

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

**30 JUNE 2020**

**DAY 227**



**Gauteng Transcribers**  
Recording & Transcriptions

22 Woodlands Drive  
Irene Woods, Centurion  
TEL: 012 941 0587 FAX: 086 742 7088  
MOBILE: 066 513 1757  
[info@gautengtranscribers.co.za](mailto:info@gautengtranscribers.co.za)

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 30 JUNE 2020**

**CHAIRPERSON:** Good morning Mr Soni, good morning Mr Molefe, good morning everybody.

**ADV SONI SC:** Morning Chairperson.

**CHAIRPERSON:** Are we ready?

**ADV SONI SC:** Yes we are.

**CHAIRPERSON:** Okay, alright let us continue. The oath that you took yesterday Mr Molefe will continue to apply. Thank you.

10 **MR MOLEFE:** Yes Chairperson.

**ADV SONI SC:** Mr Molefe yesterday...

**CHAIRPERSON:** One second. I do not know whether this distance is enough. Do you want to sit a little further? Ja, okay. I am – no I do not think further that side I think further that way. I am trying to make sure that there is enough social distance.

**ADV SONI SC:** Yes.

**CHAIRPERSON:** Between us.

**ADV SONI SC:** Yes.

20 **CHAIRPERSON:** Yes. Yes Mr Soni.

**ADV SONI SC:** As it pleases Chairperson. Mr Molefe yesterday we were dealing with your replying affidavit in the Swifambo matter, do you remember?

**MR MOLEFE:** I do remember Chairperson.

**ADV SONI SC:** And you recall that we adjourned on the

basis that you had not read the document in a long time and we would give you an opportunity to look at it?

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

**CHAIRPERSON**: Hm.

**ADV SONI SC**: Now have you had an opportunity to look at your replying affidavit?

**MR MOLEFE**: I did Chairperson.

**ADV SONI SC**: And as far as your recollection now goes is what is contained in the replying affidavit what happened?

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

**CHAIRPERSON**: Hm.

**MR MOLEFE**: I confirm.

**CHAIRPERSON**: Hm.

**ADV SONI SC**: So to the extent that there was an indication that not all the documents were contained in the envelope given to Mr Mamabolo you confirm that that – that the documents that you name in your affidavit were in fact contained in that envelope?

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

20 **ADV SONI SC**: Can I ask, did you check that with Mr Mamabolo between yesterday and today?

**MR MOLEFE**: I did do so Chairperson.

**ADV SONI SC**: Okay right. Now I just want to ask you did you also read Mr Mashaba's response to your replying affidavit?

**MR MOLEFE:** I did Chairperson.

**ADV SONI SC:** And when one looks at it is there much difference between your version and his version?

**MR MOLEFE:** There is very little difference. I think he refers to paragraph 9 – 9.4 and paragraph 10 where he says he disagrees. But overall, he agrees with the content of the affidavit and to the extent that he says he disagrees with me. I refuted that because I based my affidavit on the documents that he gave to Mr Mamabolo in an envelope.

10 **CHAIRPERSON:** Just one second. I just want to check maybe both you Mr Soni and Mr Molefe you might just raise your voices a bit.

**ADV SONI SC:** As you please Chairperson.

**CHAIRPERSON:** I want to check with the transcribers. Are you able to hear everybody? Oh, they give a thumbs up so they can hear you better than I can hear you. But I think let us try and raise our voices a little bit ja.

**ADV SONI SC:** Yes.

**CHAIRPERSON:** Okay. Thank you.

20 **ADV SONI SC:** Now just – just for the record Mr Molefe can I ask you to turn to page 327 which is where his response starts.

**CHAIRPERSON:** Just place on record again what docu – what bundle we are still on.

**ADV SONI SC:** Bundle D Exhibit SS6.

**CHAIRPERSON:** Okay you are speaking away from the microphone.

**ADV SONI SC:** Bundle D Exhibit SS6.

**CHAIRPERSON:** Yes okay and what page do you...

**ADV SONI SC:** Page 327.

**CHAIRPERSON:** Okay.

**ADV SONI SC:** So I just look at the areas of difference very quickly Mr Molefe. So if you look at what was crucial about your evidence is the meeting and at paragraph 65 of his affidavit in response to paragraph 9.6 of your affidavit he says:

“I admit that a meeting took place between me and Mr Molefe at the Maslow Hotel in Sandton on the 31 August 2015.”

You confirm that?

**MR MOLEFE:** I confirm it yes – confirm it Chairperson.

**ADV SONI SC:** And – and then in fact he hardly disputes anything in particular he says at paragraph 71 of his affidavit that you did ask him about the contributions but he says it was not in relation to Swifambo he says it was in relation to his contributions to the ANC. What do you say about that Mr.

**MR MOLEFE:** I deny that Chairperson. I did not know Mr Mashaba. At that stage I did not even know if he was a member of the ANC and I would not have asked him if he was making a contribution to the ANC.

**ADV SONI SC:** And what was the purpose of...

**CHAIRPERSON:** I am sorry Mr Soni. Should we not just have Mashaba's paragraph 71 read first to hear what he says.

**ADV SONI SC:** Absolutely.

**CHAIRPERSON:** And then Mr Molefe can respond to that version.

**ADV SONI SC:** Yes.

**CHAIRPERSON:** I think 72, 73 I think – you would know  
10 better but I see that he – he seems to talk about what transpired in that meeting in those paragraphs.

**ADV SONI SC:** Yes.

**CHAIRPERSON:** But you can take the – the points point by point.

**ADV SONI SC:** Yes. So let us just to put in context Mr Molefe if you go to page – keep your finger on page 328 but if you go to page 263 that is where you make the allegation about asking him for the proof of the docu – for the proof of the contributions.

20 **MR MOLEFE:** Page 20?

**ADV SONI SC:** Page 263.

**MR MOLEFE:** 263.

**CHAIRPERSON:** What – what of course can be done Mr Soni even without necessarily reading the paragraphs except or advise Mr Molefe might wish to refresh his memory is to

put to him what his version ...

**ADV SONI SC:** Yes.

**CHAIRPERSON:** Mr Molefe's version was and how Mr Mashaba responds to that point by point and then he can deal with them.

**ADV SONI SC:** Yes.

**CHAIRPERSON:** Point by point. That is another way but I will leave it to you how you deal with it ja.

**ADV SONI SC:** As it pleases Chairperson.

10 **CHAIRPERSON:** Whichever is convenient.

**ADV SONI SC:** Now if you look at from paragraph 9.6 on page 262 to 9.12 on page 263 this is where Mr Mashaba is asking you for assurances that there will not be any consequences for him, would that be correct?

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

**ADV SONI SC:** And your response to him when he asked for those – for those assurances was what? That you would like proof that those payments were made.

**MR MOLEFE:** That is correct but...

20 **ADV SONI SC:** Now in the context of the conversation on the 31 August at Maslow what was the proof in relation to?

**MR MOLEFE:** In relation to the payment?

**ADV SONI SC:** Yes.

**MR MOLEFE:** Well the proof was in relation to what he said where monies he was requested to pay to Ms Maria Gomes.



**CHAIRPERSON:** Yes.

**MR MOLEFE:** And the monies that he said were through her company called – which was paid into the account a company called Similex. A couple of instalments. And the money that was paid to Mr Nkosi Sabelo...

**ADV SONI SC:** Sorry I just want to get the context again. That was – he needed to pay that as a result of what?

**CHAIRPERSON:** Or maybe – maybe let me put it differently because I think I know what Mr Soni is looking for – this  
10 might help. The – as you understood the position at the meeting the payments that he said he had made to Similex and to Mr Nkosi Sabelo or his company were – was he talking about payments that he was making to Similex and to Mr – and to Nkosi Sabelo Incorporated personally or was he talking about payments that he was making on behalf of somebody else or on behalf of some entity?

**MR MOLEFE:** He was not – the context was that he – he said that he was asked by Ms Gomes, Maria Gomes to pay money into those accounts and the money was linked to the  
20 money that PRASA would pay to Swifambo but she said that that money – she needed that money for what she called the movement. So that was the context.

**CHAIRPERSON:** Okay. Okay.

**ADV SONI SC:** So it was the money that Swifambo was receiving as a result of its contract with PRASA and it was

receiving that money from PRASA?

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

**CHAIRPERSON**: What – yes.

**MR MOLEFE**: She had said earlier that this contract is going – it is a contract amounting to billions. It should not be difficult for you to give 10% of that to the movement. And I must hasten to say that I do not know Ms Gomes myself.

**CHAIRPERSON**: Yes this is what was relayed to you by Mr Mashaba at that meeting.

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

**CHAIRPERSON**: As having been said to him by Ms Gomes.

**MR MOLEFE**: That is correct.

**CHAIRPERSON**: Yes. And during the meeting was there a common understanding between you and Mr Mashaba as to what the reference to the movement was?

**MR MOLEFE**: The – the common understanding – well I think he understood that as well.

**CHAIRPERSON**: Yes.

20 **MR MOLEFE**: But the common understanding of what the movement was and is now is the African National Congress.

**CHAIRPERSON**: Hm. Yes. Okay. Thank you.

**ADV SONI SC**: Alright now – now it is that context that we look at what Mr Mashaba says at page 328 paragraph 71 and can you just say more or less well I mean can you just paraphrase what he says in relation to the payment at

paragraph 71. If you want you can just read it into the record.

**MR MOLEFE**: That is?

**ADV SONI SC**: At page 328 paragraph 71.

**CHAIRPERSON**: Is the lighting – is the lighting fine for reading purposes there Mr Molefe?

**MR MOLEFE**: It is okay.

**CHAIRPERSON**: It is fine.

**MR MOLEFE**: It is fine Chairperson.

10 **CHAIRPERSON**: Okay alright.

**MR MOLEFE**: He says:

“At the meeting on”

That is paragraph 71 he says:

“At the meeting”

Mr Mashaba says:

“At the meeting on 31 August 2015 Mr Molefe asked me whether I supported the ANC financial.”

**ADV SONI SC**: Now just – if you could just stop there. Did you ever ask that question?

20 **MR MOLEFE**: I did not ask that question.

**ADV SONI SC**: The context in which this interaction took place on the 31<sup>st</sup> was that he had called for the meeting – Mr Mashaba had called for the meeting.

**MR MOLEFE**: He had called for the meeting and it was about how he could preserve the assets that he had

accumulated before he became part of the Swifambo tender.

**CHAIRPERSON:** Now with reference to that sentence in that paragraph is your version that you never asked this question in relation to him personally or is the position that you never even asked it in relation to Swifambo in case you – you said you meaning Swifambo because he was part of Swifambo and he thought that you meant him personally.

**MR MOLEFE:** I did not ask the question Chairperson.

**CHAIRPERSON:** Yes.

10 **MR MOLEFE:** To him.

**CHAIRPERSON:** In ...[intervenes].

**MR MOLEFE:** Or in the context of him being the Chairman of Swifambo.

**CHAIRPERSON:** Okay.

**MR MOLEFE:** I did not ask.

**CHAIRPERSON:** Okay. Okay thank you.

**ADV SONI SC:** Sorry the – while on that point. At the meeting did you know or before the meeting did you know that he had made contributions to the ANC?

20 **MR MOLEFE:** I did not know that he made any contribution to the ANC Chairperson. And I should just draw the attention of the commission the Chairperson to the fact that that meeting was asked for by him and I – I was listening to him. He is the first one who told us of individuals and or companies that he paid money to which then gave rise to me

saying but we would need to see the records of those payments.

**ADV SONI SC:** When he – oh sorry carry on. He then says I did not think.

**MR MOLEFE:** He says, I did not think I am now continuing that paragraph Chairperson that is paragraph 71 and he says:

“I did not think there was anything untoward about his line of questioning as I have Mr Molefe in a high regard and  
10 understood him to be a loyal respected senior a member of the ANC. To my mind the discussion in respect of the ANC had no relevance to the issues between PRASA and Swifambo.”

**ADV SONI SC:** What is your reaction to that?

**MR MOLEFE:** No he is – he is correct because at that stage there was no reason for – for us to speculate about what the relationship could have been between Swifambo and the ANC.

**CHAIRPERSON:** Yes Mr Soni.

20 **ADV SONI SC:** But he said it had no relevance.

**MR MOLEFE:** He says it had no relevance and he is correct. It had no relevance at that stage.

**ADV SONI SC:** Well I do not understand because...

**MR MOLEFE:** What I am saying is that I – firstly I did not ask him.

**ADV SONI SC:** Yes.

**MR MOLEFE:** So it did not arise but I also agree with him that the meeting was not about the relationship between Swifambo and the ANC. But neither was it about relationship between Swifambo and PRASA. It was about his concerns regarding what the implications of the investigations that PRASA was conducting might have on him as a person and the assets that he had accumulated.

**CHAIRPERSON:** Would he...

10 **MR MOLEFE:** Before he joined Swifambo.

**CHAIRPERSON:** Would the – would the position be that the relevance of the – of any relationship that the ANC may have had with Swifambo would the position be that that relevance if any would have arisen once he said that the payments that he – that Swifambo had made to Ms Gomes were for the movement? Is that when the relevance of the ANC would have arisen?

**MR MOLEFE:** Chairperson without any further evidence that monies given to Ms Gomes through – to the ANC.

20 **CHAIRPERSON:** Hm.

**MR MOLEFE:** I do not know how one could – well it will be the relevance in the fact that she mentioned – he mentioned the movement.

**CHAIRPERSON:** Yes well what I mean is my expectation is that if you are in a meeting such as the meeting that you had

with Mr Mashaba on that day where he was coming to I do not know whether plead is the correct word but to talk to you to say please do not touch my assets. I have worked hard for these assets without Swifambo you know whatever investigation is done. If in that context and in the context of the fact that you and your board were conducting investigations into allegations of corruption at PRASA if somebody said part of the money that is paid to Swifambo is actually going to the ANC there might be no proof at that stage but my expectation is that that would raise – that would make the ANC and its relationship call it alleged relationship either with Ms Gomes or with Swifambo relevant because you would be saying, well is it possible that proceeds of corruption are going to my movement. That they may be going to the governing party and therefore you might say, well I want proof of that. I want – I want to see all of those things because maybe the ANC does not know that this money comes from corruption. Maybe it does know but this is – this would be a serious allegation if somebody makes it.

10

20 That is my – my thinking of what you would think.

**MR MOLEFE:** Chairperson at that meeting I do not know Mr Mashaba. At best that would simply say what was your state of mind.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** We should have existed in mind that well part

of the additional evidence.

**CHAIRPERSON**: Yes.

**MR MOLEFE**: That we would I want to see.

**CHAIRPERSON**: Yes.

**MR MOLEFE**: Would probably prove peace order. But it is not something that I said to him. I want evidence.

**CHAIRPERSON**: Yes.

**MR MOLEFE**: To see whether those monies went to the ANC.

10 **CHAIRPERSON**: Yes.

**MR MOLEFE**: But naturally my state of mind.

**CHAIRPERSON**: Yes.

**MR MOLEFE**: I would have been concerned.

**CHAIRPERSON**: Ja okay. Thank you.

**ADV SONI SC**: There are two issues Mr Molefe. One is he calls the meeting to say, please do not take away my assets because your investigations will show I gave certain monies to a Ms Gomes. That was part of the purpose of the meeting.

20 **MR MOLEFE**: That is – well – well – well once he started talking about people, he paid monies to clearly his fear was that he would be implicated in the investigation.

**CHAIRPERSON**: Ja.

**ADV SONI SC**: Mr Molefe I am just trying to understand your state of mind. You file your founding affidavit in the



Swifambo matter in which you say the Swifambo contract was tainted by corruption.

**MR MOLEFE**: That is correct.

**ADV SONI SC**: Right. Investigations are done and then you discover certain things but Mr Mashaba in the meantime comes to you and says, look man you may discover certain things, you may discover these payments, before you discover them, I want to reveal them to you. Is that the sequence of events?

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

**ADV SONI SC**: Now what the Chairperson is saying is when he says these payments were made to Ms Gomes to give to the movement that is what you must have understood. That the payments we made to Ms Gomes allegedly to be paid to the movement.

**MR MOLEFE**: That is correct. But – but that is in my state of mind that is not what I asked him.

**CHAIRPERSON**: No, no, no I think...

**ADV SONI SC**: Oh yes, no, no that is....

20 **CHAIRPERSON**: I think we understand that.

