SONI SC: Oh, sorry.

CHAIRPERSON: Your voice goes down and...[intervenes]

ADV SONI SC: Sorry.

CHAIRPERSON: Ja.

ADV SONI SC: What he says, “I killed him because I love Rome more than I love Caesar”. And that is exactly the point you are making Chairperson.

CHAIRPERSON: Yes.

ADV SONI SC: It is what human nature needs to go beyond. But let me... Mr Molefe, when I check at another thing raised by the Chairperson. The Chairperson pointed out that it was important for a board to function because it has been such
10 an important job in the R 173 billion enterprise.

Now, everybody knows that the term of the board was going to end on the 31st of July. Where there any attempts made to fill the vacancies that would arise on the 31st of July?

MR MOLEFE: No... no attempt was made Chairperson to prepare for the time when the term of office of the then board was coming to an end. So it was going to be dealt with as if it is an after-thought.

ADV SONI SC: Now...[intervenes]

20 **MR MOLEFE:** But uh, on the resignation... I must make this point. On the... on the resignations of the directors, I was saddened deeply when the chairperson of the Audit and Risk Committee of the board was one of those who resigned.

And resigning at a time when the board is busy with the audit for that year, finalisation. Who was supposed to go

and give an account for how it will be used, the finances appropriated to by uh, PRASA.

But that chair of the Audit Committee goes away and that is a function backed by the chair of the Audit Committee. So... so I... I think it is important that people explain their actions as well. It is a very important position of a professional.

And... and it... it shows how for experienced people could lead to a collapse of a very important organ of state
10 which served the poor people to please somebody who is into my office elsewhere. Uh, Chair.

ADV SONI SC: Now at... at... why the level uh, Mr Molefe. The minister, the previous Minister Dipuo Peters, dismisses the board on the 8th of March. It is quite clear that they do not want the board. Then the Minister Maswanganyi, he comes. He says, “please tell me why I should not dismiss you?” So it is quite clear that the powers that be did not want your board. But...[intervenes]

MR MOLEFE: Ja, it was clear.

20 **ADV SONI SC:** ...they want you to further a gap. Wants to appoint a new board. Have you any idea why they did not put any steps in place, and as you have pointed out earlier five and a half years later, we still do not have a permanent board?

MR MOLEFE: Well, I do not know Chairperson. But I... I...

it boggles my mind also. I mean, if you take the Minister Maswanganyi of Transport, he writes to the board in June. I think it was something like the 14th of June. He says, “show me cause why I should not dismiss you all?”. Now he writes that letter...[intervenes]

CHAIRPERSON: Earlier?

MR MOLEFE: ...and he notes that at the end of July...[intervenes]

CHAIRPERSON: H’m.

10 **MR MOLEFE:** ...the term of office of that board is ending.

CHAIRPERSON: Ja, so the point you are making is, he still wants to dismiss the board at a time when... in a few weeks’ time, the term of the board will expire anyway?

MR MOLEFE: Yes, Chairperson. He should have used that time to identify directors he wanted to serve on the board.

CHAIRPERSON: Yes.

MR MOLEFE: And run the process. It does not make sense to dismiss people when they are left with a few weeks.

CHAIRPERSON: H’m. H’m.

20 **MR MOLEFE:** Even... even Minister Dipuo Peters...[intervenes]

CHAIRPERSON: H’m.

MR MOLEFE: ...dismiss the directors in March...[intervenes]

CHAIRPERSON: H’m.

MR MOLEFE: ...when... at the end of July.

CHAIRPERSON: Yes.

MR MOLEFE: The term of office is ending.

CHAIRPERSON: Yes.

MR MOLEFE: And you have failed to discharge your own obligations to what that board...[intervenes]

CHAIRPERSON: H'm.

MR MOLEFE: ...which in terms of the shareholder compact...[intervenes]

10 **CHAIRPERSON:** H'm.

MR MOLEFE: ...you should be discharging because it is one-way uh, street. Where... when... when the board had to perform, the minister required to give the necessary support ...[intervenes]

CHAIRPERSON: H'm.

MR MOLEFE: ...from the department and the executive to enable the board and management to do their work.

CHAIRPERSON: H'm. H'm.

MR MOLEFE: But she chooses rather not to do that.

20 **CHAIRPERSON:** H'm.

MR MOLEFE: And focus on removing the Board.

CHAIRPERSON: H'm.

MR MOLEFE: And all of these things they gain momentum after the meeting of July of 2015 tell us Mr Montana you go, and after the meeting with the President and Minister

Jeff Radebe where we said in the meeting that as far as we are concerned this man's contracting is ending he's got no lifetime employment with the company, the Board has got no intention to retreat on his decision. We have asked him to stay previously, he told us he doesn't want to stay. So, all of these things – and by the way I keep coming back to this thing, they come also against the backdrop of the Swifambo matter where now, you know, we'll prove in the Court that there's huge corruption here. We have this

10 litigation, the Siyagena matter and so on, so all of this, you can see that there is a relationship between the determined fight against corruption by the Board on one side and those that don't want that work to continue and we had nobody to protect that Board. At some point I was the only one dealing with the issue of corruption, at one point.

CHAIRPERSON: And this was at a time when you had previously told the top 6 of the Governing party, you had told the responsible Minister – Minister responsible for

20 PRASA what was going on, you were busy trying to get corruption – allegations of corruption investigated properly and of course, you had resisted the suggestion – I don't know if it was a suggestion or by – on your evidence by the former President to say, the Board must take back Mr Montana or review its decision about Montana. So, all of

these things were happening after all of this had happened, is that right?

MR MOLEFE: That is so Chairperson.

CHAIRPERSON: H'm.

MR MOLEFE: So basically, what people are saying is that we're going to show them that power resides here not with them. Something similar to what we are experiencing in the United States of America now where the President of the country is perceived to be doing things that are flouting
10 the constitution and doesn't respect the rule of law but because he's a powerful man with big monies, people just support what he is doing and then they allowed the impeachment process again, his colleagues, even when they know that they are wrong, they stood behind it. Then the next thing, what does he do, he goes and remove all the good – the best prosecutors out, he once promised he goes to the Court he wants the Judges to be – those who would ignore the basic tenets of the law and the constitution and defend him as a person and we have seen
20 it here.

CHAIRPERSON: H'm.

MR MOLEFE: We have seen it with our own President and all of those people representing the Governing party in Parliament. We're behaving as if we didn't see anything wrong with how public funds were appropriated for

personal benefits. They defended that position until the Courts decided – okay because we are failing to do what you're supposed to do, we as a Court will tell you what the right thing is.

CHAIRPERSON: H'm.

MR MOLEFE: So, there is a danger in allowing this kind of abuse of power, abuse of office by anybody, because it can lead to losses of lives, it can destroy the economy and livelihoods of ordinary citizens and it is important, 10 therefore, that there must be people that stand up against this and by the way, and I said so before, the fundamental issue that drives us to be our values and principles, rather than to say, I have a membership card, this party, I love these colours of this party, it's not about the party, it's about the liberties, the rights and freedoms of ordinary South Africans because even when people engaged in challenging the old system it was not so that a particular party must be the one that must be one that is in power it was so that South Africans must be able to choose who 20 must govern.

CHAIRPERSON: H'm, h'm yes, no thank you Mr Molefe.

ADV SONI SC: Mr Molefe on a number of occasions you've referred to the Swifambo matter, you remember?

MR MOLEFE: Yes sir.

ADV SONI SC: Now I just want to point out, Mr Chairman,

I don't need to take either the witness or you there, that in fact, the judgement in the High Court in the Swifambo matter was handed down on the 3rd of July 2017...[intervenes].

CHAIRPERSON: During the – 2017, that would be their last month, the last month of the Board.

ADV SONI SC: It's about the time that all of these things were coming out and the significance of that will come out in later evidence as Molefe is going to testify.

10 **CHAIRPERSON:** Okay that's fine.

ADV SONI SC: But that date is important Chairperson because you would think that where a Board has saved the country R3.5billion there would be a reward in terms of, do further service for the country but they are snuffed out as Mr Molefe says by getting people not continue serving on the Board,

CHAIRPERSON: Ja well one keeps on looking for patterns because there was evidence in relation to Denel that the Board that was there before 2015 or that left in
20 2015, if I'm not mistaken, I don't know whether the Chairperson was Ms van Rensburg or Professor van Rensburg had done a very good job, to the extent that the Minister of Public Enterprises had also commended them for their good work and said that they are – they should continue, they were going to have their term extended but

according to Ms van Rensburg that changed inexplicably and they were all either dismissed or allowed to go when their term expired and – except for two Board members, ja okay.

ADV SONI SC: But that is – seems to be the pattern.

CHAIRPERSON: Ja.

ADV SONI SC: Now, your Board's term of office ended then in July.

MR MOLEFE: That is correct.

10 **ADV SONI SC:** And – because you were not re-appointed and were any of the other – well were any of the other Board members appointed to any of the intern Boards?

MR MOLEFE: There is the – the law requires that the Board should have a representative of the South African Local Government SALGA so that was the only person re-appointed, Mr Xolile George.

CHAIRPERSON: He was coming from...[intervenes].

MR MOLEFE: Am I saying re-appointed to?

ADV SONI SC: To the intern Board.

20 **CHAIRPERSON:** I'm sorry he was coming from your Board.

MR MOLEFE: He was coming from my Board, he had also been in the previous...[intervenes].

CHAIRPERSON: So, he continued?

MR MOLEFE: Ja.

CHAIRPERSON: Okay.

MR MOLEFE: He knows PRASA more than anyone.

CHAIRPERSON: Ja was he the only member of your Board that continued beyond the time of your Board?

MR MOLEFE: That is so Chairperson.

CHAIRPERSON: Okay.

ADV SONI SC: Now, Mr Molefe can we go on – we've now dealt with the Minister or firstly we dealt with the President then the Minister. On a number of occasions, you've
10 mentioned Parliament and the Portfolio Committee, what steps did you make to secure protection for your Board from Parliament and/or the Portfolio Committee.

MR MOLEFE: Maybe before we deal with that, Chairperson, we should also, maybe counsel knows whether he wants to bring it, this Minister, Maswanganyi sent two business men to my house, both of whom came from his province, Limpopo...[intervenues].

CHAIRPERSON: I'm sorry just raise your voice a bit.

MR MOLEFE: Both of whom came from the province,
20 Limpopo.

CHAIRPERSON: Oh okay.

MR MOLEFE: George Sebulela and Solo Rasta to come and say to me, look man – in fact they were the ones who got to know, even before me, that some of my Directors had resigned – some of the Directors had resigned and so

they come, they say, your Directors have resigned...[intervenes].

CHAIRPERSON: That's before you knew.

MR MOLEFE: Ja.

CHAIRPERSON: Oh.

MR MOLEFE: And you know, the Minister says we should come and talk to you.

CHAIRPERSON: We should come and?

MR MOLEFE: Talk to you, ask you, to agree to an
10 amicable separation, that he is willing to organise a media
briefing press conference where he will announce that you
and him have agreed to part ways, that you have agreed to
– you have decided to resign. I said to the Minister – to
these gentlemen go and tell the Minister that if that is what
he wants to communicate to me, he should rather come and
do it himself, let it not be you. I thought that was an
important point that needs to be made because it
emphasises the extent to which – and the lengths to which
they were prepared to go, to get this Board out or
20 especially the Chairperson.

CHAIRPERSON: H'm, did they share with you any
reasons why he was saying this, why the Minister had
asked them to say this to you or was it simply that he was
saying, the two of you were not seeing eye to eye and I'm
saying that, knowing that you said you had hardly worked

with him here and then he sent you a letter to show cause why you should – the Board should not be dismissed?

MR MOLEFE: No, they didn't say that Chairperson, the only reason they were latching on was that, look, you now do not have a complete Board you don't have a quorum. Which is what you will see later, when I have a meeting with the Minister which would have happened before these guys came because I insisted on meeting with him to say, look I need to talk to you about PRASA and you need to
10 come and meet with the Board. He was not interested in any other thing I wanted to say to him, his first prize was to drive home the fact that there is no quorum so we don't have a Board and he is not going to appoint a Board, so he's basically saying, why don't you go. So, these guys come now to continue what he was telling me when I met him.

CHAIRPERSON: H'm, could it mean that he was reluctant to take any action that you could challenge in Court and wanted you to agree to resign, failing which then, you'd
20 just have to be there but not be able to do anything because the Board did not have a quorum?

MR MOLEFE: I think earlier on, he wanted to find an easy way of ...[intervenes].

CHAIRPERSON: Getting rid of you.

MR MOLEFE: Dissolving the Board because as we can

see, by June he had mustered enough courage now, to want to take us to Court on which he attempt he retreated as soon as we wrote to him and told him that, you're actually trying to achieve the same things that your predecessor tried to achieve but you're trying to do it by different means. So, I think he wanted to do it quietly, I think he didn't want damage, maybe publicity or something because when you do it that way, you are the only one who talks and say, no the Chairman came, he said to me he's
10 resigning, I've accepted his resignation, it was a clinical way of doing it.

CHAIRPERSON: H'm.

ADV SONI SC: And about when was that meeting, did those two gentlemen come to you?

MR MOLEFE: I have to check but I think around April or so, maybe somewhere there.

CHAIRPERSON: That's April 2017?

MR MOLEFE: 2017, April/May 2017.

ADV SONI SC: So just more or less about the time he
20 came because he was appointed the end of March?

MR MOLEFE: Yes.

CHAIRPERSON: And he had not even met you or the Board in your capacity as Chairperson of the Board and the Board?

MR MOLEFE: He had never met the Board, but I had

asked to see him.

CHAIRPERSON: Yes.

MR MOLEFE: To persuade him, firstly, that he has to make sure that his nominee attends meetings, that National Treasury sends its representatives and begin the process of filling the vacant post but we were not able to discuss much when I met him, he was not interested in the affairs of PRASA. His main business was to see how soon this Board could go.

10 **CHAIRPERSON:** Did you, by any chance know each other before he became Minister, the two of you, I'm just wondering why somebody who has just been appointed as Minister of Transport who is asked by the Chairman of the Board of PRASA for a meeting and to be introduced to the Board won't seem to be keen on that but the next thing he wants the Board to show cause why they should not be dismissed?

MR MOLEFE: I got to know him when he was a member of the Portfolio Committee on transport but he had been a
20 young member of the governing party, a member of the youth league and I think, later on he worked for the government of Limpopo but I didn't know him that well. I got to really see him at the Portfolio Committee meetings, so we don't really have any history or relationship.

CHAIRPERSON: Okay.

ADV SONI SC: Now, Mr Molefe, just before we finish with the need for a Board are you aware that in terms of the PFMA, every public entity must have a Board of control because that is the Accounting Authority for that public entity?

MR MOLEFE: That is correct Chairperson.

ADV SONI SC: And was this ever discussed at any time in your meetings with either of the Ministers, Minister Dipuo Peters or Minister Maswanganyi?

10 **MR MOLEFE:** Well Chairperson with regard to Minister Dipuo Peters it was not necessary to discuss it because the Board was there, the only time when there were problems with the Board was when she decided, unilaterally and without any due process or notification to the Directors that she was dissolving the Board, so – and once she had done so, I mean, the battle lines were drawn there was no time to negotiate, safe now in Court now to say what counsel is saying now in the Court papers which is what we did. The other Minister, knows very well as a
20 former member of the Portfolio Committee and also having worked in government, knew that the Board needed to be there for State owned entities and in fact, when you read his long letter to me, to the Board, addressed to me, he does say that the Board is the Accounting Authority, so he knows very well. So we – Chairperson, I say, this Minister

the last one, Maswanganyi, never made time to meet with the Board except when I met him alone and in that instance I raised the fact that the Board has to go and account in Parliament, the financial year is and has just ended and we're finalising the audit we've got to go to the Board, we've got to go and report the annual reports to the Board. So that is all I could say and, not interested in that, he simply says, ja but your real Board does not have a quorum.

- 10 **CHAIRPERSON:** And he should be playing a critical role to make sure that the Board has a quorum because one of the nominees – one of the people who must be Board members is from his department and another one should come from the department of his colleague in Treasury?

MR MOLEFE: No, he knew Chairperson.

CHAIRPERSON: H'm.

ADV SONI SC: Sir I don't want to flog the point but this is what concerns me, you earlier said that the PRASA Act doesn't make provision for an interim Board.

- 20 **MR MOLEFE:** Yes Chairperson.

ADV SONI SC: So, they must have known that what they are doing is not in compliance with the law but they've done so for five and a half years. I'm just emphasising the point that, that's the extent to which your Board appears to have irritated them at the very least.

MR MOLEFE: Yes Chairperson, the – ja I don't know because, how they will justify that and I don't know how the Cabinet allows that to happen, I don't know how the President of the country and Deputy President of the country would allow for this thing to continue, I don't know how the Minister of Finance, who runs Treasury, would allow this to go on because even if the Court might have wanted to forgive you, they might have said, maybe well you know, government cannot allow for a vacuum to exist
10 they needed to find something to run but the fact that when they have the time they are not even beginning the process of ensuring that a substantive Board has been appointed. It's something that is inexplicable, of course I must say that Minister Mbalula has recently come in and I saw that he has advertised, maybe PRASA will now have a Board after spending five years without a Board of control.

ADV SONI SC: Mr Molefe, can we then go on to the issue I raised with you about your approach to Parliament. Now, we know you approached the Speaker of Parliament and
20 you did so in writing, is that correct?

MR MOLEFE: That is so Chairperson.

ADV SONI SC: And the letter that you wrote to her is Annexure PM12 to your affidavit, it appears at Bundle D, page 183, is that correct?

MR MOLEFE: That is so Chairperson.

ADV SONI SC: Now, in essence, what did you want Ms Mbete to do in her capacity as Chairperson of – I mean as Speaker of Parliament?

MR MOLEFE: Chairperson we had tried everything in the book. We had discussed with Ministers, we had attempted to report in Portfolio Committees, we had been to Courts, we had tried the Law Enforcement Agencies to assist, we were not getting the help we needed. I thought Parliament, as the National Body that represents the whole country
10 might be willing to know what is happening in PRASA because Parliament is the one, by the way, that approves appropriation. When the Minister of Finance comes and presents the budget various department, having been allocated certain amounts of money must still have that approved by Parliament. So it was important that the Speaker of Parliament takes interest in PRASA and what was I asking for, I was asking for a public inquiry because you had this many stories that are being told in the newspapers and what the Chairperson will read in this
20 report that was written by Mr Montana for Mr Radebe, all kinds of lies. Now I needed to have Parliament conduct a robust public inquiry and then I was prepared to subject myself to that. That letter went without acknowledgment, up to now.

ADV SONI SC: Now, I see that letter, if you look at page

183, that letter was copied to the Chairperson of SCOPA, the Chairperson of the Portfolio Committee on Transport, the Chief Whips of SCOPA and the Chief Whips of the Portfolio Committee.

MR MOLEFE: That's correct Chairperson.

ADV SONI SC: Now, in support of your request for a public inquiry or Parliamentary inquiry you raise a number of points in paragraph 5, in essence, what were you saying to Ms Mbete?

10 **MR MOLEFE:** Should I read the paragraph?

ADV SONI SC: In light of the fact that not much came out but if you could just indicate because we just want to know what is it that was brought to her attention?

MR MOLEFE: Well I was bringing to her attention, the fact that PRASA does not have a group CEO and that it is important for PRASA to have the group CEO and therefore to investigate, they should get the minutes that would account for that in a sense.

20 And the second one was to deal with a number of contracts, informed them about civil proceedings that were under way to the tune of R7 billion and the fact that we are basically seeking to have them set aside and then, of course, the steps that were being taken by way of disciplining employees who were found to have conducted themselves in a manner unbecoming.

Then, of course, I dealt also with my engagement or PRASA's engagement with the Directorate for Priority Crime Investigations, the Hawks, and the NPA and the reports that were given them in terms of the requirement of the Prevention and Combating of Corrupt Activities Act.