**ADV SONI SC**: Yes.

**CHAIRPERSON**: You did not ask him. I think the question simply arose because there was the question of – because you said you agreed with Mr Mashaba's statement that the relationship between I think either Swifambo or Ms Gomes

was irrelevant and you said you agree that at that stage that was the term you used it was irrelevant and certainly I thought that what you meant was at a certain stage I had no information about the ANC possibly getting – getting paid or allegedly getting paid out of this therefore it was irrelevant. But then I was thinking that based on the fact that your evidence is that at the same stage in the meeting Mr Mashaba did say Ms Gomes said, these payments to be paid to her company were for the movement. I then thought at 10 that stage I would not expect you to think that allegation is irrelevant. I would expect that you would say, well if what you are telling me is correct then I will be very concerned so I would therefore wait to see what proof there is because my expectation is certainly that if you were to be presented with proof that your movement is being given shall I call it “dirty money” from corruption that is not – that is not what you would like your movement to – that is not the kind of money you would like it to receive. And that is the kind of thing that if somebody makes an allegation like that that you would like 20 to see there is proof of it. So I think that is where I was coming from. But when you said at that stage you became concerned but there was no proof, I was happy to – to leave it at that. But I want to make sure that we are on the same page.

**MR MOLEFE:** The – I - maybe I am struggling to articulate

myself.

**CHAIRPERSON:** If I – if I knew another language that you knew I would say speak it but I am limited in my languages.

**MR MOLEFE:** Ja, ja. Chair – Chairperson the – perhaps to say that there would have been no relevance may not be correct.

**CHAIRPERSON:** Accurate.

**MR MOLEFE:** But to say that although the purpose of the meeting had to do with his concerns about his personal  
10 assets. Once he brought in the question of paying monies to people who said that they need the money on behalf of the movement it raises an important question of potential involvement of the movement of the ANC in matters that affect him, Swifambo and Ms Gomes.

**CHAIRPERSON:** Yes. Yes. No I think that fits in with what I expected would be the position. Ja, ja, okay. No thank you.

**ADV SONI SC:** And – and Mr Molefe it comes against the backdrop that you had already alleged in the founding affidavit that the Swifambo contract was tainted.

20 **MR MOLEFE:** Yes Sir.

**ADV SONI SC:** And so this just was in a sense proof of the nature of the tension. Not only was it an irrational uh-uh, contract for... for PRASA maybe interlinked to but we also know now that funds were being diverted to somebody else which then turned out to be allegedly the movement. Would

that be accurate?

**MR MOLEFE**: That... that is correct.

**ADV SONI SC**: In the...[intervenes]

**CHAIRPERSON**: For... I am sorry. For what it is worth uh, I just want to say that uh, of course, at this stage uh, we have no proof that money from Swifambo was paid to the ANC. We... we... we... certainly, I am not aware of anything.

I do not know if there are something in the documents that I have not seen yet uh, but if anybody makes  
10 such an allegation, it would be such a serious allegation because...

Not only because it would be wrong for any party but to... to... to... to receive such monies knowingly that... [laughs] maybe I should emphasise it, knowingly knowing where they were coming from.

But it would be much more serious when that party is the governing party because part of the questions that many South Africans, I think, ask when they look at the levels of corruption in our country, particularly within the public  
20 service, the is SOE's.

Part of the question that they should be asking or are asking is. "who were the people who are supposed to make sure that this does not happen both within government and outside off of government within an executive and outside of the executive?"

And uh... and uh, and uh, the question arises whether some of those people or some of those bodies and organisations turned a blind eye because they may have been benefiting.

So those... those questions in this kind of investigation that the Commission is doing, we have got to keep our minds open to... to check.

is it possible that here, so and so could have done something but did not do something because uh, he or she  
10 or his or her organisation was benefiting all because it was friends that were involved and therefore action was not taken.

We have to keep our minds quite open for that. So but I thought I must just mention that at this stage I am not aware that there is any evidence to... to that effect but once an allegation is made it is very important that we... we... we probe.

Particularly because the allegations of corruption at PRASA went on for many years without one seeing any uh,  
20 um... without... without one seeing the levels going down.

Um, and of course, the evidence that you have given Mr Molefe, is very clear that when your board starts to deal with this issue of corruption... I think your evidence says, "we were attacked".

"We were attacked. We did not get support from

quarters where we expected we would get support. We were being attacked. We were attacked for doing the right thing and ultimately we were kicked out”.

And uh... well, other people will come and give evidence and we want to know whether what they have to say about this because indeed, if this is what happened it is terrible but they must come give evidence and say whether they deny what you are saying.

That in the end, if... when I make my findings, I find  
10 that this is what happened, you are right, it is terrible. It is something very serious. Okay thank you. You want to say something?

**MR MOLEFE**: Maybe counsel uh, if it exists anyway in the uh, the document, you will refer me uh, to that. Uh, but I agree with counsel that the meeting takes place against the backdrop off uh, investigations that were demonstrating that Swifambo was tainted.

And that is detailed in how process was undertaken. The roll off Mr Mtimkulu designing uh, the RFP's in a manner  
20 that favours. Their particular party changes from what was originally uh, supposed to be a lease arrangement uh, to be coming now a lease and outright patches but only that done by Swifambo.

So... so... so that... that... that is correct here. I have no recollection of uh, my evidence. Um, as stating

categorically that uh, the ANC received money.

Uh, whether it is in my founding affidavit in that matter or in public statements that I made. Every time I spoke about it, was in the context of what Mr Mashaba said to us. So in fairness to the ANC, I do not have evidence that says, “you got that money”.

**CHAIRPERSON:** Yes, yes. Now that is what I was also emphasising. That at this stage, I am not aware of any evidence that the ANC got money from uh, Swifambo.

10 Uh, I have only heard evidence of what you are saying Mr Mashaba told you about what his commerce said. So that is how far it goes.

But I was simply saying, you know, one needs to have a look. One needs to... to probe. We have got to do the... the... the job that we have been asked to do properly. Thank you.

**ADV SONI SC:** Thanks, Chairperson. Mr Molefe, uh, you are quite right. Uh, you never said that you have the proof. You have merely said, that these were the reports you have  
20 received and... and... and that one accept.

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

**ADV SONI SC:** But... but I just want to make this point though. If we go to paragraph 72 of uh, the response to your replying affidavit. Mr Mashaba...[intervenes]

**CHAIRPERSON:** At what page?

**ADV SONI SC:** Sorry. At page 329 Chairperson.

**CHAIRPERSON:** Yes, okay. Paragraph 72.

**ADV SONI SC:** Yes. Now, he uh, he says... oh, sorry. At the end of paragraph 71, he says:

“To my knowledge, no donations were made by Swifambo to the ANC.”

That is... that is the point he makes.

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

**ADV SONI SC:** And if you look at the affidavit as a whole  
10 and you have, you see that is the constant theme that, “yes, I made the payments. I received the payments on behalf of Swifambo. I made payments to my own company.” That is the crust of Mr Mashaba’s evidence.

**MR MOLEFE:** Uh, that is correct.

**ADV SONI SC:** Yes. And that is all we have to go on an...  
and we must accept that as the Chairperson so... so uh,  
clearly pointed out that that is the only link we have, his  
statement to you, that:

20 “I received payments on behalf of Swifambo and I was asked to make those payments to Ms Gomes who would then distribute it to the movement. I do not know whether or not she did”.

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

**ADV SONI SC:** But what is significant at paragraph 72. In the middle he says, Mr Mashaba says:



“I made the payment set out in Annexures RA15, 17, 20, 21 and 22.”

Those are the payments referred to in the payment schedule that you were given. You remember yesterday...[intervenes]

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

**ADV SONI SC**: So the only question, as the Chairperson has pointed out is, were those pay... can those payments be linked to the ANC? That is the issue. Would be that be correct?

10 **MR MOLEFE**: Well, the [laugh] the... the payment can only be linked to the ANC to the extent that uh, according to Mr Mashaba and Ms Gomes presents herself as a fundraiser for the ANC.

**ADV SONI SC**: Yes. Yes, that is correct. Then at paragraph 73 under that, he says:

“I gave the annexures to Mr Mamabolo to show that I supported the ANC as requested during the meeting by Mr Molefe”.

What is your reaction?

20 **MR MOLEFE**: Uh, that is not true. It had nothing to do with whether uh, we wanted to put payments to the ANC. Uh, the document was requested for him to demonstrate that when he says he paid money to Similex of Ms Maria Gomes and uh, the trust that was held by uh, uh, those uh, that... that law... law firm and... and... and uh Mr Sabelo, Ngozi Sabelo,

that, in fact, those payments were effected.

That is... that is... that is what the evidence was supposed to prove for us because I have already said that I never asked him whether he was supporting the ANC or not.

**CHAIRPERSON:** [throat clearing] Excuse me. As I understand your evidence and you must tell me if I misunderstand. The meeting was called by Mr Mashaba.

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

**CHAIRPERSON:** That is point one. Point two, the meeting  
10 was called by Mr Mashaba in connection with the investigation that PRASA was... the investigations that PRASA was conducting. That is number two. Is that right? The meeting had a link.

**MR MOLEFE:** That it was ...[intervenes] by the investigation.

**CHAIRPERSON:** Yes, his request for a meeting.

**MR MOLEFE:** Yes, Chairperson.

**CHAIRPERSON:** ...had something to do with the investigations that PRASA was conducting.

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

**CHAIRPERSON:** Um, am I correct in also saying that uh, in particular, this request was connected with the investigation that PRASA was conducting that affected Swifambo?

**MR MOLEFE:** That is correct.

**CHAIRPERSON:** That was correct. And um, at the meeting,

he requests you to uh-uh... uh, he requests that his assets should not be touched as a result of this investigation. Is that right?

**MR MOLEFE**: That is correct.

**CHAIRPERSON**: And uh, and he... since he is the one who called... who requested the meeting, obviously he is the one who were... who was going to tell you why he wanted the meeting.

**MR MOLEFE**: That is correct.

10 **CHAIRPERSON**: And... and he tells you why he wanted the meeting. His... and he says he is fearing that as a result of the investigations that um, relate to Swifambo, he fears that his assets might be in danger of being taken away.

Uh, as far as you know, he himself had no business or no business that he was uh, doing with... with PRASA in his personal capacity or through any company other than that he was chairperson of Swifambo.

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

20 **CHAIRPERSON**: So... so... so the whole meeting was really about how the investigation of PRASA relating to Swifambo was affecting him or could affect him.

**MR MOLEFE**: Because he was the chairman...[intervenes]

**CHAIRPERSON**: Because he was the chairman. Yes, yes. Yes. No, thank you.

**ADV SONI SC**: And he had been asked to be chairperson by

somebody else. Who was that person?

**MR MOLEFE**: That person was uh... the person who asked Mr Mashaba to be the chairperson of Swifambo was the founder of Swifambo, Mr Mabunda Makhensa.

**ADV SONI SC**: Makhensa Mabunda?

**MR MOLEFE**: Ja, Makhensa Mabunda. Ja.

**ADV SONI SC**: And what company was he associated with, Mr Mabunda?

**MR MOLEFE**: Uh, Mr Mabunda was associated with  
10 Swifambo. Uh, he... he was with what was called the S-Group which had a lot of subsidiaries under it.

A consulting uh, an engineering consulting firm. Uh, general consulting uh, business. And then, of course uh, the other one was called Swifambo Rails.

And then I think that is the one that was supposed to then deal with the procurement of locomotives.

**ADV SONI SC**: Now the S-Group is short for what company of what group of company?

**MR MOLEFE**: The uh, S-Group is short for Swifambo Group  
20 of Companies.

**ADV SONI SC**: The evidence elsewhere is the S-Group is short a... is short for Siyaya.

**MR MOLEFE**: Oh, okay. Ja. Yes, Siyaya also that he is involved in. It is also a uh, consulting business.

**ADV SONI SC**: And then finally. Can I refer you to

paragraph 79 of Mr Mashaba's response which appears at page thirty... uh, 331?

**MR MOLEFE**: [No audible reply]

**ADV SONI SC**: Wherein response to paragraph 9.13 of your replying affidavit, he says these... the contents of these are admitted, save that he did not provide certain documents but I can ask us to go back to paragraph 9.13 which is at page 264?

**MR MOLEFE**: [No audible reply]

10 **ADV SONI SC**: And you will see that is where you list the documents that were contained in the envelope given to Mr Mamabolo. Page 264, mister...

**MR MOLEFE**: Yes, sir. Uh, Chairperson...[intervenes]

**CHAIRPERSON**: H'm?

**MR MOLEFE**: I have found the page.

**CHAIRPERSON**: Okay.

**ADV SONI SC**: Now just... just so that there is no dispute about that. Do you confirm that the envelope that Mr Mamabolo gave you contained these documents as you list  
20 them?

**MR MOLEFE**: I confirm, Chairperson. There is no other uh, place where I could have gotten documents.

**CHAIRPERSON**: H'm.

**MR MOLEFE**: Mr Mashaba...[intervenes]

**CHAIRPERSON**: H'm.

**MR MOLEFE:** ...outside what he uh, sends to us in an envelope.

**CHAIRPERSON:** H'm. H'm. I am sorry, Mr Soni. I think, go to the page two hundred and...?

**ADV SONI SC:** Oh, sorry. Page 264, Chair.

**CHAIRPERSON:** 264. Uh...

**ADV SONI SC:** That is the page I have actually finished yesterday, Chair.

**CHAIRPERSON:** Un, I wonder whether uh... these  
10 documents that were in the envelope are very important. I wonder whether we have placed them on record, apart from simply saying documents listed in page 26... I am looking at 264.

**ADV SONI SC:** 264.

**CHAIRPERSON:** Is that right?

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

**CHAIRPERSON:** Then maybe we should just...[intervenes]

**ADV SONI SC:** Uh...[intervenes]

**CHAIRPERSON:** ...place on record...[intervenes]

20 **ADV SONI SC:** Identify what...[intervenes]

**CHAIRPERSON:** ...exactly what documents were that were in the envelope, ja.

**ADV SONI SC:** As you please Chairperson. Uh, Mr Molefe, at paragraph nine... 9.13.1, the first document you say that was in the envelope was RA15 and that appears at page

283.

**CHAIRPERSON:** Uh, he... he... he might not need to go to each one.

**ADV SONI SC:** Yes, I... I could identify it.

**CHAIRPERSON:** If he knows... Ja, if he knows. He has checked already.

**ADV SONI SC:** Yes.

**CHAIRPERSON:** And just confirm.

**MR MOLEFE:** I... I confirm, Chairperson.

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

**CHAIRPERSON:** And this could be the document uh, that we referred to yesterday. This is the schedule of payments.

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

**ADV SONI SC:** The next document is the one at RA16 which is at page 284 and that is a string of emails between Mr Mashaba and Mr Sabelo.

**MR MOLEFE:** Uh, that is correct, Chairperson.

20 **ADV SONI SC:** And then the next one is 217 which is a letter written by Mr Mashaba to his bank, asking them to facilitate a payment to Knowles Husain or ten million for R 100 000,00.

**MR MOLEFE:** Uh, that is correct, Chairperson.

**ADV SONI SC:** And you have checked that ...[intervenes]

**MR MOLEFE:** I... I will check it, yes.

**ADV SONI SC:** And the next one... the next document you

refer to is RA18 which is and this is the document we went through yesterday, the first invoice that Similex sent to Mr Mashaba.

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

**ADV SONI SC**: And then RA19 is the second invoice.

**MR MOLEFE**: I have... I have uh, I confirm that.

**ADV SONI SC**: And RA20 is the payment authorisation letter to the bank again by Mr Mashaba for a payment to be made to Knowles Husain.

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

**ADV SONI SC**: And RA21 is a similar document that in relation to a... a different payment to Knowles Husain who sent for R 14 500 000,00.

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

**ADV SONI SC**: And RA22 is the payment notification sent by ABSA Bank to Mr Mashaba's company.

**MR MOLEFE**: Correct, Chairperson.

**ADV SONI SC**: For R9 400 00,00.

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

20 **ADV SONI SC**: And then RA23 is emails between Mr Mashaba and Ms Gomes.

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

**ADV SONI SC**: And in these, she just refers to the invoices we have talked about earlier.

**MR MOLEFE**: That is correct.



**ADV SONI SC:** Now just finally in relation to these... this... your evidence relating to what Mr Mashaba told you, this replying affidavit and the documents attached to you, I just want to confirm that you do confirm that what is set out in the replying affidavit is correctly records what happened at the time?

**MR MOLEFE:** I do confirm that Chairperson. That the contents of the affidavit confirms what happened at the time.

**ADV SONI SC:** Mr Chairperson, may I... may I make this  
10 point? You have raised an important issue.

**CHAIRPERSON:** Uh, please raise your voice.

**ADV SONI SC:** Oh, sorry.

**CHAIRPERSON:** Ja.

**ADV SONI SC:** You have raised an important issue that I... I intended raising uh, uh, bringing it up. Clearly what one needs now is the evidence of Mr Mashaba and the evidence of Ms Gomes and to the extent necessary, Mr Mamabolo.

So those are the witnesses whom we will... well, Mr Mamabolo, perhaps an affidavit, just to confirm the  
20 correctness of this but perhaps to call him, depending on Mr Mashaba's response and Ms Gomes.

**CHAIRPERSON:** Yes.

**ADV SONI SC:** Okay. But uh-uh, Mr Mashaba and Ms Gomes, we will obviously have to get them to respond...[intervenes]

**CHAIRPERSON:** Ja.

**ADV SONI SC:** ...to Mr Molefe's uh-uh...[intervenes]

**CHAIRPERSON:** Yes, yes.

**ADV SONI SC:** ...affidavit and evidence.

**CHAIRPERSON:** Ja, ja. And... ja, that... that needs to be done.

**ADV SONI SC:** Now, just... just finally on this issue. Again, we are talking about state of mind, sir. Mr Molefe, when you were told this by Mr Mashaba and... and remember you are a  
10 member of the ANC. I suppose you thought "oh, but that is not..." but certainly at that stage because he says you ...[indistinct] members. What was your reaction to how PRASA was awarding tenders if that allegation was correct?

**MR MOLEFE:** I think counsel should rephrase the question, Chairperson because uh, counsel says how PRASA was awarded tenders.

**CHAIRPERSON:** H'm.

**MR MOLEFE:** Counsel wanted to say something else.

**CHAIRPERSON:** Yes, I am afraid I also did not pay  
20 attention because I was reading something here. [laughs]

**MR MOLEFE:** Yes.

**CHAIRPERSON:** Uh, do you want to...?

**MR MOLEFE:** Chair. Yes, it should be, maybe Swifambo was ...[intervenes]

**CHAIRPERSON:** H'm.

**MR MOLEFE:** [Indistinct]

**ADV SONI SC:** Obviously, I... I can particularise it.

**CHAIRPERSON:** Yes. H'm.

**ADV SONI SC:** In regard to this particular tender. No, you are quite right Mr Molefe.

**CHAIRPERSON:** Well, maybe just... just uh, articulate the question...[intervenes]

**ADV SONI SC:** Yes.

**CHAIRPERSON:** ...whether it is the same question or an  
10 amended one.

**ADV SONI SC:** Yes, I... I will.

**CHAIRPERSON:** Just so that one understands it.

**ADV SONI SC:** Ja. Now, Mr Mashaba was with Swifambo had been awarded a tender for more than R 2,5 billion. Is that correct?

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

**ADV SONI SC:** Right. You look at the tender documents and uh, the process and you find that dock... Mtimkulu as he called himself, had tailormade the concept to sue Swifambo.  
20 That was your evidence and that was the finding of the supreme court of appeal and high court.

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

**CHAIRPERSON:** H'm.

**ADV SONI SC:** Now you are then are told by Mr Mashaba that there is this all added dimension and he mentions

money being paid to the movement. I am not saying he includes it but that is what he tells you. What is your reaction to that?

**CHAIRPERSON:** Uh, I am... I... I understood Mr Molefe to say his reaction was of being concern uh but bearing in mind that there was no proof. He was just getting this allegation. Is my understanding correct?

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

**CHAIRPERSON:** Yes.

10 **MR MOLEFE:** But uh, but one can take as... it a step further.

**CHAIRPERSON:** Yes?

**MR MOLEFE:** And say...

**CHAIRPERSON:** Yes?

**MR MOLEFE:** ...that it raises the question...[intervenes]

**CHAIRPERSON:** H'm.

**MR MOLEFE:** ...as to whether... as to the extent to which...[intervenes]

**CHAIRPERSON:** H'm.

20 **MR MOLEFE:** ...the tender process itself...[intervenes]

**CHAIRPERSON:** H'm.

**MR MOLEFE:** ...might have been influenced...[intervenes]

**CHAIRPERSON:** H'm.

**MR MOLEFE:** ...uh, by parties...[intervenes]

**CHAIRPERSON:** H'm.

**MR MOLEFE:** ...that uh, Mr Mashaba alleges...[intervenes]

**CHAIRPERSON:** H'm.

**MR MOLEFE:** ...that Ms Gomes uh...[intervenes]

**CHAIRPERSON:** H'm.

**MR MOLEFE:** ...she was raising...[intervenes]

**CHAIRPERSON:** H'm. H'm.

**MR MOLEFE:** ..the funds for...

**CHAIRPERSON:** H'm. H'm. Ja, okay.

**ADV SONI SC:** Now when you met the top 6, was one... was  
10 this one of the matters you raised with the ANC top 6?

**MR MOLEFE:** We... we um... I... I... I think...[intervenes]

**CHAIRPERSON:** Maybe... maybe...[intervenes]

**MR MOLEFE:** ...refresh...[intervenes]

**CHAIRPERSON:** Let me start uh, with an earlier question.  
When you met with... when you met with Mr Mashaba, had  
you already met with the top 6 or did that meeting with the  
top 6 happen later?

**MR MOLEFE:** When... when I ...[intervenes]

**CHAIRPERSON:** Okay, ja.

20 **MR MOLEFE:** When I met with Mr Mashaba...[intervenes]

**CHAIRPERSON:** Yes.

**MR MOLEFE:** ...the meeting with the top 6 had already  
happened.

**CHAIRPERSON:** Okay, ja. That... that is fine.

**MR MOLEFE:** But the meeting with the top 6 uh,

Chairperson would have dealt broadly with the investigations and what was mentioned and the Swifambo matter was the biggest and it was key in uh, what was imaging as big irregularities.

Another one was the uh, what I refer to as the Braamfontein depot, uh, modernisation uh-uh, and the procurement of rails and turnouts as part of the preparations for the trains that were to come from Brazil.

There would have been many other smaller uh,  
10 matters that were imaging uh, like uh, a bit of Siyangena and so on because the others, Siyaya and so on.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** Siyaya GP would have also been involved in that Braamfontein depot transactional advisory service, designed how the depot should look like.

**CHAIRPERSON:** Yes, so the thrust of what you are saying about your meeting with the top six is that you spoke to them and told them in general about what was emerging from the investigations that your board was conducting at  
20 PRASA but you specifically mentioned certain important contracts including the Swifambo because it was the biggest, as I understand you. You mentioned, specifically mentioned it and you would have mentioned many others.

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

**CHAIRPERSON:** Ja, okay.

**MR SONI SC:** Now when you filed or when the replying affidavit about what Mr Mashaba had told you was lodged in court it would have become a public document, would that be correct?

**MR MOLEFE:** Yes, Chairperson, it would become a public document.

**MR SONI SC:** So people generally would have known that such an allegation had been made.

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

10 **MR SONI SC:** Were you contacted by anybody from the ANC about that allegation?

**MR MOLEFE:** I was not contacted by anyone from the ANC. I recall this matter being raised pertinently by the gentleman who later became the Minister for Transport, Mr Maswanganyi saying that, you know, I have accused the ANC of receiving monies from – and that I did not even produce evidence to prove that they did not why I mentioned this matter but nobody from the headquarters of the ANC raised an issue with me.

20 **MR SONI SC:** When Mr Maswanganyi made this accusation or made this – said this to you, was he saying it as a member of a committee in parliament? I think yesterday you mentioned that ...[intervenes]

**MR MOLEFE:** Chairperson, he was saying it in his capacity as a member of the Portfolio Committee on

Transport.

**CHAIRPERSON:** Oh, okay, alright. I take it you would have explained to him that you were simply making reference to a report that was made to you, you were not making the accusation yourself about the ANC receiving the money.

**MR MOLEFE:** That is correct, Chairperson, and as counsel correctly points out, that allegation was published in the media as a result of the court papers, my replying  
10 affidavits there which was in court. It was not like I went to the media just to release a media statement.

**MR SONI SC:** And did you at any stage communicate this to any other person in the ANC except through the court papers, the allegation that Mr Mashaba had made to you?

**MR MOLEFE:** Let us start off by saying my minister was a member of the National Executive Committee of the ANC. My minister was receiving regular reports on this investigation, and we referred to those reports yesterday, in the context of my reply to the minister's letter where she  
20 was asking us to close off the investigation and that letter is dated the 24 August. Ja, 24 August 2016.

So a member of the executive committee who reports to the President and the cabinet, who also sat on the subcommittees of the National Executive Committee of the ANC was privy to all of these investigations and I did



say yesterday, well, it looks like it was much later, in 2017, detailed letters had been written to various institutions in parliament but at that time also – it was public knowledge that we had reported a series of cases to the Hawks for further investigation in terms of PACCA.

**MR SONI SC:** So on that note can I ask you to go back to your affidavit which is bundle D and turn to the point at which we left off yesterday which is page 28, paragraph 113?

10 **CHAIRPERSON:** I am sorry, Mr Soni and Mr Molefe, you will come back to this question. I just want to ask something else. You can look at the page later. You have just mentioned that your minister – and I think you are referring to Mr Maswanganyi, he was the minister at the relevant time, when you said your minister was member of the cabinet, member of the NEC, is that right?

**MR MOLEFE:** I am referring to Minister Dipuo Peters.

**CHAIRPERSON:** Oh, Minister Dipuo Peters, oh.

20 **MR MOLEFE:** It was at the time when we dealt with the Mashaba.

**CHAIRPERSON:** Oh, okay.

**MR MOLEFE:** My affidavit and the application of Siyangena she was, you know, the Minister.

**CHAIRPERSON:** The Minister of – ja, alright. Now it seems obviously every minister is supposed to report to

the President about what is going on in their departments so that the President can see whether the department is doing well or not and whether that particular minister is doing well or not because if the minister is not doing well or if the minister is not up to the challenges of the department then the President should consider whether to ship the minister elsewhere or remove her or him and get somebody else who is up to the challenges of the department.

10           So the President would be receiving reports from each minister – he is supposed to receive reports from every minister and probe whether the work is being done properly and I would imagine that also apart from every minister reporting to the President.

          So I would imagine that the cabinet has occasion to hear what everyone, every minister – how every minister is doing, what are the challenges they facing in their departments and to see what decisions as cabinet can be taken but then if a minister is also a member of the NEC of  
20 the governing party, one would expect that since the governing party talks about deploying its cadres in government and elsewhere, one would imagine that the governing party also keeps an eye on how its deployees perform because it should have an interest in them doing their job quite well because if they do their job quite well

and the populace thinks that its deployees are doing a good job the chances of getting elected – re-elected next time are greater than if they mess up in various departments.

Now you have been in government – certainly I remember at provincial level, you are a senior member of the ANC, do you know whether what I am talking about does happen?

**MR MOLEFE:** That is correct, Chairperson, it happens  
10 and when I was in the province, I was also a member of the National Executive Committee, so I was both the Chairperson of the ANC in the province and a member of the National Executive Committee. But in addition to all of that we had what was called the President’s coordinating council where the President would meet with all the premiers of the provinces, members of the cabinet to do a review of the performance of government on strategic priorities that would have been identified in their strategic plans. So there was that regular report.

20 Of course, in addition to that there would have been what was called – I think it was called the budget council or forum where premiers and MECs of finance ministers and the President would meet before the final budget was appropriated and informed in those discussions by the reports of the finance and fiscal commission which was to

ensure equitable allocation of resources throughout the country.

**CHAIRPERSON:** Thank you. I feel that it is cold.

**MR SONI SC:** It certainly has got cold, Chairperson. It is still cold, it was a little warmer some time ago.

**CHAIRPERSON:** I do not know, I think maybe heater here is not a very good – because even yesterday when it got better it was only slightly warmer, I do not think it went beyond that but most of the time it seemed to make  
10 certainly me quite cold. I do not know what can or cannot be done, I do not see Stimela here. Maybe somebody is listening. If there is anything that can still be done to make the heater more effective please, somebody should follow that up. Okay, thank you. You had asked a question and I interrupted you.

**MR SONI SC:** Yes.

**CHAIRPERSON:** I see that we are at quarter past.

**MR SONI SC:** It would be the ideal time to take...

**CHAIRPERSON:** If it is convenient we can take the tea  
20 break now then.

**MR SONI SC:** Yes.

**CHAIRPERSON:** Okay, let us take the tea break, will come back at half past eleven.

**MR SONI SC:** As you please.

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS**

**CHAIRPERSON:** We may proceed. Your mic, your mic.

**MR SONI SC:** Sorry, Chairperson. May I point out that I did raise the question of that the room is cold.

**CHAIRPERSON:** Yes.

**MR SONI SC:** I am informed that the air conditioning is controlled centrally.

**CHAIRPERSON:** Centrally, yes.

**MR SONI SC:** But that they are attending to it.

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

**MR SONI SC:** Chairperson, I know that I have indicated that I was going to turn to another topic but there is something that I omitted to raise with Mr Molefe. May I, with your leave, raise it in relation to his replying affidavit in the Swifambo matter?

**CHAIRPERSON:** Yes. Thank you.

**MR SONI SC:** Mr Molefe, can I ask you to turn to bundle D page 268, that is – it says 6, page 268. Now one of the – we have dealt with the documents that Mr Mashaba gave  
20 to Mr Mamabolo but in those documents, you refer to a series or an exchange of emails between Mr Montana, Ms Gomes, is that correct?

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

**MR SONI SC:** Now, firstly, you raise two issues. You set out the exchange between them at RA30 which is at page

323. Can I ask you to look at page 323?

**MR MOLEFE**: Is it 13...?

**MR SONI SC**: 323, RA30.

**MR MOLEFE**: RA...?

**MR SONI SC**: RA30, your replying affidavit, annexure 30.

**MR MOLEFE**: I hope I am looking at the right documents.

Are we in bundle A?

**MR SONI SC**: Bundle D.

**CHAIRPERSON**: Bundle D is the one we have been using  
10 this morning.

**MR MOLEFE**: Bundle D, okay.

**CHAIRPERSON**: Page 323, hey, Mr Soni?

**MR SONI SC**: 323, yes. Sorry, Chairperson, yes. Now –  
sorry, can I just ask you to identify what these documents  
are?

**MR MOLEFE**: RA330, Chairperson ...[intervenes]

**MR SONI SC**: RA30.

**MR MOLEFE**: RA30?

**MR SONI SC**: Yes.

20 **MR MOLEFE**: It is an email.

**MR SONI SC**: Email sent from Maria Gomes on the 17  
December 2013 and to whom is it addressed?

**MR MOLEFE**: Addressed to Mr Lucky Montana, PRASA  
Corp.

**MR SONI SC**: Okay, if you just go to the document at the

bottom of that, what is that document, on the second half of that page?

**MR MOLEFE:** That document at the bottom is an email from Mr Lucky Montana and it is addressed to Comrade Sonia.

**MR SONI SC:** Well, it is Maria Gomes, am I right?

**MR MOLEFE:** It is address to Maria Gomes.

**MR SONI SC:** Yes.

**MR MOLEFE:** But it also says:

10 "Dear Comrade Sonia."

**MR SONI SC:** And what is the date of that?

**MR MOLEFE:** The date of that document is 16 December 2013.

**MR SONI SC:** And the document from – I mean, the email from Ms Gomes is the 17 December, is that correct?

**MR MOLEFE:** That is correct.

**MR SONI SC:** So can we look at the document at the bottom, the email of the 16<sup>th</sup>. Mr Chairperson, I submit it is a document and I would ask the witness to read it into  
20 the record.

**CHAIRPERSON:** Yes, no, that is fine. I see the sequence is that the one at the bottom is 16 December, the one at the top ...[intervenes]

**MR SONI SC:** Is the 17<sup>th</sup>, yes.

**CHAIRPERSON:** The 17 December. Okay, alright.

**MR SONI SC:** So I just want to ask you, in regard to the email from Mr Montana to Ms Gomes, what is the subject matter?

**MR MOLEFE:** The subject matter, Chairperson, of the email of Mr Montana to Ms Gomes is the Capital Project that PRASA will undertake. I do not know if I have to read ...[intervenes]

**MR SONI SC:** No, no, I am ...(intervenes)

**MR MOLEFE:** Quite, you know, running out of  
10 ...[intervenes]

**CHAIRPERSON:** I am sorry, I am sorry, Mr Molefe, I think what counsel is asking, he is asking for what appears at the top where it says from T Montana and his email address to Maria Gomes and the email address, then there is some – then it says Subject. I think that is what he is asking about when he says what was the subject of that email.

**MR MOLEFE:** Oh, the subject of the email.

**CHAIRPERSON:** Emails, ja.

20 **MR MOLEFE:** Summary, it says Summary Note. And it ...[intervenes]

**MR SONI SC:** Well, the importance of that you will see when you read Ms Gomes' but I just want to point out that the subject is, according to the email, Summary Notes, is that correct?



**MR MOLEFE:** That is correct.

**MR SONI SC:** Now can you then read the email please?

**MR MOLEFE:** The one by Mr Montana?

**MR SONI SC:** Yes.

**MR MOLEFE:** It says:

10           “Dear Comrade Sonia, as discussed please note as follows: Moloto Rail Corridor, this project is about the introduction of multimodal transport system to serve as a catalyst for economic development in the Western Region of Mpumalanga, Limpopo and Gauteng. It also involves three municipalities which include Ekangala, Sekhukhune and Tshwane Metropolitan. The rail line is approximately 113 kilometres with estimated cost of R12 billion, (the cost to be revised once the review is complete.) The project is currently undergoing an option analysis phase with the project review expected to be completed by March 2014.”