So really to give a status report and to say these are challenges, they require a deeper inquiry by parliament and it should be a public one.

ADV SONI SC: And then you make mention in paragraph
10 6 about comments made by members of the Portfolio Committee on the 7 and 8 March that year.

MR MOLEFE: Yes, Chairperson, it is the meeting that I could not attend of the Portfolio Committee on Transport and that meeting was happening over two days. The report I got from the directors was that they were simply subjected to abuse, insults. The agenda that they were given on which the discussion was supposed to be conducted was just ignored, everything was just attacked, attacked about Swifambo, why are you going to court with
20 these people, why are you appointing private investigators when you should be using the South African Police Services? But we know South African Police Services was crippled by that time, you were not going to get anything out of them at the time because systems were broken.

So basically, that is what we were saying and I was

indicating that, of course, our term of office is also ending soon and that it was important that for those matters be dealt with and would like to account on those matters.

ADV SONI SC: So based on that you formally asked for a parliamentary inquiry into the affairs of PRASA?

MR MOLEFE: That is correct, ja.

ADV SONI SC: What was the reaction to this letter?

MR MOLEFE: No response, no acknowledgement, up to today.

10 **CHAIRPERSON:** That is from the Speaker, what about the other people that you copied?

MR MOLEFE: None of them. I think SCOPA. SCOPA was in the process of arranging for us to meet and not an inquiry *per se* but we did go to SCOPA.

CHAIRPERSON: Yes, yes.

MR MOLEFE: To report on some of these matters and they also came to visit PRASA.

CHAIRPERSON: Okay.

20 **ADV SONI SC:** But save for that there was no response and nothing active was done to - from parliament's side to probe PRASA.

MR MOLEFE: There was nothing.

CHAIRPERSON: Did you at any stage get to know whether particularly the Speaker did receive your letter? Did you get to know whether formally or informally?

MR MOLEFE: I asked the company secretary if the letter would have been sent by email but it would also have been hand delivered. I did, I did ...[intervenes]

CHAIRPERSON: Yes.

MR MOLEFE: I was assured by the company secretary that it was delivered.

CHAIRPERSON: It had been sent.

MR MOLEFE: H'm.

CHAIRPERSON: Okay.

10 **ADV SONI SC:** Then you also on the same day, this is the 8 March, you wrote to the Chairperson of the Portfolio Committee on Transport and that letter is at page 187 and it is marked annexure PM13, is that correct?

MR MOLEFE: That is correct, Chair.

ADV SONI SC: Now in this letter you mention a number of points which are similar to the points that you make to the Speaker. If I could just start off at paragraph 5. You say:

20 “The above investigations have revealed more irregularities and corruption and obliged the board to take the following steps.”

And you indicate that those steps ...[intervenes]

MR MOLEFE: Is that paragraph 5?

ADV SONI SC: Sorry, paragraph 5 on page 188,

MR MOLEFE: Yes, yes, yes.

ADV SONI SC: Can you indicate what you said to the

Portfolio Committee as to the steps the board had taken?
If you could just summarise that?

MR MOLEFE: Well, the – really, the contents of this letter are more or less similar to what – that of the Speaker of Parliament. We were again indicating that the Auditor-General's report of 2014/2015 financial year, which identified irregular expenditure to the tune of 550 million was – should I not just rather read because, you know, to talk, I think it is going to be difficult.

10 **CHAIRPERSON:** Okay, if you can identify important features that you can read, you can read. I think Mr Soni is trying to avoid that ...[intervenes]

MR MOLEFE: No, it is basically to say what we have been doing.

CHAIRPERSON: Yes.

MR MOLEFE: There has been the Public Protector's report, Auditor-General's report, there have been investigations that we have conducted.

CHAIRPERSON: Yes.

20 **MR MOLEFE:** And there are certain steps that we had taken.

CHAIRPERSON: Yes.

MR MOLEFE: To respond to all of those things.

CHAIRPERSON: Yes.

MR MOLEFE: And we indicated that although, for

example, in 2014/2015 irregularities amounted to 550. Irregularities for 2015/2016 were now going to over R14 billion and we will show what – that all of these were uncovered by the investigations that we had conducted.

ADV SONI SC: Mr Molefe, I suppose what I am trying to do and can I just make my point. On that same day you wrote to the Speaker and you wrote to the Chairperson of the Portfolio Committee.

To the Speaker you say hold an inquiry into PRASA
10 but to the Chairperson of the Portfolio Committee it appears that the purpose of your report is to say given all that I have indicated to you that we have done, you ought to treat us with more respect and you say that at paragraph 9.

Would that – I am just trying to draw a distinction between the two letters where the purpose of – or the differences between the purposes of the two letters.

MR MOLEFE: Yes, Chairperson, the essence of my letter was that we are doing our job, we are responding to all
20 these irregularities that have happened and the results show what effort we are making to achieve good governance but your committee has so far not been interested in the exercising of its oversight to focus on things which are germane to good governance.

On the contrary, you allow the meetings of the

committee to be chaotic, you allow members of the committee to attack management and directors and attack their persons and that really, looking at what we are doing to fix this organisation, you should be showing a modicum of respect to the board of directors of PRASA and I said please, manage your meetings properly now.

You do not send people an agenda that says we require you to come and report or account on the following issues. They get there, you have forgotten about that
10 agenda, people are all over the place, they are talking about personal things, there is nothing about the country, about the company.

CHAIRPERSON: Well, Mr Soni, Mr Molefe earlier on asked whether he could just read this letter. It is not a short letter but I think it is very important.

ADV SONI SC: Yes, yes, yes.

CHAIRPERSON: I think let us ask him to read it. Mr Molefe, please just read that letter in full, I think it is very important.

20 **MR MOLEFE:** Ja. Let me try.

CHAIRPERSON: This is the letter addressed by Mr Molefe to Ms Dikeledi Magadzi Portfolio Committee on Transport. I think she was the Chair and it appears as annexure PM13 at page 187. Ja.

MR MOLEFE: The subject of the letter, Chairperson, is:

“Briefing(?) **12.46** by Passenger Rail Agency of South Africa on service delivery at Metrorail.”

10 1. As you are aware, I send my apology to the Portfolio Committee on Transport, PCOT, indicating that I was not in a position to travel to Cape Town. I, however, followed the proceedings of the PCOT. I was shocked to learn that the entire first day of the PCOT proceeding was about a matter that the Board of Control, the BOC of PRASA, was not asked to bring to the attention of the PCOT. We were invited to appear before the PCOT under the guise that we were going to discuss Metrorail operations. We prepared a presentation for the POCT on this basis and spent money in ensuring the presence of PRASA’s officials critical to operations to appear before the POCT.

20 2. The leadership of PRASA is aggrieved that the BOC and key officials of PRASA were brought into the [indistinct] **14.18** Chambers of Parliament to discuss a matter that should not occupy the time and attention of the PCOT and were subjected to a barrage of false accusations, grossly [indistinct] **14.33** members and assassinations of character under your watch. I

request the Chairperson of the PCOT to urge members to desist from abusing the parliamentary privileges and immunity by assailing the characters of leadership of PRASA by unfounded and spurious accusations without producing any evidence.

- 10 3. As the accounting authority of PRASA the board appreciates that parliament in general and your committee in particular is one of the most important stakeholders that PRASA has to account to. However, in the interest of proper accounting and mutual respect the board cannot be ambushed with a topic that does not add value to the work of PRASA and be subjected to a situation where that topic is treated in a way that is grossly unfair and is a distraction from the work of the committee.

20 The letter of Mr Letsoalo is a very simple one and has been dealt with and formalised by the board and the minister. In accordance with good governance the Minister has received a comprehensive report on 3 March 2017. On 1 March 2017 the minister terminated the secondment of Letsoalo. Now before you and your committee accuse the board of being involved in dispute after

dispute, the board has been engaged in a difficult process of restoring order, good corporate governance and enforcing controls in an institution where these have been deliberately and systematically destroyed over several years. In this regard we urge you to familiarise yourselves with

(a) The Auditor-General's report of 2014/2015 financial year which identified irregular expenditure to the tune of 550 million.

10 According to the PFMA the board is obliged to investigate the instance of irregular expenditure, and

(b) The Public Protector's report entitled Derailed which found widespread maladministration and breakdown of processes and systems and recommended that the board and National Treasury investigate every contract above 10 million and concluded between 2012 and 2015.

20 (c) The Auditor-General's report of 2015/2016 financial year which identified irregular expenditure to the tune of 14 billion. This irregular expenditure was uncovered by the investigations that were conducted under the purview of the board of PRASA."

Now paragraph 5:

"The above investigations have revealed more irregularities and corruption and obliged the board to take the following steps.

(a) Provided about 69 reports in terms of Section 23 of the Prevention and Combating of Corrupt Activities Act.

(b) Assisted the Hawks in their investigations of the alleged corruption and money laundering in Swifambo and Siyangena contracts.

10 (c) Launched a review application in respect of the Siyangena and Swifambo contracts."

6. Operationally the investigations assisted PRASA to identify those contracts that were awarded to people who had neither the capacity nor the ability to carry out the contracts that were awarded to them. These contracts are the reasons for the constant failure in operations.

20 7. It is very easy for any person who is oblivious to the amount of that corruption and incompetence that we discovered in the wake of the departure of the former Group CEO to assume that all the challenges of PRASA were caused by the board. We, we have frankly and honestly shared our

frustrations and challenges with the PCOT.

As stated above, it is through our investigations that we have uncovered almost 14 billion in irregular expenditure. This is almost 90 percent of PRASA's annual expenditure. It is almost impossible to ensure quality services where almost all the expenditure is irregular.

10 8. The board has implored management to proceed with the quality assurance of the draft turnaround strategy and process as per the discussion of November 2016. We believe that once this has been adopted PRASA would be in a position to show the positive and quality fruits of the money that is spent by the fiscus to support the work of this important cog in our economy.