Then it goes on, it says:

20           “Johannesburg, Durban High speed rail. This project is about introducing a high-speed train service between Johannesburg and Durban. The project is currently being conceptualised with the detailed feasibility study expected to be undertaken in 2013/2014 financial year. Detailed options

analysis will be undertaken to assess the viability of a separate Passenger Rail service for a combination of freight and passenger rail services.”

It then goes on to say:

“Park Station. This is the largest railway station in South Africa situated in Johannesburg with over 200 000 commuters connecting through the station daily. It is, however, anticipated that the commuter numbers will reach 260 000 by 2020. It is planned that a full backing of the station will be undertaken in order to create more space for commercial use. In the medium term PRASA will invest approximately R1 billion as part of phase one of the project which mainly focuses on creating additional commercial space on the lower part of the station. The fourth project is Pretoria station.”

It says:

“Similar to Park Station in terms of the planned works the project is currently being conceptualised for future development. Approximately 130 000 passengers, commuters connect through the stations daily. Hope this will be of assistance to you and the team from DBA.”

**MR SONI SC:** Can I ask you, do you know who DBA is?

**MR MOLEFE:** Well, I am not sure, this may well mean – I

am not sure, I am not sure, let me not answer, I am not sure who DBA referred to.

**CHAIRPERSON:** What the abbreviation stands for? You do not know what the abbreviation that he used stands for? Ja, no that is fine, I think that is what you mean, you mean that you do not know what this abbreviation stands for.

**MR MOLEFE:** I do not know what this abbreviation stands for.

**CHAIRPERSON:** Yes, okay.

10 **MR SONI SC:** Alright, can we then read the email of the 17 December 2017?

**CHAIRPERSON:** Before we do that...

**MR SONI SC:** Yes.

**CHAIRPERSON:** I notice and I just want to confirm whether you notice the same thing, Mr Molefe, that in this email that you have just read the author tells Ms Maria Gomes or Comrade Sonia, as he calls the person concerned, he tells her about projects that PRASA was undertaking or was planning to undertake, what they  
20 entailed, at least in regard to two, he also tells her what monetary value would be attached to them.

The one, the first one he says – and the estimate cost of the project is about R12 billion.

**MR MOLEFE:** That is correct.

**CHAIRPERSON:** The other one that he tells, that is in

paragraph 3, he says would be approximately R1 billion and, of course later he says:

“I hope that this will be of assistance to you and the team from DBA.”

That is part of what he is telling the person about. The projects and in some cases the costs involved. Is that what you notice as well?

**MR MOLEFE**: I am noticed that, Chairperson.

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

10 **MR SONI SC**: As you please, Chair. I will want to come back to that issue as he sets it out in his – as Mr Molefe sets it out in his replying affidavit.

**CHAIRPERSON**: Okay, okay.

**MR SONI SC**: Now what is the subject matter again in relation to Ms Gomes’ email?

**MR MOLEFE**: The subject matter in Ms Gomes’ email, Chairperson, is summary notes.

**MR SONI SC**: So putting it ...[intervenes]

20 **CHAIRPERSON**: We you just, for the sake of completeness mention again for the record that that is the email that appears at page 2, at page 323 of bundle D, that is marked RA30 to – ja, that is marked RA30 and it is an email from Maria Gomes to Mr Lucky Montana dated 17 December 2013 at 12.25.

**MR MOLEFE**: Yes.

**CHAIRPERSON:** And you have just confirmed that the subject matter is Summary Notes. The subject matter is the same as the subject matter of the email that came from Mr Montana to Maria Gomes, is that right?

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

**CHAIRPERSON:** Yes, thank you. Yes, Mr Soni?

**MR SONI SC:** As it pleases, Chairperson. Could you read the whole email including the manner in which Ms Gomes addresses Mr Montana?

10 **MR MOLEFE:** May counsel repeat that question?

**MR SONI SC:** I say could you read the whole email from Ms Gomes addresses Mr Montana including the manner in which she addresses Mr Montana?

**MR MOLEFE:** The email reads as follows, Chairperson:

20 “Dear Comrade Happy, I am sorry to come back to you only today but yesterday dinner finished too late but otherwise, how are you feeling now? Hope much better. However, it was good help for the part of our conversations related to railways issue. Now today I will have a meeting with Vice-President of the bank to go to some more details of how and what we would like to go forward. The meeting will be in Sandton at 4 p.m. in our office. So if you feel you can come and participate, will be most than welcome. Otherwise I will see you later because

our man is completely desperate. So please. With regards, SG.”

Which I think is Sonia Gomes.

**MR SONI SC:** Now just putting the two emails in context would it be fair to say that Ms Gomes’ email is a response to Mr Montana’s email of the 16<sup>th</sup>?

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

**CHAIRPERSON:** Ja, I am sorry, Mr Soni. The salutation in the email from Ms Maria Gomes to Mr Montana is:

10 “Dear Comrade Happy.”

Do you know that name as one of the names for Mr Montana or is it a name that you do not know? I do not know whether it is – I am taking it that it is a name, so – but I do not know. Is that something that you associate with him or not?

**MR MOLEFE:** Where I am sitting now, I am not certain but it is very clear that is a response to a discussion they have.

**CHAIRPERSON:** Yes.

20 **MR MOLEFE:** And the notes that appear in the email of Mr Montana to Ms Gomes dated the 16 December 2013.

**CHAIRPERSON:** Yes. So I guess what you are saying is I do not know about Comrade Happy but when I look at the two emails it is clear to me that the one is a response to the other.

**MR MOLEFE:** That is so, Chairperson.

**CHAIRPERSON:** Yes, okay. Thank you.

**MR SONI SC:** Now in your replying affidavit at page 268 you deal with – or you comment on this exchange of emails at page 268 paragraph 9.15.10. Can I ask you to read into the record what you said in paragraph 9.15.10 of your replying affidavit?

**MR MOLEFE:** Paragraph 9.15.10 of my replying affidavit reads as follows:

10           “The first alarming feature of this correspondence is the familiarity between Ms Gomes and Mr Montana. For instance, they refer to each other as comrades. The second alarming feature is that Mr Montana sends Ms Gomes details of various projects within PRASA. Mr Montana had no business sending such information to Ms Gomes, Similex is not a tenderer, supplier or contractor to PRASA. Ms Gomes, to the best of my knowledge, is not involved in any entities supplying services to PRASA.”

20   **MR SONI SC:** And, of course, the third point that ought to be made is the one raised by the Chairperson that not only are you giving details but you are giving approximate costs which are not trifling amounts.

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

**MR SONI SC:** Now where did you acquire – where did you

get this document, this set of emails from, Mr Molefe?

**MR MOLEFE:** My recollection, Chairperson, the set of emails was found in the course of the investigations by the investigators.

**MR SONI SC:** And by the time it was found Mr Montana had left, so [inaudible – speaking simultaneously]

**MR MOLEFE:** He had already left. A lot of work had to be done, imaging the laptops and computers.

**MR SONI SC:** Chairperson, I just wanted to place that on  
10 record again to say that obviously these are matters that will be canvassed with Ms Gomes and Mr Montana when they come.

**CHAIRPERSON:** No, that is fine. I just want to go back to something else that we dealt with earlier, Mr Molefe. When we were looking at certain paragraphs of Mr Mashaba's affidavit earlier on – I do not remember in which page, but you do not need to go there for now – I noticed that he says in that affidavit that he was instructed by Ms Gomes to make certain payments to Ms Gomes' entity. Is  
20 that part of what he told you at the meeting that you had with him and other people, that he was instructed?

**MR MOLEFE:** He said that he was requested.

**CHAIRPERSON:** He was requested. Yes, okay. Okay, well, I am just wondering what relationship he would have with her or her to instruct him to make payments to her



entities, but obviously you cannot help with that because he did not use that terminology in the meeting.

**MR MOLEFE:** Yes, Chairperson, I do not know how she would then instruct somebody who is not her subordinate in the same business. It is probably – is the use of language.

**CHAIRPERSON:** Ja, maybe it is just the use of language. Well, I hope Mr Mashaba will come here and then he can explain.

**MR SONI SC:** Yes. Can I raise one issue?

10 **CHAIRPERSON:** Ja.

**MR SONI SC:** Relating to that, Mr Chairperson?

**CHAIRPERSON:** Yes.

**MR SONI SC:** Mr Molefe, can I take you to page 263 of bundle D and in particular paragraph 9.11. This is still part of your replying affidavit. Are you there?

**MR MOLEFE:** No, what is it, paragraph?

**MR SONI SC:** Paragraph 9.11, page 263.

**MR MOLEFE:** I am looking at it.

20 **MR SONI SC:** Will you read it into the record please? It relates to the issue about the instructions.

**MR MOLEFE:**

“Mr Mashaba explained further that Mr Mabunda had instructed him to pay some of the money received from PRASA into a specified accounts without Mr Mashaba knowing who was being paid or

the reasons for the payment. Mr Mashaba insisted that he did not know the identity of the beneficiaries and he was merely informed that the money would benefit the movement.”

**MR SONI SC:** So that is the difference between the two....[intervenes]

**CHAIRPERSON:** Yes, I am trying to look for Mr Mashaba’s affidavit because maybe it might be helpful for me to...

10 **MR SONI SC:** Yes.

**CHAIRPERSON:** Maybe I will be able to catch ...[intervenes]

**MR SONI SC:** Let me just try and find the passage.

**CHAIRPERSON:** I think it is 32 something.

**MR SONI SC:** I think it is at 329, paragraph 72, Chairperson.

**CHAIRPERSON:** Yes. I think we – that is fine, we will move on but I think I did see where he seems to say he made these payments effectively – where he says  
20 effectively that he made these payments on the instructions of ...[intervenes].

**MR SONI SC:** Ms Gomes.

**CHAIRPERSON:** Ms Gomes. But that is okay, I can check that later.

**MR SONI SC:** Yes.

**CHAIRPERSON:** Okay. Mr Molefe, just before tea you had indicated that you had approached the different law enforcement authorities ...[intervenes]

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

**MR SONI SC:** Oh, ja.

**CHAIRPERSON:** I am terribly sorry, I just picked up something that links to those two – which may link and not links but may link to the two emails exchanged between Ms Gomes and Mr Montana. So I just mention I see that in  
10 paragraph 9.10 at page 263, I think that is a – no, I am sorry, that is Mr Molefe’s replying affidavit.

**MR SONI SC:** Yes.

**CHAIRPERSON:** But he says, that is Mr Molefe speaking now in his affidavit:

“Mr Mashaba explained that he met with Ms Gomes. Ms Gomes told Mr Mashaba that she wanted money for the movement.”

**MR SONI SC:** Yes.

**CHAIRPERSON:**

20 “Ms Gomes also told him that she knew the bid to supply locomotives to PRASA was worth billions and she could not understand why 10% of the value of the bid could not be paid to the African National Congress.”

**MR SONI SC:** Yes.

**CHAIRPERSON:** So I do not know whether it is connected with these emails but we saw from the emails that Mr Montana, according to the email, was telling Ms Gomes about projects that PRASA was undertaking or was going to be undertaking and telling her even the costs involved, the value, monetary value of those projects and here you are saying what he told you and you are saying he said he said he met with Ms Gomez and he said Ms Gomez told him that it's Mashaba, that she wanted money for the  
10 movement and Ms Gomez – Mr Mashaba told you that Ms Gomez also told him that she knew the bid to supply locomotives to PRASA was worth billions and she could not understand why 10% of the value of the bid could not be paid to the African National Congress. You don't need to comment, you may comment if you want to, I was just saying maybe there is a connection between how Ms Gomez gets to know information that maybe should only be known at a certain time, only by people within PRASA. That's what I was saying, that it may be that there is that  
20 link but it might not be that it links to this particular one, okay but as I say, you don't have to comment on it but if you want to say something, I'm not preventing you from saying something.

**MR MOLEFE:** No, I would rather not comment.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** Because I don't know where it would stop save to say that there seem to be the probability of the link in the emails and what appears in this response that a person get given, the values project and the values well in advance and the person says probably that's what they had agreed with Mr Montana that they must get 10% you know, for the movement but the 10%, as she is putting it of each one of those projects.

**CHAIRPERSON:** Yes, yes, no thank you.

10 **ADV SONI SC:** Mr Molefe, can I then go to page 28, 113 of your main affidavit, page 28 paragraph 113.

**MR MOLEFE:** Is that Bundle B?

**ADV SONI SC:** The same bundle yes.

**MR MOLEFE:** This one?

**ADV SONI SC:** Yes, page 28 paragraph 113, are you there?

**MR MOLEFE:** I am there Chairperson.

20 **ADV SONI SC:** Chairperson I just wondered in the interest of time because I'm also considering how to deal with this complaint beyond merely recording it as a complaint because we know from what's contained in the affidavit that – and in the answering affidavit of the police that there's no answer for why they've delayed up to now and I wondered whether it may not be an idea to get Mr Molefe to confirm the correctness of this and then get the

new head of the police inspectorate to come and explain why nothing has been done now? It's just in the interest of saving time Chairperson.

**CHAIRPERSON:** Yes well this is non-action by Law Enforcement Agencies, well it shouldn't take long for him to just say, bang, bang, bang.

**ADV SONI SC:** Yes.

**CHAIRPERSON:** Ja.

**ADV SONI SC:** So in these – in paragraphs 113, 114 and  
10 115 of page 29 you set out the approaches you made to the police, would that be correct, Mr Montana?

**MR MOLEFE:** I do Chairperson.

**ADV SONI SC:** And at page – paragraph 113 you refer to a letter that you wrote to the Law Enforcement Authorities including the head of the NDPP at that time?

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

**ADV SONI SC:** And the head of the Directorate of Priority Crime Investigation?

**MR MOLEFE:** That's correct Chairperson.

20 **ADV SONI SC:** And that letter appears at page 192, you don't need to go to it but I'm just asking you to confirm that, that is the letter you, in fact, wrote to the different persons?

**MR MOLEFE:** I do confirm that I wrote that letter and I've seen it several times before I appeared here.

**ADV SONI SC:** Can I just ask, if, in about two or three sentences you can summarise what you said in that letter, no not two or three sentences but as summarised as possible.

**MR MOLEFE:** The essence of the letter, Chairperson, was a complaint about the fact that nothing had been done about the cases reported to the DPCI and relating to what we considered to be very serious violations of the law or criminal activities and the fact that we'd registered several  
10 of these cases, I think elsewhere, probably in the founding affidavit in the previous – in my letter to the Minister and previous affidavit, most likely, we tabled some 69 cases that we had reported. So we were concerned that there was no movement.

**ADV SONI SC:** And did you ask...[intervenes].

**MR MOLEFE:** And of course, I – my view was that – and the view of the Board was that it was improper for what was the organ of State charged with the responsibility of investigating crimes, offences and prosecuting, laying a  
20 basis for prosecution in that regard.

**ADV SONI SC:** And can I ask you just, the extent of the details you gave in that letter, if you look at page 197 paragraph 11.4 you point out that you were annexing to the complaint, the founding affidavits in the Siyangena and the Swifambo matters, at page 197.

**MR MOLEFE:** Hundred and?

**ADV SONI SC:** Page 197 paragraph 11.4.

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

**ADV SONI SC:** Right and then on the next page, page 198 you set out the formal request for assistance, if you look at paragraphs 14. 15 and 16, you point out why the police and the NDPP are required to look into these matters on account of the legislation dealing with corruption.

10 **MR MOLEFE:** Yes it is so Chairperson...[intervenes].

**CHAIRPERSON:** Mr Molefe...[intervenes].

**MR MOLEFE:** But it relates to – we’re dealing with where we talking about Corporate Governance, the constitution obliges organs of State to support one another to collaborate in dealing with the problems and to the extent possible avoid unnecessary litigation. Litigation is to be dealt with as last resort.

**CHAIRPERSON:** It must have been frustrating to you and the Board to have a situation where you had to even  
20 remind Law Enforcement Agencies about what the constitution says about their responsibilities to try and get them to do their job, it must have been frustrating to have to approach so many entities or institutions and functionaries without really getting support for your fights against corruption because yesterday you told us about



writing to the Minister and – Minister Maswanganyi not getting the support, writing to the Chairperson of the Portfolio Committee on transport in Parliament, not even getting acknowledgement of receipt of your letter, writing to the Speaker of Parliament, raising these very important issues not even getting acknowledgment of receipt of your letter. Writing to the Hawks laying complaints with the SAPS and the Hawks, expecting them to do their job but them not doing their job then having to go to Court to try  
 10 and get them to do their job, it must have been quite draining and...[intervenes].

**MR MOLEFE:** It was certainly frustrating and it was inexplicable the way it was dealt with and again these matters became public knowledge, the question that one might ask, and bearing in mind that political interference is undesirable but certainly the Minister of Justice under whom such – and the Minister of Police under whom these organs resort should have been able to say, look we see in the public domain and in the reports given to our Minister  
 20 of Transport that there are these cases that have been lodged with you, give us a status report, these are very serious matters what are we going to do about them, they involve monies that could easily disappear which are continuing to be used against the tax payers interests. So it's a question that begs for answers.

**CHAIRPERSON:** H'm, h'm and it may well be that to the extent that it is said that State Capture involved or entailed paralysing certain institutions so that they don't do their job properly, that they're supposed to do. It may well be that, what happened with your Board trying to get assistance might well – and not getting it and institutions not doing their job, it may well be that it's a manifestation of that kind of paralysis.

**MR MOLEFE:** It is so Chairperson, the backdrop to the point that is made by the Chairperson is that there was the head of the DPCI or the Hawks who appeared to be effective and committed to doing – discharging his responsibility, Mr Anwar Dramat, he was removed unceremoniously on spurious allegations which never were seriously tested in a proper Court of law and that is when Mr Ntlemeza was appointed in his place. Our experience with this case, and I'll try to be very brief, Chairperson, also, is that there were very – quite a number of professional Police Officers in the Police Service, the DPCI but every time those professional Officers put their teeth on the cases, they would be removed and cronies would be appointed in their place, clearly with the instruction to do nothing and there was no movement after that. Several of them became casualties and I think one of those who became casualties would have been – but though relating

to a different case would have been Major – I think Major General Colonel – Brigadier Sibiya something like that who later became head of the Forensic Unit in the city – metropolitan city of Johannesburg. So there was a deliberate crippling of the system and what was happening in the Police Services was also happening in the NPA.

**CHAIRPERSON:** H'm, h'm and I guess that from the point of view of anyone who may have been pursuing State Capture and who may have been pursuing the agenda of benefiting from corruption, it would make sense to make sure that the Law Enforcement Agencies would not do their job, even if evidence relating to them – evidence of crime relating to them would be placed before them because whatever they did, if they knew the Law Enforcement Agencies would do their job properly, the chances that – would be that they would be caught and they would be brought to book and – so the idea of paralysing the Law Enforcement Agencies seems to be something that they would really have – that would have benefited them.

20 **MR MOLEFE:** It is so Chairperson, maybe at some point we must get someone to present to this Commission what exactly happened in the interaction between PRASA and the DPCI in particular. The DPCI – I attended a couple of meetings with them, in particular with the gentleman, I think he's called Major General Khana, he was the deputy

to Mr Ntlemeza. When we started, and we do indicate in some of our documents that they said that they were going to prioritise the Swifambo and Siyangena matter, when we started, he said that they needed – they didn't have forensic capacity to investigate. We agreed with them that the capacity that we had in the PRASA investigation would be given to them with full control of those forensic investigators that they didn't even need to give – those investigators didn't need to give reports to PRASA because  
10 once they're under the police, DPCI, they should account to them even though PRASA was paying the bill for that. Several reports, many - actually were files – lever arch files were made available as a result of that investigation. They did not want to touch them because dealing with them would have meant they have to follow the people implicated in those things. I think at some point, Chairperson, as counsel correctly pointed out earlier on, they must be called to explain.

**CHAIRPERSON:** Yes, no they will be called there is a –  
20 we call them a work stream, there is a work stream within the Commission which consists of members of the legal team as well as investigators that is focusing on Law Enforcement Agencies and included in the Law Enforcement Agencies is the Hawks to say to what extent did they not do their job as part of this paralysis that we

are talking about and I know that there have been consultations with senior people within the Hawks. So it is in the plan that at some stage we are going to look at those things, what the – what I think the investigators – what I'm not sure about is whether they may have appreciated the particular special place that the PRASA cases must occupy in that investigation, namely the PRASA cases – the cases that PRASA placed before the SAPS, placed before the Hawks and said, investigate and what  
10 happened so that the information will be shared with them but the information will be shared with them but they are certainly looking at how, for example, the Hawks operated, to what extent were they paralysed who was responsible for that, how did that come about, same thing with the NPA and so on.

**MR MOLEFE:** Chairperson maybe I should make the last point.

**CHAIRPERSON:** Ja.

**MR MOLEFE:** If allowed, lest I get misunderstood, I need  
20 to credit the new leadership of the DPCI, I think they are busy rebuilding that institution, I think General Lebeya and quite a couple of other officers with whom I had met and who are now back, very professionally attending to these cases. Show commitment that a professional law enforcement Officer needs to exhibit, so I think we

acknowledge the work that they are doing including what the NPA is doing to fix a broken system. So it shouldn't be like all is lost they are doing nothing.

**CHAIRPERSON:** Yes, yes, no that's fine I think we – I think everyone understands that we certainly talk about the past what was – what may have happened during that time and certainly, I think, you are right that the new leadership in some of these institutions seem to be committed to fixing the problems that have been there and I think that is  
10 why, I think the Commission will be – is getting a lot of cooperation from them – from the leadership, thank you.

**ADV SONI SC:** If I could take that issue further, Chairperson, what we will do is, we will ask Mr Molefe outside these proceedings to give us details of any of those interactions so that we can pursue it with the Law Enforcement work stream. Now what was the reaction to your request to the DPCI? This is the letter that we were looking at Mr Molefe, in other words, did they exceed to your request and pursue the matter?

20 **MR MOLEFE:** The – there was a matter that, as I indicated, which said that they were prioritising certain cases, maybe we should look for that exhibit and look at what the response is but up until my term of office ended there was no progress in this matter. Of course, in the end, Chairperson, we had to institute action in the High

Court of the Republic of South Africa to try and compel them to do their job asking them to explain to the Court, why is it that they are not doing their job. Of course, their response to that, was to raise a technicality that says – which now links what they are doing to what the new Minister was – Mr Maswanganyi was saying, to say, you don't have the authority to take us to Court because your Board did not have a quorum when this decision was taken. Of course, I must say it was incorrect because I had a full  
10 mandate taken in 2015 which allowed us to investigate and to litigate on the matters arising out of the investigation.

**ADV SONI SC:** So, because of their lack of response to your request for assistance from the Law Enforcement Authorities, you turned to the Courts, is that correct?

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

**ADV SONI SC:** I'm going to deal with the judgment in a moment but effectively the relief you sought was a mandamus, an order that they must do their job as you had set out in your letter of request.

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

**ADV SONI SC:** Now – and then you've explained to the Chairperson that their response was to take a technicality – a technical point that the Court didn't have – the Board didn't have the *locus standi* to bring the application because it wasn't a quorum.

**MR MOLEFE:** That is correct.

**ADV SONI SC:** Now I just want to, Chairperson to take...[intervenes].

**CHAIRPERSON:** I just want to say, of course it was – it must have been an indictment on the executive that a Board of a parastatal, a government entity had to go to Court to get another organ of State to do its job when actually, if you were getting proper support from the Minister responsible for PRASA, once you reported these

10 things to the Minister to say, the police are not doing anything about our cases, we have been – we have laid complaints, they are not doing anything, it would – it should have been the Minister who speaks to the Minister of Police and tells the President this is – the Hawks are not doing their job and then the Hawks should have been talked to, to say why you not doing your job and of course if Parliament was giving you support, Parliament could have called the Hawks to Parliament as well to say, what's going on, why are you not doing this but to have a situation

20 where taxpayer's money now must be taken to pay lawyers in order to get an organ of state to do its job when another organ of state is saying, here is a problem it falls under our jurisdiction please do your job. It is a very strange situation. But of course, you – you had nowhere else to go by then that is why you had to go to court.



**MR MOLEFE:** That is correct Chairperson. But to the credit of SCOPA.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** SCOPA did call them

**CHAIRPERSON:** Yes.

**MR MOLEFE:** To come and account on what they were doing.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** About these cases.

10 **CHAIRPERSON:** Yes.

**MR MOLEFE:** General Ntlemeza was there.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** And Major General Khana.

**CHAIRPERSON:** Ja.

**MR MOLEFE:** Of course, in their answers they sounded to have been at sixes and sevens because they were really not – Mr Ntlemeza had – General Ntlemeza had just recently been appointed.

**CHAIRPERSON:** Hm.

20 **MR MOLEFE:** And they were really not able to give – answer properly.

**CHAIRPERSON:** To answer properly.

**MR MOLEFE:** Yes.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** To those questions but SCOPA did attempt...

**CHAIRPERSON:** Yes.

**MR MOLEFE:** To get them to address issues but nothing happened after that.

**CHAIRPERSON:** Yes. They were not called back later on to say, you have just been appointed maybe you do not – you have not familiarised yourself with what has happened. Go back, come back in a month's time, tell us what you have identified as going wrong and what you are going to do to fix it.

10 **MR MOLEFE:** They might have been called but this particular day.

**CHAIRPERSON:** Ja.

**MR MOLEFE:** We were together in the same meeting.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** Where of course they were disputing what I was reporting as being done by PRASA.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** Without any factual basis for their rejection. I do not know if they were called back later.

20 **CHAIRPERSON:** Later on yes.

**MR MOLEFE:** And what they said when they went back.

**CHAIRPERSON:** Yes, yes.

**MR MOLEFE:** The reality of the matter is that we are sitting here today.

**CHAIRPERSON:** Hm. Not much [intervenes]

**MR MOLEFE**: There is no evidence of anything much.

**CHAIRPERSON**: Unless, unless.

**MR MOLEFE**: That has been done except what we have taken to the courts as PRASA and their matter of Swifambo which resulted in the setting aside of – of that contract it having been declared invalid.

**CHAIRPERSON**: And if you had not taken the matter to court it looks like not – nothing would happen. Nothing would – nobody would have done anything.

10 **MR MOLEFE**: It would have been business as usual.

**CHAIRPERSON**: It would have been business as usual.

**MR MOLEFE**: Hm.

**ADV SONI SC**: As you can see. Now the Chairperson has said that it is strange that you had to go to court to get the law enforcement of authorities who are other organs of state to – to do their job. They took a technical point. And just ask you – Chairperson may you refer to the judgment because the learned Judge in rejecting the point made by the police that there was no locus standi raises this issue  
20 and I just would like to place it on record Chairperson. May I ask you to turn to page 206 of Bundle D which is part of the judge – which is page 3 of the judge – page 5 of the judgment of the court?

**CHAIRPERSON**: What page in the bundle?

**ADV SONI SC**: Page – the Bundle – the judgment starts at

page 202 Chairperson.

**CHAIRPERSON:** 202?

**ADV SONI SC:** 202.

**CHAIRPERSON:** Ja.

**ADV SONI SC:** And paragraph 5 is the passage. But perhaps I should just place on record who the parties are Chairperson.

**CHAIRPERSON:** Ja.

**ADV SONI SC:** At page 202 Mr Molefe you will see that  
10 this is a case in the Gauteng Division of the High Court and it is case number 36337/2017 and the parties are PRASA, who is the applicant and OUTA this is the organisation undoing tax abuse which is an intervening party and the respondents are the Directorate for Priority Crimes Investigation and the National Prosecuting Authority. Is that correct?

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

**ADV SONI SC:** Now again just as background to the judgment they had taken 2 points. The first point is that  
20 you did not have locus standi and OUTA ought not to be admitted as an intervening party. Is that what happened?

**MR MOLEFE:** That was correct.

**ADV SONI SC:** Now at paragraph the learned judge just gives a comment about the approach adopted by the respondents and I would just like you to read that into the

record.

**MR MOLEFE**: The honourable judge at paragraph 5 says:

“I consider it inimical to the interest of justice that where matters of public interest are concerned organs of state indulge in costly squabbles of interlocutory and somewhat technical nature rather than engage with the merits of the matter in an expeditious, responsible and transparent manner.”

**ADV SONI SC**: And in fact, again just to give it context  
10 they had not filed an answering affidavit in regard to the substance of your complaint as set out in the case. Am I right?

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

**ADV SONI SC**: So at paragraph 14.1 on page 218 of the papers.

**CHAIRPERSON**: I am sorry just – I just want to.

**ADV SONI SC**: And paragraph 14.1 Chairperson.

**CHAIRPERSON**: I think it is before we go there.

**ADV SONI SC**: Yes.

20 **CHAIRPERSON**: They did not answer the substance of your complaint they filed an affidavit taking these preliminary points but the Judge went on to deal with the merits in the matter. Is that correct?

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

**CHAIRPERSON**: Did they ask to be given an opportunity if

there are – if there are points, preliminary points were dismissed to be given an opportunity to file an affidavit to answer the substance of the complaint. Or is that something you would not remember.

**MR MOLEFE**: I would not remember because at this stage.

**CHAIRPERSON**: Yes.

**MR MOLEFE**: I think I had ceased to be the Chair of PRASA>

10 **CHAIRPERSON**: Yes. Oh okay, okay. Okay. Because it is quite strange.

**ADV SONI SC**: Yes.

20 **CHAIRPERSON**: Normally when a party who has been sued takes a – the kinds of points that they took they would nevertheless answer the substance of the allegations on the merits on the basis that if the court dismissing their preliminary points the courts should have their response to the complaint. Now one wonders whether the reason why there was no response – there was no affidavit containing a response was that whatever they could say was going to be embarrassing to them. In other words, they did not have a defence to the allegations on the merits that is why they did not put them up.

**MR MOLEFE**: My – yes Chairperson my view is that they had no defence because all they could say is that no PRASA is wrong we are in fact intending to act on your

[intervenes].

**CHAIRPERSON:** Yes. Yes.

**ADV SONI SC:** Again, I will address that issue through the judgment Chairperson the question of what was go happen to the substantive – their response to the substance of the trial. Again, at paragraph 14 the learned Judge deals with the question of costs and at 14.1 he again comments on the unacceptable approach adopted by the respondents. Could you read 14.1 into the record?

10 **MR MOLEFE:** Chairperson 14 – paragraph 14.1 of the Judgment reads as follows and it relates to the costs:

“As indicated earlier in this judgment it is to be deplored that organs of state engage in interlocutory skirmishes with each other whilst the main battle is raging around them and they by their conduct delay any meaningful engagement therein.”

**ADV SONI SC:** And then if you look at the order itself you will see on page 219 Mr Molefe in paragraph 15.1.1.2 an order is made as to when the answering affidavit is to be  
20 delivered. And you will see that the learned Judge gave them just 5 days to deliver their answering affidavit.

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

**ADV SONI SC:** And then I just want to refer to the last paragraph of the judgment and the order and can you just indicate what the order was because it seems to express

the learned Judge's displeasure at the approach that the respondents have adopted? Paragraph 5 of page 220.

**MR MOLEFE**: Chairperson paragraph 5 of page 220 it is paragraph 5 of the judgment and it relates to the order handed down by the court. It says:

“The DPCI is ordered to pay PRASA's cost of the interlocutory applications including the costs of the condonation application and PRASA's counter application on the – on the scale as between attorney and client  
10 including the costs of three counsels were employed.”

**CHAIRPERSON**: It is a – it is a – it is an order – it is a very unusual or rare order for a court to make and – and it is made when a court strongly disapproves of the conduct of the party against whom the order is made.

**ADV SONI SC**: Yes.

**CHAIRPERSON**: It says:

“On an attorney and client scale and it is costs of three counsels.”

**ADV SONI SC**: Three counsels.

20 **CHAIRPERSON**: It is a – It may be – it may be a pity if person who did not do their job did not get to be the ones to pay those costs because in the end those costs come from the taxpayers it is the institution that pays.

**ADV SONI SC**: Yes.

**CHAIRPERSON**: That it is persons that fail to do their job.



So – but it reflects how displeased the Judge was with the conduct of DPCI. Okay so I thought I would just mention that.

**ADV SONI SC:** Yes.

**CHAIRPERSON:** It reflects very serious disapproval by the Judge of DCPI's conduct in – in the matter.

**MR MOLEFE:** That is so Chairperson I agree.

**CHAIRPERSON:** Ja. Hm.

**ADV SONI SC:** Now you carry on at page 100 and –  
10 paragraph 115 of your affidavit Mr Molefe where you point out that the DPCI then filed an answering affidavit and PRASA filed it replying – sorry its answering affidavit and PRASA filed it to a replying affidavit but the matter has not been taken further. And then you make the point:

“It is clear that the interim boards that were installed simply do not have the determination of the dismissed board to hold those world power to account.”

**MR MOLEFE:** Chairperson that is right.

**ADV SONI SC:** Oh sorry.

20 **MR MOLEFE:** I know the page...