20 9. We implore you to ensure that PCOT avoids sensational narrow sideshows of individuals and focus on constructively interrogating the presentation on Metrorail operations as per the invitation. We value any constructive engagement that is meant to improve the experience of millions of commuters that PRASA is mandated to move every day. We

had expected that the PCOT will focus on this and not on a matter that concerns a tripartite agreement that has lapsed.”

So that is the letter. I needed to say, by the way, Chairperson, when I wrote this letter, one of the directors in parliament had implored me to – because after they briefed me, they said no, write to the Chairperson.

CHAIRPERSON: Yes. Ja.

MR MOLEFE: And I did that immediately.

10 **CHAIRPERSON:** Okay. Thank you.

ADV SONI SC: Mr Chairperson, you are quite correct, it is important that this letter is on record. I was trying to short circuit but I think it was led by ...[intervenes]

CHAIRPERSON: No, no, no, it is not criticism on your part because you do know that we are trying to strike a balance between being quick and – but at the same time doing justice to the issues.

ADV SONI SC: Absolutely.

20 **CHAIRPERSON:** So it is not criticism on your part, it is just that while Mr Molefe was giving evidence I had a look at it and I thought it is important. Actually – ja, okay.

ADV SONI SC: No, but with respect, Chairperson, that is the balance I should have struck.

CHAIRPERSON: Ja.

ADV SONI SC: Let him read the letter.

CHAIRPERSON: No, no, no, that is alright, that is alright.

ADV SONI SC: No to this letter did you get any response, Mr Molefe?

MR MOLEFE: No response, Chairperson. That, Chairperson, is now a deputy minister, she is now a deputy minister.

ADV SONI SC: So the ball ...[intervenes]

CHAIRPERSON: Yes and did she ever acknowledge receipt of this letter?

10 **MR MOLEFE:** No acknowledgement, nothing.

CHAIRPERSON: You write to the Minister of Transport, Minister Maswanganyi after his appointment and as I recall you request a meeting for him to meet the board. There is no response, is that right? There is no response?

MR MOLEFE: No response, Chairperson.

CHAIRPERSON: There may be other letters you wrote to which there was no response but you write to – you also write to the Speaker of Parliament raising very important issues about PRASA. You get no response. You copy a
20 number of people in parliament and except for the Chairperson of SCOPA it looks like nobody reacts or even acknowledges receipt and you write to the Chairperson of the Portfolio Committee on Transport to which PRASA and the board accounts, you raise very important issues yet again you get no response, not even an acknowledgement

of receipt. Is that right? That is what happened.

MR MOLEFE: That is what happened.

CHAIRPERSON: Yes.

MR MOLEFE: That is what happened, Chairperson. The message in that silence is very clear, we do not want you.

CHAIRPERSON: You see, that is what I am ...[intervenes]

MR MOLEFE: You should not be there.

CHAIRPERSON: That is what I am ...[intervenes]

MR MOLEFE: So we are not going to dignify you with an
10 answer.

CHAIRPERSON: That is what I am trying to understand because the lack of response could be inefficiency, could be incompetence but it could be – could also be just a refusal to deal with you and can it be incompetence with all of these people? Can it be inefficiency with all of these people or is it that all of them were simply not prepared to interact with you? And I think from what you have said, you would think that it probably was not incompetence or inefficiency, it was an attitude based on not wanting to deal
20 with you or – maybe I do not know whether this was a way of dealing with you, it was an attitude that we do not want to have anything to do with you.

MR MOLEFE: Well, I wrote many letters, Chairperson.

CHAIRPERSON: Yes.

MR MOLEFE: At least I know that Mr Sean Abrahams

replied my letters. He was not going to do what I was saying he should do but I at least he replied, you know? Ja.

CHAIRPERSON: Ja.

ADV SONI SC: Now, Mr Molefe, in your letter to the Chairperson of the Portfolio Committee you talk about the meeting of the 7th and 8th of 2017 – 7th and 8th March 2017. But in your affidavit, you then go on to say but that is how throughout our tenure as board members we had been
10 treated and I would like you to deal with that because you deal with it from paragraph 105 of your affidavit. Or if you could just from recollection indicate to the Chairperson that what happened at that meeting was not something new to us.

MR MOLEFE: Yes, Chairperson, it was really not something new and again, things changed after we agree with Mr Montana that he would not get another contract and after we insist that as a board we should do what the Public Protector is asking us to do, answer the questions
20 she is asking and investigate those matters that she wanted us to discuss. So all of that and up to the dismissal of Mr Montana.

So we start seeing this behaviour. I was going to say, Chairperson, that if one looks at some of the things that I say, the Portfolio Committee was saying to my

directors, they are pretty similar to the contents of this report that was ...[intervenes]

CHAIRPERSON: The Turmoil in PRASA report?

MR MOLEFE: The PRASA in Turmoil.

CHAIRPERSON: The PRASA in Turmoil report.

MR MOLEFE: Now it does give one the impression that it too was shared with them. So it is an organised group. The basis of that organisation is how to get rid of this board, how to stop their investigations into corruption.

10 Now repeatedly, therefore, when the directors went to the Portfolio Committee, it was just a circus. It was a circus, sometimes somebody just stands up and say we understand and employee somewhere is being purged because he is not wanted, he is not supporter of this board or because you believe he is a supporter of Lucky Montana. Now you do not have that nonsense, that's what the Department of Transport should investigate if it thinks that the Board is not doing what it is supposed to, but that is what they are doing. We often got the impression that

20 there is some kind of rehearsal before we appear before the Portfolio Committee. Our engagements were always hostile and acrimonious, and when people asked questions it was something akin to people who have gone through chorography of some point, you know your party this one played, and sometimes you would see that they sat

somewhere writing questions and they distributed questions amongst themselves and you literally hear them saying having covered that one that question, having covered that question, it is not about them listening to the reports that is placed before them and then responding to that report, it is about what they were told by somebody from outside to ask the Directors when they come to Parliament.

So that is how that Portfolio Committee was playing
10 its role and when you say to them we need to focus on the business of the committee they say you are not going to tell us how to do our job.

ADV VAS SONIC SC: You will look at the Chairperson but I want to ask you in relation to what appears to be a choreographed presentation on their side did that apply only to the ruling party or was it among the opposition parties as well?

MR MOLEFE: It was mainly the ruling party, it was the ruling party, you would have thought that the ruling party
20 knowing that it is the government of the day and the SOE's that it is in charge of that they would try to assist those SOE's to do their job properly and protect them. It wasn't so.

ADV VAS SONIC SC: Surely – can I ask you, because it is related to this issue; in paragraph 108 on page 27 of

your affidavit if you could just read that into the record because I want to ask a couple of questions around that relating to the role of the different parties in the portfolio committee.

MR MOLEFE: The paragraph 108 reads as follows
Chairperson:

10 “In my view the Portfolio Committee focused on trying to find wrongdoing with the investigations commissioned by the BOC, the appointment of Werksmans and regulatory of BOC meetings.”

Now – should I wait – now when you talk about irregularity of the Board meetings then I am pleased that I mentioned it before. When you go to the PRASA in Turmoil document there is a long complaint there and actually it lists the number of meetings that the Board have.

20 Now that was discussed clearly with this Portfolio Committee and the Portfolio Committee has become his Master’s Voice on this issue, that you are meeting too much, you hold too many meetings. You should be meeting only four times. Now there’s nowhere where meetings are restricted to four times, the Companies Act requires, and of course the Public Finance Management Act would also say so, that the Board should meet a minimum of four times per annum, but the meetings of a Board are determined by the work that has to be done, and for a long time by the way

these meetings were taking place and they were not being paid for, there was only somewhere it was the end when that happened and it turned out that the Minister had not approved a policy and I said well if the policy has not been approved money must be paid back and I was the first to pay it back.

ADV VAS SONIC SC: Now you say, and this is my point, that in your letter of the 8th of March 2017 you say to the Chairperson of the Portfolio Committee that we have
10 investigated the following matter, the Swifambo matter, the Siyangena matter and other matters worth billions of Rands. You say here that instead of concentrating on the wrongdoing of possible tenderers and management they were concentrating on things that they said the Board was doing, notwithstanding that the amounts you were talking about were billions of rands.

MR MOLEFE: Yes.

ADV VAS SONIC SC: What I want to ask in that connection is but surely the opposition parties would have
20 said no but what are you doing about Siyangena, can you give us a report, can you give us a report on Swifambo, we understand you have taken them to Court, or was there not a voice for them?

MR MOLEFE: No there was a voice, I mean they were asking about those, there were also those who were

genuinely concerned about operations of Metrorail, especially in the Western Cape, so they were asking and by the way I can now say so, that when it became clear that this committee is not interested in what we are doing I invited willing Parliamentarians, even from the opposition, to visit and see, meet with the investigators to see the work that we were doing, because the Portfolio Committee was not allowing that space for a proper report, or if it was there it was not allowing for a discussion of that report.

10 **ADV VAS SONIC SC:** So when you say you called willing Parliamentarians are you saying Parliamentarians who were not part of the Portfolio Committee but who were interested in PRASA's ...[intervenes]

MR MOLEFE: No, no, no, who were part of the Portfolio Committee.

ADV VAS SONIC SC: Oh.

MR MOLEFE: Some of them of course would have been in SCOPA.

20 **ADV VAS SONIC SC:** And were there also members of the ruling party or none of their members?

MR MOLEFE: No there were not members of the ruling party.

CHAIRPERSON: But what you are saying is did you give an open invitation to individuals who were members of the committee who were interested in coming to see

...[intervenes]

MR MOLEFE: No, no, no, I ...[intervenes]

CHAIRPERSON: It was individuals that you ...[intervenes]

MR MOLEFE: It was individuals who were showing interest in what we were doing.

CHAIRPERSON: Okay, okay.

MR MOLEFE: And who were realising that sitting in those sectors of meetings they were not going to get proper information.

10 **CHAIRPERSON:** Yes. Were meetings of the committee, as far as you know, being mechanically recorded, as far as you know?

MR MOLEFE: They are supposed to be.

CHAIRPERSON: Yes, because it would be good to get the transcripts of what was being said, particularly in meetings between the Board and this committee over the years that you have indicated here, 2015, 2016, 2017.

MR MOLEFE: It would certainly be good to do so Chairperson.

20 **CHAIRPERSON:** I didn't hear that.

MR MOLEFE: I said it will be good, it will be helpful.

CHAIRPERSON: Yes, yes, yes. I have been told that – I don't know whether with all portfolio committees, but with some committees or all committees don't record in Parliament, they make notes and only the National

Assembly records mechanically, so I don't know to what extent that information is correct, but if there is a transcript or transcripts we should try and get.

MR MOLEFE: Yes.

CHAIRPERSON: So, and if we don't get that we nevertheless should try and get maybe two or so other people, either from the Board, your Board, or from the Committee who can tell us some of the things that were happening in that Committee during the time of your Board,
10 you have said in paragraph 106 of your affidavit the meetings of the Portfolio Committees during 2015, 2016 and 2017 could best be described as chaotic.

So it is very important, you get put in a committee in Parliament so that you can exercise a very important responsibility of oversight.

MR MOLEFE: Yes.

CHAIRPERSON: If now members of a committee instead of doing their job they might actually not be doing their job properly while an entity such as PRASA was losing billions
20 of Rands through corruption, it will really be very important to see exactly what was happening. Were they turning a blind eye to massive corruption that you wanted to tell them about, resulting in the country losing billions in that entity, billions of Rands in that entity, and they were interested in other things. Let us know if that is what was

happening so I would like to know if there are transcripts so that these things can be put in the open, because I keep on saying when we see SOE's, or a number of them, being in the positions in which they are now in 2020 financially we have got to go back and say when did it start, but Parliament was supposed throughout to be overseeing, to be exercising oversight and where was it as the situation in each of these SOE's was deteriorating every year, where was Parliament, what was Parliament doing? Where were
 10 the Portfolio Committees, what were they doing about it?

So I think Mr Soni you know there should be an attempt to try and see if you can get transcripts, if there are any transcripts of all of those meetings between the Board, this Board and the Portfolio Committee during those years.

ADV VAS SONIC SC: Yes, okay. Mr Molefe when the Parliamentarians who displayed a genuine interest in fixing up PRASA's problems, if I can put it that way, when they met with you and other members of the Board, what was
 20 their impression of the – sorry – what was their impression of what the Board was uncovering? I mean we have heard, because we have seen the court reports like Swifambo, Siyangena, what was their reaction?

MR MOLEFE: Any normal being would be shocked by the level, the extent of this corruption, and they were shocked

and they wanted action. They wanted action. And when the Chairperson says were they not concerned that these things were happening. If they were concerned, they would have supported my efforts to compel the Hawks to investigate their cases and to explain to us why they are not discharging their constitutional duty. That should have been the work done by Parliamentarians, so they were not doing it.

But I am saying the opposition was supporting, look
10 Swifambo, because they – sometimes they are political parties so they will try to score points against one another. The articles we were reading this morning, we were looking at this morning there is a section where the EFF specifically raises concern about the fact that PRASA was spending R3.5billion on locomotives that are dysfunctional, that are not fit for purpose.

So we want people to be saying these things from all kinds of parties because it is about the country now, it is not about sectarian interest, it is about all of our people.

20 **ADV VAS SONIC SC:** I am raising it in the context of how a democracy can better function if you have more effective public representatives, even if they belong to a minority party. For example could a Parliamentarian not write to the Hawks and say but what's happening to the Swifambo matter, what's happening to the Siyangena matter?

MR MOLEFE: I suppose if Parliamentarians could do that, that is what Dr Helen Suzman used to do, those many years when she was the only Parliamentarian of the PFP, but if there is a particular agenda that is being pursued, and you have the governing party that has got a leader like the current President of the United States who is doing what he is doing, people are dying of Covid-19 and he doesn't encourage people to be like you Chairperson and me wearing masks, he just goes there, he organises indoor
10 big meetings and he breaks the system to appoint cronies as prosecutors, as judges, so if the Hawks are run by cronies, people with a particular agenda, not agenda of enforcing the rule or ensuring the rule of law, if they are not ensuring the rule of law they can – opposition can guide to them, nothing will happen. Nothing will happen.

As the Honourable Chairperson would have noticed in many instances in this country things got right only after the courts decided on that, because people don't want to do what they are supposed to do.

20 **CHAIRPERSON:** And that is such a pity because sometimes people, not sometimes, very often people who might want to take issues to Court don't have money to take those issues to Court and then – so it is just in certain circumstances where somebody is able to assist or some organisation is able to assist to bring matters to court but

if Parliament were to play its part correctly and if it were to play its part correctly it seems that there is a lot of damage that could be prevented from happening and a lot of financial loss that could be prevented, that the country would otherwise suffer.

MR MOLEFE: That is true Chairperson. Just to return to the point that was made by Counsel, yes indeed if and what the Chairperson is saying now, if indeed people who go to Parliament understand that they are public
10 representatives they might have gotten in there using a party ticket, but once they are in Parliament they are not representing sectarian interest of a party, they represent those ordinary men and women in the villages, in the townships, on the farms, who are poor, they have become the voice of the people because those people cannot be there at Parliament in their millions, so they must make sure that what they say there and what they decide correctly reflect the experiences of the people that they claim to represent, so it is important to do that, and I do
20 think that as Counsel says that if we have more and more of such people our democracy will function better, because it would mean even the most powerful of the parties will not take for granted the support of the voters, they would know that the voters will learn something further by listening to the opposition because the opposition is

talking to those things that are touching their souls and their hearts.

CHAIRPERSON: And in the process a lot of money that is lost to corruption could be used for the needs of the people, because the needs of the people – the people have a lot of needs that need government to attend to, and those needs need money. Now if Parliament doesn't do a job properly and corruption levels just keep on going up then the money that is lost through corruption goes to a
10 few, instead of being able to be used for the majority of citizens.

Yes Mr Soni I see we are – we have gone past four o'clock but I would like if possible that we finish with Mr Molefe because I am sure he would like to be able to go and do other things. Can we continue Mr Molefe, is that alright with you?

MR MOLEFE: Now?

CHAIRPERSON: Ja, straight ja.

MR MOLEFE: I am happy to continue until we finish Chair.

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

MR MOLEFE: I will talk less going forward.

CHAIRPERSON: No, no that ...[intervenes]

ADV SONI SC: No, that you cannot do because this is going to be an important part of your evidence.

CHAIRPERSON: Ja, all of the things that you have been

saying are important.

ADV SONI SC: Yes, now you then say that at paragraph 111 that you were concerned and you used some strong language, could you read that into the record what you say at paragraph 111?

MR MOLEFI: It reads as follows Chairperson.

10 “I found the conduct of the members of the Portfolio Committee to be disgraceful and it appeared from their line of questioning that they appeared to have been lobbied to compel the BOC to stop the investigations. The looting of the public purse and holding those responsible for such looting accountable appears not to be important to them at all.”

Now the pattern Chairperson here is the same, I mean you go to – you look at the conduct of Minister Maswanganyi, you look at the conduct of Minister Dipuo Peters much later, now in 2017, and you look at the conduct of the President and Minister Radebe that evening in a meeting, it is all
20 about how do we frustrate this drive to end corruption.

Now I don't know what it is that all of these people have in common, what is it that draws them so close to one another that they would not disagree on issues that are so obvious.

ADV SONI SC: Now you mentioned that they even asked

for the investigators, namely Werksmans Attorneys, to be subjected to an SAA vetting.

MR MOLEFI: That is so. That is so Chairperson.

ADV SONI SC: And you say that that is the first time that any investigator had been subjected to that requirement.

MR MOLEFI: Investigator or investigation, I don't mind if an investigator who is investigating a government department, because government departments deal a lot with classified information, if the State Security says we
10 have got to make sure that these people are going to have access to classified documents are vetted, are people who can be trusted, it is understandable, but you cannot go out there in the general public of South Africa and say every company must be vetted by State Security Agency, they have got far more work to do to protect the country than to worry about vetting people who are investigating corrupt individuals.

ADV SONI SC: Then the last line of paragraph 112 you say you link it, this requirement to certain regulations where
20 you tell the Chairperson what those regulations are.

MR MOLEFI: Well I think it is difficult to remember specifically now but we had ...[intervenues]

CHAIRPERSON: Yes you can read it if you – if that will make it easier for you. Paragraph 112.

MR MOLEFI: No, no it won't.

CHAIRPERSON: Oh it won't, okay.

MR MOLEFI: There had been revelations that people who were in intelligence you know got involved in corrupt activities there had been report about their offices being broken into, information disappearing. There are instances actually also of monies disappearing from those offices.

Now we are being asked, and some of them of course have been implicated in some of the contracts in these companies, including PRASA, now have been asked
10 that they should be the ones who vet the investigators. The investigators are going to investigate and they have to investigate their conduct as well as service providers to PRASA, so it did not make sense to me to ask for that to be done except where you are looking for an elegant way of frustrating the investigations without appearing to be doing so.

ADV SONI SC: Then could you read from the last line of paragraph 112 on page 27, the word starting moreover this requirement of the SSA investigation.

20 **MR MOLEFI:** Should I read it?

ADV SONI SC: Yes please, just from the last line onto the next page.

MR MOLEFI:

“It was also strange to me that such SSA vetting was only required for Werksmans and not for any other

service provider conducting investigations at PRASA. Moreover, this requirement only emerged as more and more corruption was exposed.”

ADV SONI SC: Sorry the sentence continues on the next page.

MR MOLEFE: Oh, okay sorry. Okay.

ADV SONI SC: Perhaps you should read that sentence again, it is quite key Mr Molefe.

MR MOLEFE: “It was strange to me[intervenes]

10 **ADV SONI SC:** No, no, no starting with “moreover”.

MR MOLEFE: Oh.

“Moreover, this requirement only emerged as more and more corruption was exposed, particularly Mr Osler Mashaba revealed that 18million had been paid to individuals who claimed to be collecting the funds on behalf of the government party.