**ADV SONI SC:** That is at page 28 Mr Molefe.

**MR MOLEFE:** At page 28. I found it and that is paragraph?

**ADV SONI SC:** Paragraph 115 right at the end of the page.

**MR MOLEFE:** I have ...

**ADV SONI SC:** So effectively what you are saying here is

we pursued this matter. We got it into court. We got past the technical stage but nothing has happened since then when you say this is partly due to the fact that the interim boards that succeeded yours – your board did not pursue the matter with the required enthusiasm in zeal. They are a public entity or a public board should do.

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

**CHAIRPERSON**: But you see Mr Molefe this is really very serious. Even when your board had been dismissed nobody  
10 can say that whoever the different Ministers of Transport have been after your board had left would not know that there was this litigation that was still pending. If they were really interested in dealing with corruption and if they were really interested in having the cases that you had sent to the HAWKS being properly investigated and the relevant Portfolio Committee in Parliament ought to have known that your board had launched an application and had since been dismissed. They ought to have kept an eye on what would the next board do about that litigation. They ought to have  
20 – Parliament ought to have asked where is that litigation now, why is it not being finalised? They ought to have asked the Minister. They ought to have called the interim board and asked them about these things if they were doing their oversight functions properly. And if there seemed to be too much of a delay, they ought to have been interest to

say why. Why are these matters not being finalised? These are old matters. So it is as if – it creates an impression as if any corruption connected with PRASA was not supposed to be investigated. Any criminal cases arising from corruption in PRASA were not supposed to be investigated by the police, were not supposed to be investigated by the HAWKS. It creates that impression and it is very worrying. Some of these things I am saying you do not have to say anything but it is just the impression that one gets to say

10 you have Ministers, you have a government that almost [indistinct] says we are committed to fighting corruption. You have got point help parties that almost [indistinct] saying we are committed to fighting corruption. You have got Ministers who will say the same thing in – on public platforms. Members of Parliament, everybody but here is a case from PRASA – here are cases. Here is a board that has been trying to get these cases investigated. Nobody comes up to say, this board has been dismissed it had reported these cases let us pursue them. Nobody does

20 that. And if the HAWKS do not do anything nobody does that. The President ought to have been interested to say to the HAWKS, how can the Board of PRASA have to take you to court to do your job? And when your board is not there the President is supposed to say to the Minister what is happening? Both the Minister of Police and the Minister of

Transport, what is happening about those cases that were reported to the HAWKS? Why are people not doing what obviously is what they are supposed to do? Cabinet must be interested in these things. Parliament must be interested in these things. The governing party must be interested in how its own employees perform their job. Are they displaying a fight against corruption that the party says it is committed to? Is that commitment to fighting corruption manifested in how people conduct themselves in performing their job? It is very, very worrying. It is very, very worrying. You may have been doing your job what you considered to be your job but it raised a lot of things because it gave an opportunity to various institutions, various functionaries if they were committed to fighting corruption to join you, to assist you and when your board was – had been dismissed to take that baton and say we want to see those cases finalised. And if there were people who were not doing their job get them fired. Because you are employed to do a particular job and if you cannot do it you must not be there. Now five years later not much has been done about these cases. And then of course when you get reports that say certain things about certain connections you have got to prove and see whether the reason why nothing has been done has got anything to do with who are being mentioned in regard to certain things. It is very

concerning. Okay Mr Soni sometimes I say these things that I say that you – you might feel that you have to say something but you do not need to but I think you want to say something Mr Molefe.

**MR MOLEFE:** Just two points Chairperson.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** I think quite clearly from what the Chairperson has said. Those who sing that they are fighting corruption but not acting probably think that all that  
10 they have to do is to sing a ritual.

**CHAIRPERSON:** Hm. Hm.

**MR MOLEFE:** About corruption. That is one point. The second point is that yesterday the Chairperson said that perhaps there is a need to look at the record of discussions of some of these Parliamentary committee.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** The – my last Minister of Transport when he was still a member of the PCOT, Portfolio Committee on Transport.

20 **CHAIRPERSON:** Hm.

**MR MOLEFE:** Was very much opposed to the fact that the PRASA Board was taking Law Enforcement Agencies to court to compel them to discharge their responsibilities and obligations to the citizens of this country. Probably those records are made available that could be picked up in those

discussions. But it shows that there was no willingness.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** To deal with these issues.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** And that would also perhaps show that we read earlier on projects that Mr Montana was giving to Ms Gomes in his notes and one of those projects is called the Moloto Corridor. The Minister, my last Minister of Transport Mr Maswanganyi when he got into office that was one of the  
10 projects that he wanted to see happen regardless of what National Treasury had said about the viability of that project because National Treasury had said this is not viable. But it is one of the projects they wanted to happen because all you needed is to commit capital to it. And those who are beneficiaries of it will get what they have to get out of it.

**ADV SONI SC:** What happened to that project the Moloto Rail Project?

**MR MOLEFE:** Well I – when I left office we had said to the Minister – the earlier Minister, Minister Dipuo Peters that  
20 this project is not doable based on the study that was done by National Treasury. I do not know what is the status of that project now.

**ADV SONI SC:** But to your knowledge it has not been implemented?

**MR MOLEFE:** It has not been implemented. There was

towards the last days of my office some pronouncements that there will be the Chinese investors in that project with – but I have got no further information on that.

**ADV SONI SC:** Mr Chairperson you will forgive me that I am going to go to a parallel concern that you have raised with the witness. The Chairperson has raised...

**CHAIRPERSON:** I see we are at one but I suspect we about to finish.

**ADV SONI SC:** Yes.

10 **CHAIRPERSON:** Is my assessment correct?

**ADV SONI SC:** Yes.

**CHAIRPERSON:** Because then we can finish and allow Mr Molefe to – to go. Yes.

**ADV SONI SC:** The Chairperson has raised with you the following concern that Law Enforcement Authorities did not do their job. Notwithstanding the fact that all these complains had been made to them and nobody followed up upon it. But there was two – there were two civil cases that PRASA had been involved in. The one is the Swifambo  
20 matter in which you were successful to the tune of R3.5 billion. Do you know whether any attempts were made to secure the money that PRASA had paid those contractors for a contract that was said to have been cancelled?

**MR MOLEFE:** Chairperson I – I do not know of any effort.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** To secure that money – to get that money back.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** And the application was that the – the contract was unlawful, it needed to be set aside and the court did so. The second part of it was that the locomotives will be returned to the – our argument should be returned to the supplier and the supplier should pay back the money. At the time R2.6 billion had already been paid and only 13  
10 locomotives had been delivered when we said we do not want anymore.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** To be delivered. In the interim if Counsel allows me.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** Vossloh was bought by a company – a Swiss company called Stadler Rail.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** And when I was already now out of the Board  
20 of PRASA I got communication that said Stadler Rail want to talk, they want to – to make good.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** Of the wrongs of Vossloh.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** That they were willing to consider paying



back the money but they also would not be willing to – they can leave those locomotives which are already in the country if there was any adjustment should be made for them to be usable, they were willing to do so.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** But suddenly the person who approached me said no, no they have now advised that they do not want to go that route. Obviously, I would still have referred ...[intervenes]

10 **CHAIRPERSON:** H'm.

**MR MOLEFE:** ... and because I would not have been able to make any decision on the matter.

**CHAIRPERSON:** H'm. H'm.

**MR MOLEFE:** H'm. So... so... that... that money, I think uh, it is... it is one of the issues that uh, perhaps the Commission...[intervenes]

**CHAIRPERSON:** H'm.

**MR MOLEFE:** ...should ask...[intervenes]

**CHAIRPERSON:** H'm.

20 **MR MOLEFE:** ...the executive authority...[intervenes]

**CHAIRPERSON:** Yes.

**MR MOLEFE:** ...and the board to explain...[intervenes]

**CHAIRPERSON:** Yes.

**MR MOLEFE:** ..what is being done about it.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** I know that Minister Maswanganyi when he came here...[intervenes]

**CHAIRPERSON:** H'm.

**MR MOLEFE:** ...uh, one of the things that he was saying that “no, those locomotives uh, are okay. They... they should be used”. And that was against the backdrop of the judgment...[intervenes]

**CHAIRPERSON:** H'm.

**MR MOLEFE:** ...[laugh] that had that uh...[intervenes]

10 **CHAIRPERSON:** H'm.

**MR MOLEFE:** ...that contract um... uh-uh, so... so uh, um, that... that is what we have to deal with.

**CHAIRPERSON:** H'm. So to the best of your knowledge and uh, I accept that you say that your knowledge might not be up to date but to the best of your knowledge, those locomotives are probably sitting somewhere uh, that were delivered. Sitting somewhere ...[intervenes]

**MR MOLEFE:** Uh, the ones that had not been delivered yet.

20 **CHAIRPERSON:** And then those that had not been delivered...[intervenes]

**MR MOLEFE:** Ja.

**CHAIRPERSON:** ...uh, remained undelivered because nobody has um, nobody has done anything about these matters after your board had left?

**MR MOLEFE:** Those that had not been delivered are

probably still in uh, uh, Barcelona.

**CHAIRPERSON:** H'm.

**MR MOLEFE:** Uh, and those who were delivered  
...[intervenes]

**CHAIRPERSON:** H'm.

**MR MOLEFE:** ...as I understand it, with the uh, there was  
an application for the liquidation of Swifambo Rail.

**CHAIRPERSON:** H'm.

**MR MOLEFE:** ...and they were put to auction. I do not know  
10 how many of them...[intervenes]

**CHAIRPERSON:** H'm.

**MR MOLEFE:** ...were sold in that auction.

**CHAIRPERSON:** H'm. H'm. And uh... and... and the  
money, I think you said R 2,6 million that had already been  
paid?

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

**CHAIRPERSON:** And that was already paid to Swifambo or  
to...?

**MR MOLEFE:** That... that... that is so, Chairperson.

20 **CHAIRPERSON:** Yes.

**MR MOLEFE:** Although, Swifambo was conduit.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** He said, "get the money...[intervenes]

**CHAIRPERSON:** Ja.

**MR MOLEFE:** and...[intervenes]

**CHAIRPERSON:** pass it on.

**MR MOLEFE:** and he passed it on.

**CHAIRPERSON:** Ja.

**MR MOLEFE:** Most of it to ...[indistinct 00:02:34]

**CHAIRPERSON:** Yes. So that... that is the money that uh, you are saying you... you do not think anybody has done anything to get... to get it back despite the judgments declaring that the contract was uh, invalid?

**MR MOLEFE:** That is correct.

10 **CHAIRPERSON:** Yes.

**MR MOLEFE:** And I recall that. [laughs] I recall sending a WhatsApp message to the interim chairperson of the board uh, the last uh-uh board.

**CHAIRPERSON:** Ms Kweyama.

**MR MOLEFE:** Uh...

**CHAIRPERSON:** Ms Kweyama.

**MR MOLEFE:** Ms Kweyama. Um, and... and it was in the context of an article I had read in the... in the papers that uh, a previous board would be called to parliament to  
20 account and I said but I had asked ...[intervenes]

**CHAIRPERSON:** H'm.

**MR MOLEFE:** ...for this public hearing...[intervenes]

**CHAIRPERSON:** H'm.

**MR MOLEFE:** ...and I would welcome that.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** Um, and... and then I said, “well, you know...[intervenes]

**CHAIRPERSON:** [Indistinct 00:03:39]

**MR MOLEFE:** ...your next step now is to get the... send these locomotives back and get your money.

**CHAIRPERSON:** H’m. Yes.

**MR MOLEFE:** ...in your country”.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** H’m. But at the end of that there was nothing  
10 more uh, that was done.

**CHAIRPERSON:** Ja. I mean, certainly, there should be no scarcity of state functionaries and bodies who are interested in that money being recovered uh, from the president through the minister to the relevant DG’s through the board um, to say the courts have made a declaration uh, steps should be taken to recover that money.

Uh, obviously, those who have got the money might resist but the fact that they... they will resist is no ground for... for... for people to do nothing, to try and get... get it  
20 back. H’m.

**ADV SONI SC:** May it please, Chair. The second matter, again parallel to what the Chairperson raised about, the criminal issues is, in the Siyangena matter, the amount involved, if I understand it now, with interest and so on, is in the region of R 6 billion. Would that be about correct from

your understanding?

**MR MOLEFE:** The... that is the estimated uh, amount Chair.

**ADV SONI SC:** Now in regard to that, that issue, you first took to court in 2016. There were technical points taken and you... then, after you left, the sitting review was filed and that is now to be heard in August. Do you know why it is taken so long to get that matter in court and debated before a judge?

**MR MOLEFE:** As I recall it again it was uh, a... a problem.

10 Uh, when an interim board was appointed before the interim board of Ms Kweyama. Uh, that interim board wanted to enter into negotiations to pay money to Siyangena and not to proceed uh, with the... with the uh, civil action.

Uh, and perhaps that then links uh, very well with the evidence of mister... Mr Holele, where he says that uh-uh, Mr Moodley came to demand payment uh, on the basis of what they said, the guarantees that a... that a PRASA had... had given to uh, Siyangena and we said also ballooned by that time to R1,5 billion.

20 **ADV SONI SC:** So what we have is probably raised yesterday. You do not have a permanent CEO. You only have acting CEO's. You do not have a permanent board. You only have acting boards. And for five years, effectively, nothing has been done to secure or PRASA what is it due. To have criminals behind bars and to get the money back on

behalf of taxpayers.

**MR MOLEFE**: Chairperson, in respect of the Group Chief Executive, yes. For five years approximately there was no Group Chief Executive but in the intervening period there had been two uh, interim boards.

And there is also now um, the administrator who is like a substitute board. So at that level of accounting authority, there were uh-uh, people who... who should have acted.

10 **CHAIRPERSON**: But you know, two comma something billion. One comma... you are talking lots of money here, taxpayer's money.

Why despite all of this being well-known to the Portfolio Committee of Transports to members of parliament to uh, uh, the executive, whether the executive at that time was the executive now, why is there no clear action that is known in the public domain is being pursued to get this money back because this is taxpayers money?

20 So that... that is part of the worry. Why... why do you have five years without an institution having a CEO? Why interim boards?

I mean these things... these questions just make you think that there may be quite something big behind this whole thing.

This... how... how can... how can there be no visible

action to recover R 2,6 billion lost by an organ of state from different functionaries and uh, state organs?

And yet we know the people on the ground have lots of needs that they need to be... that need money. Why does it... what... why... why have this been just left hanging?

Nobody seems to say, “hang on. We remember what Mr Molefe’s board was doing. He is no longer there. But what has happened to that money?”

**MR MOLEFE:** Yes.

10 **CHAIRPERSON:** “Who is following this up?” Why is it like... like everyone just wants that to be forgotten? So the... the Commission must look into that. Who has been doing what and why have they not been doing... who has not been doing what they are supposed to do?

Because, I mean, with the Covid-19 problem, I mean, a lot of money has been diverted from what projects that it was going to... to... to do.

Now all of that money would have been needed but without... even without Covid-19 uh, you know, if... if... if any  
20 organ state loses money illegally that should not have lost there. There should be a clear determination to... to recover it.

**MR MOLEFE:** Yes. H’m.

**CHAIRPERSON:** Okay. I guess Mr Molefe [laughs] you may be looking at me and maybe feeling that I am... maybe



feeling some frustration that you know about. [laughs]

**MR MOLEFE**: I have permanently. [laughs]

**CHAIRPERSON**: Yes. [laughs]

**MR MOLEFE**: I can... I can sense the Chairperson's frustration.

**CHAIRPERSON**: Ja.

**MR MOLEFE**: But there is also something very interesting. I must say to counsel that...[intervenes]

**CHAIRPERSON**: H'm.

10 **MR MOLEFE**: ...we had said we would connect the dots. I think Chairperson has connected a lot of dots.

**CHAIRPERSON**: H'm.

**MR MOLEFE**: ...for us.

**CHAIRPERSON**: H'm. H'm.

**MR MOLEFE**: So we are not going to have to spend a lot of time on that. [laughs]

**CHAIRPERSON**: [laughs] Okay. [laughs] Well, I am happy if that is... ja, but if there is anything left we can... we can finalise it.

20 **ADV SONI SC**: Yes. But why... you... you yesterday said you would like to be given that opportunity and the Chairperson has laid the stage for you to... to connect the dots as you see it.

We may see it differently and the Chairperson differently from me but it would be helpful to have your

views, you being at the core phase of one of the biggest battles that state-owned entities have had with the executive.

**CHAIRPERSON:** H'm.

**ADV SONI SC:** Would you... would you then ...[indistinct]

**MR MOLEFE:** [Indistinct]

**CHAIRPERSON:** H'm. H'm. H'm. H'm.

**MR MOLEFE:** Chairperson, uh, thank you very much. Uh, the... we have traversed in a... in our evidence.

10 **CHAIRPERSON:** H'm. H'm.