20 **ADV SONI SC:** Now can I ask you where did you get that information from that Mr Mashaba, Mashaba had collected R18million for the governing party? Mr – also Mashaba well of course the investigation was reported in the media and everywhere but he began to worry. He apparently became suspicious that he – he was being investigated. He knew it had to be because he was part of Swifambo, he was the Chairman of Swifambo that is a company that got that big contract for the locomotives. He sent someone to approach

a certain Mr Philemon Mamabolo who worked for PRASA in the security division mainly in the business investigations unit. I think that is what that DIU stands for. And he said he wanted to meet with the Chairman of the Board of PRASA – oh this individual who was unknown advised Mamabolo that Mashaba wants to meet with him. So they met with Mamabolo somewhere in Pretoria in an Italian restaurant. At that meeting he told him that he believed that he was being investigated and he was worried that he might lose all the assets that he had accumulated working hard for. And he did not want to lose what he had as a result of the contract of Swifambo. He was a man who was running like filling stations. He had all kinds of things and he had an engineering consulting business AM Engineering. So he wanted to meet with me as the Chairman of the Board so Mamabolo asked me, I agreed to meet with him. We met in Sandton at the Maslow Hotel. I had asked one of our directors Ms Matlala, Sheila Matlala to accompany me and so it was Mr Mamabolo. Mashaba came and he repeated what he had told Mamabolo to say that he is worried that he might lose everything that he has and he really is begging that we should not take whatever he asks. He worked hard for which had nothing to do with Swifambo and he said that he – he actually had not known the founder of Swifambo before. The founder of Swifambo was Makhensa Mabunda

or Mabunda Makhensa. Makhensa had approached him and asked him to join him become a director of Swifambo and become a Chairman thereof that there was a tender opportunity at PRASA for the locomotives. He wants them to bid for that tender. So – so he goes on and Mashaba of course had agreed. But Mashaba says, I am prepared to co-operate provided you guys will not take my assets. So he starts telling us a story about the various people whom he paid money to and as he was talking I said, look I do not
10 think I want to go around saying you paid money to people unless you can demonstrate by way of bank deposits that you actually paid money to these people and give us the names of those people or their companies and so on. So he said he did not have the documents but he – he could make them available. And when he made the documents that is how we got to know about this R80 million. He did say that there were other monies that he paid. I think he paid another R90 000.00 and he paid another R1 050 000.00 but those monies he said he did not have proof because he was
20 – he was giving cash. Now who are the individuals he was paying money to? One of them was a person who was born in Angola, a lady called Maria Gomez. She ran a company called, I think it was called Similex and then the other one was an attorney George Sabelo. I think at the time Sabelo was working for I think Bowmans. I cannot remember

exactly. So – so these are the monies I cannot remember the rest of the monies but they are paying quite a number of companies. I dealt with those details in one of the applications in the Swifambo Application when I was still the Director of PRASA.

ADV SONI SC: Can I just in reference to what you have just said your evidence in the Swifambo matter by way of affidavit. May I ask you to look at Bundle D page 259?

CHAIRPERSON: That is the same bundle in front of you is
10 it not?

ADV SONI SC: It is the same bundle in the...

CHAIRPERSON: The same bundle ja.

MR MOLEFE: Oh the same bundle okay.

CHAIRPERSON: Ja. Page 259.

ADV SONI SC: Yes.

CHAIRPERSON: Hm.

MR MOLEFE: Okay

ADV SONI SC: So Mr Molefe have you got it?

MR MOLEFE: I got it. I got it.

20 **ADV SONI SC:** The title of the document is a replying affidavit, do you see that?

MR MOLEFE: I see yes.

ADV SONI SC: Now I am just pointing out so that we can put it in context. This is your replying affidavit in the Swifambo matter, would that be correct?

MR MOLEFE: That is correct Chairperson.

ADV SONI SC: We did not include the whole replying affidavit we just included the parts relating to the matters you have dealt with now. But can I ask you in your founding affidavit...

CHAIRPERSON: Before you do so.

ADV SONI SC: Sorry.

CHAIRPERSON: Just for the sake of completeness the Swifambo matter is as it appears from the affidavit of Mr
10 Molefe at page 259 was case number 2015/42219 in the Gauteng Local Division of the High Court. The matter being Passenger Rail agents of South Africa versus Swifambo Rail Leasing Pty Limited.

ADV SONI SC: As you please.

MR MOLEFE: Ja.

CHAIRPERSON: Ja. Okay.

ADV SONI SC: Now in – in your replying – in your founding affidavit you did not raise this issue about Mr Mashaba's telling you about the payment of funds. Is that correct?

20 **MR MOLEFE:** Yes. Yes.

ADV SONI SC: Because that is a complaint he makes.

CHAIRPERSON: I think you might need to explain to him that you are referring to the founding affidavit that he filed in the Swifambo matter.

ADV SONI SC: Yes. Sorry. You recall the case that was

made out in the original – well in the founding affidavit in the Swifambo matter Mr Molefe?

MR MOLEFE: The – the case that we were making was one of asking the court to consider and set aside the arbitration step in the – in the contract between Swifambo and PRASA. And the reason we wanted that set aside and us proceeding immediately for the application to set aside the contract on the basis that it actually never existed. It was invalid at the initial because certain conditions which should have been
10 met were not met. And it was our view that time that if we were to go the – you go the route of arbitration. If you disagree about elements of the contract but you – you do not accept that the contract exists but in this instance we were saying it does not exist so there should not be a need for arbitration but of course you cannot just exclude it unless the court set it aside.

ADV SONI SC: The – I am making a slightly different point. In your original – in your founding affidavit you did...

MR MOLEFE: In the Swifambo matter?

20 **ADV SONI SC:** Yes in the Swifambo matter.

MR MOLEFE: And it is not this one this is a reply.

ADV SONI SC: This is your replying affidavit.

MR MOLEFE: So why do we not go to the founding one?

ADV SONI SC: No, no Mr...

CHAIRPERSON: Oh but I think he might have something...

MR MOLEFE: It makes it difficult.

ADV SONI SC: No, no.

CHAIRPERSON: Oh okay.

MR MOLEFE: Because I will not remember.

ADV SONI SC: Mr Molefe when you first gave evidence.

MR MOLEFE: Yes.

ADV SONI SC: We went through the judgment of Justice Francis. We went through the judgment of Justice Lewis.

MR MOLEFE: Yes, yes.

10 **ADV SONI SC**: You remember?

MR MOLEFE: Yes.

ADV SONI SC: Because they think that this was corrupt. Mr Mthimkhulu so called Doctor Mthimkhulu had set aside – had tailor made the contract for Swifambo.

CHAIRPERSON: Yes.

ADV SONI SC: Do you remember it?

MR MOLEFE: Yes.

20 **ADV SONI SC**: So this matter that you are raising now was not raised in that. But you do raise it in the replying affidavit. The only reason that is important is – because I want to go to Mr Mashaba's response to what you say which is also included in these papers.

CHAIRPERSON: Yes.

ADV SONI SC: I am just trying to orientate you.

CHAIRPERSON: Yes.

ADV SONI SC: So that we can deal with your evidence in a systematic way.

MR MOLEFE: Let me understand. In that case the issue was the contract is not valid.

ADV SONI SC: Yes. And that is what the court found.

MR MOLEFE: Probably then the lawyers would have held that to go into the details about Mashaba does not prove anything with regard to that.

ADV SONI SC: I am not criticising.

10 **CHAIRPERSON:** Yes. But maybe we can deal with it this way. Mr Soni you obviously have looked at his founding affidavit?

ADV SONI SC: Yes.

CHAIRPERSON: And you know that he did not say anything about this issue. You can say to him that he can accept that you have checked and he did not say – say anything about this issue and then put the question that you want to put.

MR MOLEFE: It is true and the court did not deal with it.

20 **ADV SONI SC:** Yes. So you – but in your replying affidavit you dealt with this piece of evidence you now linked today to say Mr Mashaba had approached you to say, please come to my rescue, do not take away all my – all my assets. Remember you said that a little earlier?

MR MOLEFE: Yes.

ADV SONI SC: Yes. So is it correct that when you look at paragraph 9 of your affidavit what you have said today is a summary of what is contained in paragraph 9 of your affidavit.

MR MOLEFE: That is correct.

ADV SONI SC: In other words, you have dealt with how the – the approach was made to you through Mr Mamabolo and Mr Mamabolo and what happened at the Maslow Restaurant.

MR MOLEFE: That – that is correct.

10 **ADV SONI SC:** There is just one thing though that I want to deal with is the payment schedule that he gave to you and you found that at page 283.

CHAIRPERSON: 2 – on page?

ADV SONI SC: 283.

CHAIRPERSON: Yes I think let us just get that in the correct context. At the meeting that you had with Mr Mashaba and Ms Matlala you said that Mr Mashaba said he did not have with him on that occasion information about or proof of payment – proof of payment into the bank accounts
20 of the individuals concerned, is that right?

MR MOLEFE: That is correct.

CHAIRPERSON: Yes. Did – did – were arrangements made for him to later...

MR MOLEFE: He did not – he did not – he – that day he did not have any documents.

CHAIRPERSON: Yes. Ja that is what you said ja.

MR MOLEFE: Any documents...[intervenes]

CHAIRPERSON: Were arrangements made for him to provide such proof at a later date and more information?

MR MOLEFE: It was made for him to provide it to Mamabolo.

CHAIRPERSON: Mamabolo.

MR MOLEFE: Who duly collected it and brought it to me.

CHAIRPERSON: Okay I think that is – let us – then we can
10 move to the schedule ja.

ADV SONI SC: Yes. Now is the document at page 283 the document that he gave to Mr Mamabolo?

MR MOLEFE: That is correct Chairperson.

ADV SONI SC: And...

CHAIRPERSON: I am sorry do you say 283?

ADV SONI SC: 283 Chair yes.

CHAIRPERSON: Ja.

ADV SONI SC: Is that a schedule of payments made – well that he said he had made?

20 **MR MOLEFE**: That is correct Chairperson.

ADV SONI SC: This is....

CHAIRPERSON: I am sorry what I have at 283 is something that has got loan payments.

ADV SONI SC: Yes.

CHAIRPERSON: At the top is it – are we on the same

page?

ADV SONI SC: That is – that is – yes Chairperson.

CHAIRPERSON: Okay alright.

ADV SONI SC: Now the Chairperson is raising an important issue is he at the meeting had said to you that he will send a schedule of payments he had made. Because you said, but look you telling me that you have paid these people but where is the proof of payment?

MR MOLEFE: Hm that is true, that is what I did. Because I
10 was not going to be able to do anything with what he just told me verbally.

ADV SONI SC: Ja. Now he then sent you this document but as the Chairperson points out this does not say Schedule of Payments it says Loan Payments. Do you see that?

MR MOLEFE: That is correct.

ADV SONI SC: But that is what the document is headed.

MR MOLEFE: That is correct.

ADV SONI SC: What did you understand notwithstanding
20 what the documents – what the document is headed?

MR MOLEFE: Well I understood it to be payment and I understood that the recordings of payments and loaned was merely for purposes of bookkeeping and auditing.

CHAIRPERSON: So let us go back one – one step back. Subsequent to the meeting that you had with Mr Mashaba

and Ms Matlala, Mr Mamabolo was also in the meeting?

MR MOLEFE: He was in the meeting.

CHAIRPERSON: Ja subsequent to that meeting when Mr Mashaba gave this schedule to Ms Mamabolo did you understand from Mr Mamabolo that he said this is the schedule of payments that I promised to give or something to that effect?

MR MOLEFE: No when – Chairperson when in a meeting where I was present and my – and Mr Mashaba was present
10 and Ms Matlala he said that he paid these monies to these people and I say the names Maria Gomez and her company.

CHAIRPERSON: Yes.

MR MOLEFE: And Sabelo Nkosi – Nkosi Sabelo.

CHAIRPERSON: Yes.

MR MOLEFE: And Knowles Husain. I think Sabelo was working for Knowles Husain when I tried to remember the company.

CHAIRPERSON: Ja.

MR MOLEFE: And he was with that firm.

20 **CHAIRPERSON**: Hm.

MR MOLEFE: So I understood it be payments not loans.

CHAIRPERSON: Ja. Okay. So when you got this – these documents your understanding was this document reflects the payments that Mashaba had told you about?

MR MOLEFE: That is correct Chairperson.

CHAIRPERSON: Ja okay.

ADV SONI SC: Then can I ask you to please look at page 285.

MR MOLEFE: 285?

ADV SONI SC: Yes. What is that document?

CHAIRPERSON: I am sorry before you go to 285.

ADV SONI SC: Yes.

CHAIRPERSON: Mr Soni do you not want us to – do you not want him to tell us what schedule – this schedule
10 reflects?

ADV SONI SC: Yes.

CHAIRPERSON: At 283?

ADV SONI SC: I was trying – but I could do that
Chairperson.

CHAIRPERSON: Oh okay well if you are...

ADV SONI SC: Yes. It answers the question whether it was
a loan.

CHAIRPERSON: It answers your questions okay.

ADV SONI SC: Or ...

20 **CHAIRPERSON:** Oh okay that is fine. That is fine.

ADV SONI SC: So if you look at 285 what is that document
there Mr Molefe on the face of it?

MR MOLEFE: Well it appears obviously it is an invoice.

ADV SONI SC: From whom?

MR MOLEFE: From – from Similex was a company owned

by Ms Gomez.

ADV SONI SC: Yes.

MR MOLEFE: Maria Gomez.

CHAIRPERSON: Hm.

ADV SONI SC: If you look just under the – the heading of that document.

CHAIRPERSON: I think it...

ADV SONI SC: It says directors.

CHAIRPERSON: I am sorry are we looking on the same
10 page? On my document – my bundle the name Similex appears at page 286 and on page 285 which I think is the page that you referred to Mr Soni unless I have missed something.

ADV SONI SC: No I..

CHAIRPERSON: I have got consulting engineers.

ADV SONI SC: No you are absolutely right Chairperson. Because it is in I guess middle misread the 5 – I misread the 6 for the 5.

CHAIRPERSON: Oh okay.

20 **ADV SONI SC:** But it is 286 I am sorry.

CHAIRPERSON: So the idea is you want him to talk about page 285?

ADV SONI SC: 286.

CHAIRPERSON: 286 ja okay.

MR MOLEFE: But there is no 285 here.

ADV SONI SC: No that is the document.

MR MOLEFE: Oh is this 286 yes.

CHAIRPERSON: 286 has got...

MR MOLEFE: Similex.

CHAIRPERSON: Similex ja.

ADV SONI SC: Sorry Chairperson.

MR MOLEFE: Okay page 285. Oh 285 is there. Okay.

CHAIRPERSON: Hm.

MR MOLEFE: Okay.

10 **ADV SONI SC:** Okay we are dealing with 286. What is the document at 286?

MR MOLEFE: So this is an invoice.

ADV SONI SC: Yes.

MR MOLEFE: It is an invoice Chairperson.

CHAIRPERSON: Yes.

ADV SONI SC: From whom to whom?

MR MOLEFE: It is an invoice from Similex to AM Consulting Engineers. Now AM Consulting Engineers is a company of Mr Mashaba.

20 **CHAIRPERSON:** Hm.

MR MOLEFE: That AM stands for Auswell Mashaba.

CHAIRPERSON: Oh okay. And Similex was?

MR MOLEFE: Was a company owned by Maria Gomez.

CHAIRPERSON: Hm okay.

ADV SONI SC: And you will see that Mr Molefe if you look

under Similex the name Similex it tells you who the directors are, you see that? Right at the top.

MR MOLEFE: Yes.

ADV SONI SC: And who are the directors?

MR MOLEFE: The directors are Maria Cruz Gomez and Domingos Gomez. I think Domingos Gomez is her husband.

CHAIRPERSON: Hm.

ADV SONI SC: Yes.

CHAIRPERSON: And then we may as well for the sake of
10 completeness indicate that that invoice is dated the 1
January 2014.

ADV SONI SC: Yes.

CHAIRPERSON: And it is invoice number 002/SML/2014
and it is for a total amount of R100 – is that – what – how
much is that? R14 100 000.00 is that correct?

MR MOLEFE: That is so.

CHAIRPERSON: Yes.

ADV SONI SC: Do you see that Mr Molefe?

MR MOLEFE: Yes I do Chairperson

20 **ADV SONI SC**: Now I just want to go back now to page 283
with this...

CHAIRPERSON: Before you do so Mr Soni, Mr Molefe are
you able to see the description of services in respect of
which this invoice was being issued? Are you able to read
what the nature of the service – services were – was?

MR MOLEFE: The description of services it says service rendered IRPTM planning and planning development.

CHAIRPERSON: Development and implementation.

MR MOLEFE: And implementation.

CHAIRPERSON: Yes. And in terms of the rate it says 30% of the total amount. You are able to see that?

MR MOLEFE: I can see a 30% of the total amount.

CHAIRPERSON: Yes okay Mr Soni you can then proceed to – to 283 I think you said.

10 **ADV SONI SC**: Yes. So if you look at the schedule that we looked at there at page 283 you will see that amount has been reflected in the third line of the payments. Do you see that?

CHAIRPERSON: Before that Mr Soni I think let us – let us get him to first tell us what is reflected in this schedule. Obviously that will include what you are talking about.

ADV SONI SC: Yes.

CHAIRPERSON: Maybe just to read what is in the schedule there.

20 **ADV SONI SC**: Yes.

CHAIRPERSON: And dates.

ADV SONI SC: Yes.

CHAIRPERSON: Are you able to read Mr Molefe the dates, the payee and the amount as reflected in this schedule at page 283?

MR MOLEFE: Oh 283.

CHAIRPERSON: Where the schedule of payment – payments appears.

MR MOLEFE: I am going to do so Chairperson.

CHAIRPERSON: That is if it is easy otherwise Mr Soni you can read it in.

MR MOLEFE: The – there is one payee there Similex.

CHAIRPERSON: Yes.

MR MOLEFE: And 1, 2, 3, 4, 5.

10 **CHAIRPERSON**: Yes.

MR MOLEFE: Appears 5 times and then of course there are only the dates written there was on the 6 May 2014, 20 of January 2014, 10 January 2014. The other part does not have the dates.

CHAIRPERSON: Oh I am sorry. I am sorry Mr Molefe. Let me just quickly read it the way we – I think we should. According to this schedule on the 6 May 2014 a company Similex Pty Limited was paid an amount of is that R9 400 000.00 Mr Soni?

20 **ADV SONI SC**: It is so Chairperson.

CHAIRPERSON: And on the 20 January 2014 Similex Pty Ltd was paid an amount of R14 500 000.00, is that right?

ADV SONI SC: Yes, yes.

CHAIRPERSON: And on the 10 January 2014 Similex Pty Ltd was paid R14 100 000.00 and no date is given for

another payment to Similex Pty Limited which amounts to R90 000.00 and Similex was paid also another amount on a date that is not given for – it was paid R2 050 000.00, am I right?

ADV SONI SC: That is so yes Chairperson.

CHAIRPERSON: Yes and then the last three payments relate to Nkosi's – Nkosi Sabelo Incorporated on the 11 April 2013 Nkosi Sabelo Incorporated was paid R14 300 000.00. And on the 22 April 2013 Nkosi Sabelo Incorporated was paid R14 200 000.00 and on the 22 May 2013 another entity or Nkosi Sabelo was paid two times not three times. Then on the 22 May 2013 Knowles Husain Links Incorporated trust account – oh it also says in [Nkosi Sabelo Incorporated] was paid R10 400 000.00. And there is an amount of R79 040 000.00 given there. And then there is a handling fee of 10% seems to be given as R7 904 000.00 and the whole total is R86 944 000.00.

MR MOLEFE: That is correct.

ADV SONI SC: Yes.

20 **CHAIRPERSON:** Okay. Yes we may continue.