**MR MOLEFE:** Uh, a number of uh, key uh, areas of... of what happened. Uh, we... we spoke about, in the course of evidence uh, a report called PRASA uh, in turmoil but uh, which is, I think uh, SS6A uh, PM16, I think we said. That... that is what it is going to be.

And in the evidence that we... we have dealt with, we have seen a lot of correlation of what... what was happening in a number of institutions or what ministers were doing uh, or what Portfolio Committee has omitted to do or failed to  
20 date. I speak of parliament and so on.

And all of it, when one looks at it and... and of course we... we go over some exhibits in the... in the... in the files here, linked to for example uh, the evidence of Mr Mamabolo. I will not go specifically to that exhibit.

When one looks at what has happened up until now,

it all starts with the board of directors on November 20...  
November uh, ...[indistinct 00:15:20] 2014, né? 2014.

Demanding assurance that the R 2,4 billion that the Group Executive, Chief Executive through the FSAIP was recommending for approval by the board uh, ostensible for the modernisation uh, of Braamfontein depot that would have included some construction work uh, the...

That... that would also have included the patches of rails and turnouts. Um, and we said, “you say this is urgent.  
10 We agree.” But as a board we cannot just agree to R 2,4 billion being spend without being assured that the process followed was proper. That there was properly uh, conducted on... on this tender.

And being the Chairperson, of course, we have been lied to. The result was that we had stop that uh-uh, procurement for ...[indistinct 00:16:43] for that time because it had to be done properly.

That had not been done properly and the reports were there. So that is that side. The second issue is, when  
20 we learnt about the interim report of the public protector and we insist that the Group CEO who has had that report and which raises a number of questions that PRASA had not responded to adequately, be made available to the new board.

There are two key events happened and uh,

immediately we received... I... the board received the letter of Mr Montana saying uh, he will not seek extension of his contract.

Of course, he had verbally told me when I had just been appointed chairperson of the board that uh, you know, he... he... he had been there for too long. He had previously wanted to leave but uh, the... the board at the time uh, prevailed on him to stay.

So that is that. Now, we as a board accept mister...  
10 the fact that Mr Montana will not seek a new contract and that uh, we will not give that contract but also, of course, now we are beginning to look at the investigations that have to be done, arising out of uh, um, the... the report of the... or the general and of course uh, what uh, what the public protector later on said.

The... the report of mister... the... the... the annexures to the affidavit of uh, Mr Mamabolo uh-uh, indicates that from that time onwards, Mr Montana became very busy to meet with a range of organisations uh-uh, one  
20 of them being SATAWU, a union that was benefiting out of PRASA contract through uh, Black Star and uh, it's Bashumi Trust.

And he was bringing in groupings like your MKMVA which... which is supposed to be the former military veterans uh, of the... the ANC. Uh, the student organisation called

COSAS, the Congress of South African Students, an organisation which I mentioned earlier on in my evidence, called the South African Commuter Organisation led by a man, Stephen Sangweni.

They attempted also to draw the South African National Taxi Corporation (SANTACO) into this company. The campaign is to say, “bring Montana back. We want him back.”

And we must demonstrate that there are many  
10 institutions that say that “this is our man”. Of course, I... I... which is uh, document I have not tabled but if the counsel might want to do so. It is a small thing. So again a... a whistle-blower’s report that shows how directly Mr Montana himself was involved in this thing.

And how in one meeting when he was confronted by SATAWU in Cape Town, he says... and when they say to him “but why do you want us to support your campaign because you told the board you want to go? The board accepted your wish”.

20 And he said, “ja, I blundered. I did that but I thought that this board would... the chairman and the board would persuade me... or try to persuade me to stay on.”

The Chairperson will recall that this is similar to what I have said in my earlier evidence of how his contract earlier on had been extended because he said to the board he was

leaving.

The board uh, said, “no, but why are you leaving?” and then he... he went to... he came with the bogus uh, a fake uh, offer of a job from a company called Gibson Fatal Fertilisers.

Uh, and the board had to then match and actually did better... to better what he said was the offer and that was not true. So it is clear that he thought he would do a similar thing uh, to this board.

10            Now, I am... I am... I am dealing with that. And then, of course, you being to realise that your Portfolio Committee is beginning to talk his language uh, which... which is in this thing. Um, so...[intervenes]

**ADV SONI SC:**        Would the statement being the ...[intervenes]

**MR MOLEFE:**        The PRASA in Turmoil.        There uh...[intervenes]

**CHAIRPERSON:** Yes, I remember. Mister, sorry. Not... do not speak too far away from the mic otherwise the transcripts  
20 to the record what is happening.

**MR MOLEFE:** Ja, in turmoil. But maybe I should try quickly to bring these matters together. To say that there is a common thread that connects uh, the... the termination of uh, the contract of Mr Montana, the acceptance of his wish by the board uh-uh, his so-called PRASA in Turmoil.

The series of media attacks uh, on... on... on... on the Board of PRASA, all of which are a substance uh, is informed by... by uh, this document called PRASA in Turmoil.

The... the refusal by the Minister of Transport to allow the Board of PRASA to appoint a Group CEO, ignoring the process of interviews that had happened and later again that company is not ready for that.

And then, enforcing on the Board of PRASA an appointee who is from her department to be the Group, 10 acting Group CEO. And one of the issues that the board disagreed from the ...[indistinct 00:24:38] with the minister on, was when she wrote to... to the board to say that uh, she has been told that the board is interfering in operations.

Now that again is linked to the document of PRASA in Turmoil. The new person that the minister appoints takes queue from these documents and begins to complain that uh, the board is interfering.

The minister does not stop there. She goes on to say, "I have directed the acting Group CEO to review the 20 practices... the performance of the board on governments in accordance with the best practices to determine whether they comply with the best practices".

Basically saying, the board is under administration of an appointee of the minister. So the board is being emasculated.

Then you have a series of meetings of the Portfolio Committee. Their attack there also is finding its genesis on this document, PRASA in Turmoil.

This document, in one page where Mr Montana complains, refers to the fact that the board meets too often. It should not be meeting more than four times a year.

So those members of the PCOT latched on the argument of Mr Montana which shows that we are dealing with the coordinated uh, campaign.

10 Then you have... following this PRASA in Turmoil, a meeting convened by the president, whose express purpose is to say, “bring him back”.

Uh, and it is saying because he says in PRASA in Turmoil, “I am the best... the best thing ever that this country has had in the rail business and I understand also the... your political uh, economic demands.

Uh, your political situation and the regional challenges of regional integration. I am the only one who can implement the decisions of the African Union. Nobody  
20 else here”.

And he says that this board knows nothing. The board led by Molefe knows nothing. All it knows is uh-uh, to interfere.

And they say that we are causing divisions amongst management and so on. It is again in this document. Uh,



and in this document, they say that there is a state of paralysis in the company because the board is fighting with management which is not true.

So the president, Mr Jeff Radebe, called us to that meeting. They allow him to present a long speech informed by PRASA in Turmoil. And it is all about bad the chairman of the board and the board is.

Of course, to some extent, also saying how bad the Minister uh, of Transport was. So it goes on like that. Then  
10 you... you have the minister who later on says to us “stop your investigations”.

And she says so. Uh, again there, I have given... there is a document here that shows uh-uh, one of the regular briefings to the minister uh, on what we were uncovering in our investigations and steps that we have taken.

My letter, also, in reply to the minister when he said, “close down the investigations” detailed the importance of these investigations and what we had done.

20 And it also says to her “by the way, do not plea ignorance”. Not in so many words, of course, but you know that we have been giving you reports and it sets out meetings uh-uh that had taken place one at the international airport. One at the Werksmans’ offices. The other one at Rivonia Offices.

And these reports were revealing some of the things that Chairperson was talking about and connecting the dots, saying the behaviour here appears to suggest that there are some people in powerful places who are benefiting and would not want action to be taken. So I part that, the minister having failed to do that, look for other ways of dealing with us. But before that, we make an application to law enforcement agencies and the NPA, which we referred to. Nothing happens. Instead, they get  
10 emasculated, good people are removed who would have been able to ensure that action is taken, they are removed. Those who are brought in, who are cronies, do nothing.

There is systematic also weakening of the NPA, of course, following the appointment of Mr Shaun Abrahams. So all of these actions seemed to point to protect the protection of certain individual of a group – certain individuals or a group of people or a section of a people.

As if that is not enough, the minister now appearing to be frustrated, that none of their tricks in the book are  
20 working, summarily dismisses the board of directors and, having done so, does nothing about the work that that board had done.

But it does not end there. We have the governing party, we have the government, we have had senior people who are officials, all of these things were reported to them.

So therefore, when you connect all of these dots they suggest that there might well be a common purpose served by this corruption that is happening and none of these people with the authority to make decisions wanted to upset the applecart, they wanted to preserve that continuing as it was continuing regardless of how much misery was caused to the poor people of this country, the poor commuters of this country, by billions which have been siphoned off which should have served our people.

10           But that situation also suggests that if there are good people out there, they are overwhelmed by the bad apples so much that the bad apples have more power than them and therefore they are unable to assert their authority over the bad apples.

          But in a broader context, what does this say to us? It says to us the democracy that so many paid so dearly for is being undermined, is being incapacitated but it also says that you are actually, by failing to deal with these sorts of things, creating a situation where you might end up with an  
20   autocratic rule in this country where the constitution of the country, the institution of public representation of our people become meaningless to the poor, that they no longer serve as the voice of those who elected people who serve in those institutions.

          We do not have to go too far but to look just here,

the United States and see what is happening there and I mentioned this yesterday, that there is a danger in allowing individuals to have unassailable powers in a democratic order. In fact, in the debate of the impeachment, many speakers, speaker after speaker said when we adopted the constitution of the United States of America we were not adopting a constitution that would institute a monarchy, so we do not want a king, we want a commander-in-chief who is the president and representing our people.

10           If you look at what is happening in Brazil now, you have a president who does not care how much Covid-19 is killing our people.

          So, Chairperson, in summary, therefore, what the evidence that we have given here points to is that state capture seems to have successfully captured key people in the governing party and the governing party, I having been captured, allowing further capturing of organs of state through which it has to execute its responsibilities as a government of the day or as the state. So it, itself, has  
20   been paralysed and it also says that.

          I am not going to make many people happy but it also says that the governing party and various political parties need to take a lesson from relief of this corruption fight that unless you deal frontally with corruption in political institutions, particularly those who have the

authority to act on behalf of the poor people, using parliament, using other organs of state as instruments to advance the interest of the poor people and to protect their wishes expressed in term after term election in parliament. Unless you deal with that question within the parties themselves, this corruption is not going to end. It is not going to end.

So – and I say I am not making myself – I am not covering myself in glory in saying what I am saying, but it  
10 has to be said because we have tried to allow things to happen, expecting people would act in a manner that is ethical, that reflects courage by those put in office to lead that places the interests of the people and the country first rather than sectarian interests of little groups in the country. The interest of the constitution first, we will try to get that to be done. It is not happening.

So we need to have a crescendo of voices now that say act and act now, you are wrong, do not sing us a ritual about how you are opposed to corruption. Demonstrate  
20 with your action, demonstrate in how you hold organs of state, including boards and management of the SOEs, accountable, that you mean business, as professed in your anti-corruption statement.

I thought I should make that point and to say all of what we have seen starts with the removal of Mr Montana.

The question that then would arise is was he placed there for a purpose rather than that of running this all important public good delivering organisation and to serve the poor people of our country, to ensure that we achieve the objectives set out in the mandate of the legal succession to South African Transport Services Act.

**CHAIRPERSON:** Well, Mr Molefe, you might not have covered yourself in glory by saying certain things in the eyes of certain people but I think certainly a lot of what  
10 you have said needs to be said and in the eyes of those who put the interests of the country first and in the eyes of those who are really committed to serving the public, serving the poor. Some of the things you have said should make them very happy.

Part of what you have said raises issues that I continue to be concerned with as I look at what this Commission is doing and what it should be doing and what areas it should be focusing on and I know that for quite some time I have been placing a lot of emphasis on the  
20 issue of the role of parliament in terms of oversight but it may be that part of the problem is that if a senior official within the governing party, for example, is aware that another senior member of the governing party or a leader, one of the leaders is involved in wrongdoing, he or she will be afraid to do what is right and say but you cannot do this

and the organisation must take action when you, as a member of the organisation, do this because you are bringing the name of this organisation into disrepute.

He or she may be afraid to take that stand because maybe she needs or he needs that leader in order to progress in her political career or he or she needs the supporters of that leader to vote for him or her next time she wants or he wants to ascend to a higher position or next time he or she wants to have his or her name put in  
10 the list of those to go to parliament or to the legislature.

And if I am in a parliament and I am member of the governing party and I see that somebody within the governing party, who is in government, who is in the executive, whether the person is President or whether the person is a minister and I know my obligation to hold them to account and I want – I am thinking about doing my job properly, I get scared because that person, if he is President, he is the person that I rely on to make me a minister or to make me a deputy minister, or he and his  
20 supporters are the people that I rely on to be made Chairperson of a committee in parliament. If I stand up and do my job properly in parliament in keeping with the oath of office that I have taken when I became a member of parliament, which effectively says the country first, the people first, I decide not to do my job properly because I

cannot be minister, I cannot be deputy minister, I cannot be chairperson of the portfolio committee if I displease these people if I ask them difficult questions, they are going to ask me, are you a member of my party or are you a member of the opposition?

And if I am a minister and I see another colleague who is a minister, that he or she is not doing the right things, here is a board that is supposed to have enough members to have a quorum, he or she is not appointing  
10 those members, the board has to go to court in order to get a job done that is supposed to be done by an organ of state, I do not say anything even if I am aware because I read about these things in the newspapers because I know that if I raise those things I am going to be unpopular within government, within the executive or within the governing party and I will be limiting my career or I will be without a job if I get fired either for this or for something else because I am asking too many questions.

I am supposed to maybe mind my own business,  
20 look at my own department. I am not supposed to ask these questions.

And if I am the President and I see that a certain department is not run properly and that minister is not doing a proper job maybe I will not fire them because they have a constituency that I am going to need when next



time I want to be re-elected as President.

If I take action against that minister who has got that kind of support, he or she is going to go out and mobilise support so that when next I want to be elected or re-elected as President, I will not succeed, other people or somebody else will be put up.

It may well be that unless these issues are resolved, whatever we do as a country in trying to reduce the levels of corruption significantly, it is not going to be effective. It may well be that we need a President who is going to be in a position to stand up in parliament and say when members of parliament coming from the governing party do not ask me difficult questions to hold me accountable, I know they are not doing their job and they should not be here.

When you do not ask my ministers difficult questions, coming from the same party, I know you are not doing your job but your party requires you to do this job, and it is not a career-limiting thing for you to ask difficult questions to ministers coming from your own party, to your own President in the interests of the country and in order to make sure that these high levels of corruption are brought down.

It may be that the country needs somebody who can stand up and say let us start with me. Start with me. The

more questions you ask me, the more I realise you are a good member of the governing party, you are a good member of parliament.

Well, I am sure some will say I am just dreaming, such a thing can never happen but it seems that we need something quite drastic, maybe we need somebody who is not going to be looking at even re-election to start changing things, we need somebody who is just going to say let us do the right thing, everybody. Let us do the right  
10 thing for the sake of the country. The country comes first. The people come first. Because when there are elections, I am sure every political party will tell the voters the people come first but we need to see this in action, we need to see in action, we do not need speeches of how people say they are committed to fighting corruption.

When it comes to this Commission, we also need actions to show that people are supporting the Commission by coming to the Commission to give evidence.

You have come to the Commission, you have come  
20 here many times and you have given evidence. I have no doubt that there are many other senior members of the governing party who know a lot that should come before the Commission who have not come before the Commission.

I know there are others who have come before the

Commission and we are grateful for what they have done but there are many others, I have no doubt, that have not come before the Commission. And because they do not come to the Commission, give evidence, to give information to the Commission, they are failing to contribute to a solution to some of these problems of state capture and corruption in our country.

But I thank you for the contribution that you are making. There will be people who will come and they will  
10 give evidence and some of them maybe will say that what you have said is not true and whatever and I have made no findings about whether what you say is true or not, I will make findings later on but for the fact that you came here and you said things that you believe need to be said, you have shared with the Commission your experiences. I am grateful that you had the courage to do that and I just wish there were more people who would come and help the Commission in that way. Thank you very much, Mr Molefe. Thank you.

20 **MR SONI SC:** Mr Molefe, after that rousing address by the Chairperson, on behalf of the PRASA stream, I just want to say to you I know how you must have agonised over whether you should make the revelations you did. Can I just make this observation?

True patriotism is speaking truth to power in the

most difficult circumstances and we hope that your coming here is going to be a clarion call for other patriots who have done so much for our country because unless patriots like you do come, we are not going to find the solution that the Chairperson has been asked to forge so that we can move the country forward.

Mr Chairperson, may I say you are not the only dreamer as John Lennon said, we all are.