ADV SONI SC: So comparing the – the payments or the invoice against the payment if you look at the invoice at page 286 it is dated the 1st of January, although it says 1th instead of saying 1st, first, “st” it says 1th, do you see that?

CHAIRPERSON: That's 1st January 2014.

ADV SONI SC: Yes. Do you see that Mr Molefe?

ADV SONI SC: What page are we looking at?

ADV SONI SC: At page 286.

CHAIRPERSON: Oh, 286, okay, it says, okay yes, okay, the 1th of January?

ADV SONI SC: Yes so the amount that was paid on that or the amount of the invoice was R14 100 000, do you see that?

10 **MR MOLEFE:** I can see that.

ADV SONI SC: If you compare the payments as they appear on page 283 do you see a similar payment made in the third line?

MR MOLEFE: That is correct Chairperson, it is so, a similar amount.

ADV SONI SC: And it says that that payment was made on the 10th of January, on that page, on page 283.

MR MOLEFE: It does say on the 10th of January.

ADV SONI SC: Yes.

20 **MR MOLEFE:** But this – well you know this one is an invoice.

ADV SONI SC: Yes.

MR MOLEFE: Issued on the 1st of January, nine days later it got paid.

ADV SONI SC: Yes. No, I am just trying to compare the

fact that there was an invoice for that amount and payment for that amount was made?

MR MOLEFE: Yes.

ADV SONI SC: Then if you look at page 287 what is that document?

MR MOLEFE: 287 the document is again an invoice from Simulax.

ADV SONI SC: And addressed to?

MR MOLEFE: It is addressed to A M Consulting Engineers.

10 **ADV SONI SC**: Yes it is from the same company to the same company.

MR MOLEFE: Yes.

ADV SONI SC: And what is the amount ...[intervenes]

CHAIRPERSON: I am sorry Mr Soni, it can't be from the same company to the same company.

ADV SONI SC: Sorry, sorry Chair.

CHAIRPERSON: But I know what you mean. It is from Simulax to A M Consulting and it is dated 5 January 2014, it is invoice number 003/SML/N14 and it is for an amount of
20 R16 450 000 and the services are described as service rendered by RPGN Planning Development and Implementation.

MR MOLEFE: Okay.

ADV SONI SC: Yes.

CHAIRPERSON: Some of these things are unlikely to be

disputed so you can move faster on them and you can just read them to the witness for confirmation.

ADV SONI SC: As it pleases.

CHAIRPERSON: Ja.

ADV SONI SC: Can I then ask you to look again at page 283, the amount paid as reflected on the second line is for an amount of R14 500 000. It is on the second line now Mr Molefe.

MR MOLEFE: That is correct Chairperson.

10 **ADV SONI SC:** That is not ...[intervenes]

MR MOLEFE: And that was paid on the 20th of January.

ADV SONI SC: That was paid on the 20th of January. So it is not for the same amount of that invoice, because the invoice is for R16 450 000, the amount that appears there is R14 500 00.

MR MOLEFE: That is correct.

ADV SONI SC: There is no correlation between those two?

MR MOLEFE: There is no correlation.

20 **ADV SONI SC:** Can I ask you then to look at page 290.

MR MOLEFE: 290.

CHAIRPERSON: Before you go to 290, do you want to confirm how you have told – the witness has told us how we come to have this schedule of payments.

ADV SONI SC: Yes.

CHAIRPERSON: It was given to Mr Mamabolo by Mr Mashaba and Mr Mamabolo gave it to Mr Molefe. What about the invoices from Similex, can we know how we ...[intervenes]

ADV SONI SC: I will clarify that.

CHAIRPERSON: ...come to have that.

ADV VAS SONIC SC: Mr Molefe you understand the issue that's been raised, where the invoices part of the documents that Mr Mashaba gave to Mr Mamabolo. You
10 see you asked him ...[intervenes]

MR MOLEFE: No, my recollection is that Mamabolo did not have the invoices, he had the schedule of payments.

CHAIRPERSON: Yes, yes, okay.

ADV SONI SC: So where did you get these invoices from?

MR MOLEFE: I think these invoices came as a result of the investigations.

ADV SONI SC: Oh so they were affected from the ...[intervenes]

MR MOLEFE: Simply from the schedule.

20 **CHAIRPERSON:** From the Werksmans investigations.

ADV SONI SC: And so is the proof of payment in regard to all of them those were not given by Mr Mashaba? So if you look at page 285 for example the letter of authority, they were not given by Mr Mashaba to Mr Mamabolo

MR MOLEFE: 285?

ADV SONI SC: Yes.

CHAIRPERSON: Do you think we have a different 285, why is this 285 – wasn't 285 something else?

ADV SONI SC: No it is – you will recall Chairperson I made a mistake I said 286 was 285.

CHAIRPERSON: Oh okay, alright. 185 is a letter from consulting engineers addressed to Mr Dinapather.

MR MOLEFE: It is a letter of Mashaba.

CHAIRPERSON: It is the letter from Mashaba, and it says
10 the subject is letter of authority and it says payment to a creditor, okay, so what was the question Mr Soni?

ADV SONI SC: I am asking was this document – or sorry – what is the source of this document, because as I understand it now, and I misunderstood, that this payment schedule is the only document that Mr Mashaba gave to Mr Mamabolo or am I wrong?

MR MOLEFE: Well it could be so, but when we investigate, when we investigate the banks are obliged to ...[intervenes]

20 **CHAIRPERSON:** Look this side please.

MR MOLEFE: So when this letter of authority comes from Mr Mashaba and he is telling his banker to pay, to pay Mr Husain ...[intervenes]

CHAIRPERSON: Yes, how did he get hold of this letter, how does it come to be here? Did it come through the

investigation that Werksmans was ...[intervenes]

MR MOLEFE: I think it came through the investigation Chairperson, it certainly was not in the document that Mashaba gave, Mashaba gave me that schedule only.

CHAIRPERSON: Okay, thank you.

MR MOLEFE: Which I gave to the investigators.

CHAIRPERSON: Okay, thank you.

ADV SONI SC: Can I just ask you to look at page 264 which is part of your affidavit. Okay very quickly Mr Molefe
10 at paragraph 9.3 ...[intervenes]

MR MOLEFE: 264?

ADV SONI SC: Yes, which is part of your replying affidavit, you say on or about the 2nd of September Mr Mamabolo collected the documents from Mr Mashaba and this is the whole set of documents that you say he collected.

MR MOLEFE: The one I took from him personally was the schedule, but he would have been working with the investigator since we have so some of those documents
20 could have been given directly to the investigators.

CHAIRPERSON: Okay let us deal with it this way, okay Mr Molefe in this – in your affidavit in this matter page 264 of the bundle before you, you say at page – at paragraph 9, point 13 that:

“On or about 2 September 2015 Mr Mamabolo

collected the documents from Mr Mashaba at his office which is situated in Block G, Central Park 400, 16th Road, Midrand. Mr Mashaba handed over an envelope containing the following document ...”

Meaning Mr Mashaba handed over to Mr Mamabolo an envelope containing a number of documents which you then list there. Do you recall that to be what happened, because that’s what you appear to have told the High Court?

10 **MR MOLEFE**: I honestly don’t have a recollection of seeing every invoice.

CHAIRPERSON: You don’t have a recollection of this?

MR MOLEFE: The envelope would have been given to my lawyers.

CHAIRPERSON: Yes.

MR MOLEFE: And I remember seeing the statement, because I discussed again after that.

CHAIRPERSON: I think what may be necessary is that afterwards Mr Molefe can be given his entire affidavit in
20 this matter, the replying affidavit, so that he can go through it properly and refresh his memory on the context, then he could in due course maybe send a supplementary affidavit to say after having had – gone back to that affidavit has his memory been refreshed to say this was – this is correct or has he found that it was not correct.

ADV SONI SC: Yes, no that is so.

CHAIRPERSON: Would that be fine Mr Molefe?

MR MOLEFE: That will be fine Chairperson.

CHAIRPERSON: Yes okay, alright.

ADV SONI SC: Now the documents I am just putting to you generally Mr Molefe, except for the difference between – you sort of seem to be worried about ...[intervenes]

MR MOLEFE: No I am worried about the figures, you see at page ...[intervenes]

10 **CHAIRPERSON:** Well one second, maybe we – it might be convenient to take a comfort break and you could have a look and then we come back, is that fine, but we are at nearly quarter past five, I am still fine about continuing, if you are still fine I am sure everybody would be fine. Would that be fine, would that help if we have a comfort break?

MR MOLEFE: It will be fine Chairperson.

CHAIRPERSON: Yes, okay let's take a comfort break and then we can come back, we can come back at twenty five
20 past so about ten minutes break.

We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Your mic.

ADV SONI SC: Chairperson it seems it has been a long

day for the witness and I proposed to him that it may be better if he slept over this issue and we dealt with it first thing in the morning, which would allow us to deal with it quicker and let him be more at ease. Mr Molefe is more than happy to do that as I understand.

CHAIRPERSON: Okay, is that fine Mr Molefe? Is that fine, yes.

MR MOLEFE: Thanks Chairperson.

CHAIRPERSON: Yes no that is fine, that will just give you
10 also time to refresh your memory on the document. I was going to say we will start earlier than ten o'clock but we cannot because of other commitments on my part, so let us start at ten o'clock as normal tomorrow. I guess that we shouldn't be long and I don't want to say we shouldn't be long because I thought we would not take the whole day but I think everything that we had to deal with was important so I am not regretting that we have taken the whole day, but tomorrow how much time do you think we might need?

20 **ADV SONI SC:** I don't think more than an hour Chairperson.

CHAIRPERSON: Yes, yes, okay, no that is alright.

ADV SONI SC: We will just go factor in the issue that Mr Molefe raised right at the end ...[intervenens]

CHAIRPERSON: Ja, the connecting of the dots ja.

ADV SONI SC: But this part won't take much, much longer.

CHAIRPERSON: Ja, ja, okay then we are going to adjourn and resume tomorrow at ten.

We adjourn.

ADV SONI SC: As you please.

INQUIRY ADJOURNS TO 30 JUNE 2020