**CHAIRPERSON:** No, thank you very much, we can  
10 release Mr Molefe now. Yes, we are at two minutes to two, I think we will take a lunch break that will go up to three.

**MR SONI SC:** Yes.

**CHAIRPERSON:** Ja. But once again, thank you very much, Mr Molefe, we really appreciate your having come here and assisted the Commission, I really appreciate it very much. Thank you very much.

**MR MOLEFE:** It is my pleasure, Chairperson.

**CHAIRPERSON:** Thank you. You are released. We will take the lunch break and resume at three o'clock.

20 **MR SONI SC:** As you please, Chairperson.

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**ADV SONI SC:** We finished with your third affidavit which appears at Bundle E as EXHIBIT SS7C, at page 386. You

don't need to go to it, I am just pointing it out to you for the purposes of the record.

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

**ADV SONI SC:** Now during your ...[intervenes]

**CHAIRPERSON:** I am sorry Mr Soni I may have missed some of what you have said, I guess you need to remind us which Bundle we are using, which Exhibit and then what page you want us to look at or did I...[intervenes].

**ADV SONI SC:** It's just for the record...[intervenes].

10 **CHAIRPERSON:** Oh okay.

**ADV SONI SC:** So, it's Bundle E1, EXHIBIT SS7C, page 386, that's the last document, I'm going to go back to 7B in a moment Chairperson.

**CHAIRPERSON:** Okay, you go ahead I'll wait for when you go to a particular page and then – ja.

**ADV SONI SC:** You might recall that in that affidavit you dealt with what was contained in paragraph 21 in your founding affidavit in the review application in the Siyangena matter.

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

**CHAIRPERSON:** H'm, maybe what you can do Mr Soni, just for, also the benefit of viewers and listeners and so on, just to re-cap what evidence and what issues she was dealing with when we stopped last time and then announce this is what she will cover today and then you start asking

her.

**ADV SONI SC:** Yes sure.

**CHAIRPERSON:** Ja.

**ADV SONI SC:** So there are two basic matters I'm going to raise with you today Ms Ngoye, the first is relating to Siyangena's response to the allegations at paragraph 21 which dealt with the property dealings between Mr Montana and Mr van der Walt who was Siyangena's lawyer, you recall those four properties that you dealt with?

10 **MS NGOYE:** I do Chair.

**ADV SONI SC:** I know you didn't have anything to do with the opposing affidavit but because it's an opposing affidavit to your founding affidavit I just want to place it on record through you. The second issue I'm going to raise with you is what you raise in paragraphs 53 to 58 – sorry to 62 of your affidavit of February 2020, that was your second affidavit.

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

20 **ADV SONI SC:** And that's where you deal with the attempts by the Director General to settle certain matters which has become an issue as – well you were not here but Mr Molefe raised that issue as well. So, if I could ask you, then, Ms Ngoye to go to your review application now and those relevant pages are at Bundle B2 EXHIBIT SS3.

**MS NGOYE:** Chairperson, I've got here Bundle B SS3

Court applications continued.

**ADV SONI SC:** That's the one.

**MS NGOYE:** Is this the one?

**ADV SONI SC:** Yes.

**MS NGOYE:** Okay.

**ADV SONI SC:** If you just went to page 401, I just want to alert you to the document that we are talking about – sorry it's page 400 rather than 401, have you got it?

**MS NGOYE:** I've got it Chair.

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

**CHAIRPERSON:** Just remember to, once again, just remember to once again mention or identify what the document is and in regard to what matter with reference to the case number and the parties.

**ADV SONI SC:** Yes, so this is case number 14332 of 2018 in the Gauteng Division of the High Court and it's a matter between PRASA and Siyangena Technologies, do you remember this matter?

**MS NGOYE:** I do Chair.

20 **ADV SONI SC:** Now just for orientation sake again, you will recall – sorry what is this application about?

**MS NGOYE:** This application, Chair, has been brought by PRASA to set aside the contract that was concluded between PRASA asking the Court to review and set aside the contract that has been concluded by PRASA at the time

that, you know, the whole deals were entered into, it involved a number of contracts, sub-contracts relating to the tenders so to speak that PRASA had concluded with the company Siyangena. So, following the investigations that were conducted by the Board it was felt that it was necessary to review the contract and set it aside.

**ADV SONI SC:** Now, the – just again, for orientation, this was the second case that PRASA had brought. There was a review application in 2016 and you did deal with it, but  
10 just again, for completeness sake, what happened to that application?

**MS NGOYE:** Chairperson the first application, the review application, in fact, was deposed to by Dr Popo Molefe as he then was the Chairperson of the Board and during that period the issue that we needed to deal with or that we were found wanting on as PRASA was the issue of the – I think it's the 180 days if I'm correct within which to bring your own review as a state owned enterprise and because we were way out of time in relation to bringing this matter  
20 to Court, the Court found that there was no basis for us because we were out of time so that's why we lost that review in relation to that 180 days requirement that was there.

**ADV SONI SC:** And that decision was made without considering the merits of the case?



**MS NGOYE:** That's correct Chair, we didn't go into the merits of the case.

**ADV SONI SC:** As a result of a decision of the Constitutional Court in the Gijima matter the technical point fell away and you were now entitled to persuade the Court to hear your review application.

**MS NGOYE:** That's correct Chair, the Gijima case, obviously you know, decided on the basis that legality was important more than the 180 day timeframe that was  
10 required. So, it's on that basis, we believed as an organisation that we needed to take the matter up again and bring it to Court. That's why we have the second review which I have then deposed to because at the time, Dr Molefe had already left PRASA.

**ADV SONI SC:** And just again for completion sake this is the matter that's going to be heard, I think, on the 19<sup>th</sup> of August this year, is that correct?

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

**ADV SONI SC:** Now, in your...[intervenes].

20 **CHAIRPERSON:** You can keep your mic on Ms Ngoye.

**MS NGOYE:** Okay, thank you Chair.

**ADV SONI SC:** In your founding affidavit you raise a number of concerns, we've been through, about the propriety of the process and the lawfulness of the process but in paragraph 29 in particular – paragraph 21 you dealt

with the question of property dealings between Mr Montana and Mr van der Walt, you recall that?

**MS NGOYE:** I do recall Chair.

**ADV SONI SC:** Now, in the opposing affidavit as it is called it starts at page 400, Siyangena opposes the whole application, the whole review application, is that correct?

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

**ADV SONI SC:** Now who deposes to this affidavit?

**MS NGOYE:** The deponent, Chair, is Thomas Andreas  
10 Dubek.

**ADV SONI SC:** And in his capacity as the CFO.

**MS NGOYE:** He's the CFO of the first respondent Siyangena Technologies.

**ADV SONI SC:** Can I then ask you to look at page 516 of that – well of the papers but it's a continuation of that affidavit. Now, in this part of the affidavit Mr Dubek deals, generally, with the allegation that the property dealings between Mr Montana and Mr van der Walt, in some way taints the award of the contract to Siyangena.

20 **MS NGOYE:** I know that Chair.

**ADV SONI SC:** And I just want to place on record what their position is in regard to the broad allegations you make. Can I ask you to look at paragraph 176 in regard to how the property dealings started, would you read that into the record?

**MS NGOYE:** At paragraph 176 of the affidavit, Chair, it reads,

“During Siyangena’s involvement in Isams Phase one, Montana and Ferreira had a discussion in regard to Ferreira’s other business interests which *inter alia* related to investments in immovable property and construction”.

**ADV SONI SC:** Who is Mr – well we know who Mr Montana is, that’s the former CEO of PRASA, group CEO of PRASA, is that correct?  
10

**MS NGOYE:** That’s correct Chair.

**ADV SONI SC:** And Mr Ferreira?

**MS NGOYE:** Mr Ferreira was the attorney involved in the transaction.

**ADV SONI SC:** No, Mr van der Walt was the...[intervenes].

**MS NGOYE:** Oh, sorry Mr van der Walt was the attorney, I can’t remember who Mr Ferreira – just remind me please counsel.

**ADV SONI SC:** Wasn’t Mr Ferreira on the Board or a representative of Siyangena and was he not the person who wrote a letter in June 2014 before the R2.5billion contract was concluded?  
20

**MS NGOYE:** That’s correct Chair, I recall, there’s too many of these people Chair, you will pardon me.

**ADV SONI SC:** Okay so this is now Mr Ferreira from

Siyangena who Mr Dubek says had a meeting with Mr Montana?

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

**ADV SONI SC:** Okay and at paragraph 177 he goes on – Mr Dubek goes on with the interaction between Mr Ferreira and Mr Montana.

**MS NGOYE:** Yes, yes Chair.

**ADV SONI SC:** What does he say?

**MS NGOYE:** Okay in response,

10           “Mr Montana noted that, similarly he was also involved in such industries, Montana enquired as to whom Ferreira used to assist him in this regard as he was always on the lookout to improve his team and in particular, was looking for a good lawyer. Ferreira then referred Mr Montana to van der Walt whom was, at the time, the attorney that attended to the transfers of the immovable property acquisitions within Ferreira's other interests and whom, from time to time, recommended and was a partner in  
20           some ventures which came across his table in his day-to-day activities”.

**ADV SONI SC:** Now, Mr van der Walt is described as being Mr Ferreira's lawyer in respect of property transactions.

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

**ADV SONI SC:** What is your knowledge of Mr van der Walt's involvement?

**MS NGOYE:** My knowledge, also, Chairperson was that Mr van der Walt was also Siyangena's attorneys.

**CHAIRPERSON:** Well I know that this is not your affidavit that you are reading from but based on your knowledge of the papers involved in this matter, namely PRASA's application to Court, are you able to put a time when the deponent might be talking – when the time was when he's  
10 talking about Montana and Ferreira having this discussion, which year and so on, is that something you, based on your knowledge of the papers are you able to say because it doesn't say here when it was.

**MS NGOYE:** It doesn't say Chair.

**CHAIRPERSON:** You are not able to say?

**MS NGOYE:** I'm not Chair, I think I suppose one would surmise that it was during the times that Mr Montana started with his property transactions but I'll have to be reminded of the years.

20 **CHAIRPERSON:** H'm it may be that when one reads your founding affidavit and reads the paragraph to which this deponent is referring to, one might be able to say it was earlier than a certain event or that kind of – so it might be important to have an idea when this discussion happened, okay.

**ADV SONI SC:** Yes, he says though, Chairperson, if you look at page – paragraph 176 it was during the IS and AS phase one.

**CHAIRPERSON:** Yes, so when was that?

**MS NGOYE:** Phase one would have been – remember we had the two – the confederation cup which was 2009, phase one would have started just, you know, 2010/2011 round about that time Chairperson.

**CHAIRPERSON:** Oh okay.

10 **MS NGOYE:** That would have been the time when the phase one of the tender for the Siyangena process started.

**CHAIRPERSON:** Okay.

**ADV SONI SC:** And phase two started around June 2014...[intervenes].

**MS NGOYE:** That's correct Chairperson there's quite a number of phases, if you recall Chair.

**CHAIRPERSON:** Ja.

**MS NGOYE:** Phase one, phase one extension and then phase two.

20 **CHAIRPERSON:** Ja okay, I think that's helpful too, if phase one was around 2010/2011 I think that timing makes quite some sense, ja.

**ADV SONI SC:** Yes, and then at paragraph 178 Mr Dubek goes on about the nature of the relationship, could you read that into the record.

**MS NGOYE:** Paragraph 178 reads this Chair,

“Neither Ferreira, Siyangena or any other entity associated with either of them had any knowledge of subsequent dealings between Montana and van der Walt until November 2014 when, during a conversation with van der Walt, Ferreira became aware of these dealings. Ferreira’s requests to van der Walt was to ensure that any and all dealings with Mr Montana by van der Walt were completely above board and completely transparent. Van der Walt, heeding Ferreira’s request and after requesting Montana on various occasions to deposit monies into his trust account to continue with their proposed joint venture decided not to include Montana in the dealings and proceeded with the transfer of the subject properties on his own accord without Montana”.

10

**ADV SONI SC:** Now you obviously have no knowledge of the dealings between Mr van der Walt and Mr Montana or the dealings between Mr Ferreira through his other holdings, for example, TMM and Mr van der Walt?

20

**MS NGOYE:** I don’t Chair.

**ADV SONI SC:** Chair, may I just point out that subsequent to all of these we are going to be leading evidence in the next two days dealing with these matters

and I merely want to place Siyangena's response in context so that when you look at that evidence you will know what the real facts are as emerge from documentary evidence not from the say so of this witness but I thought I should just place that on record that it is important you are aware of what Siyangena is saying was the relationship and in comparing it to what the documents will show. Then if you go on to page – sorry if you go on to paragraph 180, what does he say then, Mr Dubek?

10 **MS NGOYE:** He says,

“What is more, what the nature and extent of the dealing were between van der Walt and Montana is completely unknown to Siyangena and/or any person, particularly Ferreira related to it”.

**ADV SONI SC:** Alright, then if you look at paragraph 185, what does he say?

**MS NGOYE:** Paragraph 185 says,

20 “The striking absence of primary factual allegations to this effect in the founding affidavit is telling. PRASA is challenged to produce primary admissible facts in relation to the unsubstantiated contentions levelled against in this regard”.

**ADV SONI SC:** That is what, Chairperson, you will be asked to assess after we've led that evidence. We don't need to go into the further aspects at that stage but later



in his affidavit at page 516 of the recorded pages – oh sorry page 604 if you could go to please.

**MS NGOYE:** I've got it Chair.

**ADV SONI SC:** If I could ask you to read paragraph 393.3 into the record please Ms Ngoye?

**MS NGOYE:** Chair paragraph 393.3 reads...[intervenes].

**ADV SONI SC:** Sorry before you do that, can I just say that paragraph – the heading to paragraph 393 is – are paragraph 21 and sub paragraphs of your affidavit in the –  
10 your founding affidavit in the matter.

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

**ADV SONI SC:** Sorry.

**MS NGOYE:** Okay paragraph 393.3 reads,

20 "I have indicated herein above that I cannot comment on the relationship between van der Walt and Montana save to confirm that as far as I know van der Walt is a developer or property investor in his own right whilst Montana obviously displayed a desire to become involved in the business of property development and investment. Van der Walt and Montana conducted their business amongst themselves and I can only refer to the affidavit deposed to by van der Walt in this regard, which is an Annexure to these papers".

**ADV SONI SC:** Then can you look at paragraph on the

following page which is page 605, paragraph 393.7.

**MS NGOYE:** 393.7?

**ADV SONI SC:** Yes, that's just lower down on that page.

**MS NGOYE:** Yes, I've got it Chair, it reads,

“There is no allegation that Siyangena paid van der Walt any benefit to use any of the alleged transaction with Montana”.

**ADV SONI SC:** And at 393.8?

**MS NGOYE:** It reads,

10 “There is no proof or allegation that Montana received any benefit since the factual end result of the transactions between van der Walt and Montana is that van der Walt asked that Montana, on their relationship and is at present the only and sole owner of these properties via his entities”.

**ADV SONI SC:** And then...[intervenes].

**MS NGOYE:** And in 3.3.8.1 Chair it reads,

20 “Nowhere in Ngoye's affidavit is one single fact which could imply or indicate that Siyangena is linked to any benefit actually or even potentially received by Montana”.

**ADV SONI SC:** Right will you just finally read paragraph 394.

**MS NGOYE:** Paragraph 394,

“As a consequence of the aforesaid, I submit that

Ngoye failed to establish any grounds on which a Court can realistically rely to assume any undue benefits from Siyangena to Montana”.

**ADV SONI SC:** Chairperson I just place that on record because I will come back to it at a later stage after we've led the evidence and obviously after Siyangena, Mr Ferreira and hopefully Mr van der Walt will respond to what is said in allegations that have already been presented to you. Now Ms Ngoye can I then ask you to turn to your  
10 affidavit at Bundle E1, which is EXHIBIT SS7B which starts at page 277 but I want to refer you to page 300.

**MS NGOYE:** I've got it Chair.

**ADV SONI SC:** Now again, just to orientate you Ms Ngoye, you might recall on the last occasion you were giving evidence you gave evidence on this affidavit up to paragraph 52 and then we went into your allegations in regard to the property transactions.

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

**ADV SONI SC:** Yes, I want to now return to the  
20 allegations you make in regard to PRASA in general.

**MS NGOYE:** Okay Chair.

**ADV SONI SC:** Now one of the matters that you dealt with at paragraph 51 in this affidavit – sorry it's on the previous page, is what you call, in paragraph 53, the interference of Ms Makhubela in the contractual relationship between

Siyaya and PRASA or the contractual dispute.

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

**ADV SONI SC:** Now in paragraph 53 you say, in the previous section I note the interference by the Chairperson of the Board in Management matter, is that what you were referring to?

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

**ADV SONI SC:** Now just again to orientate ourselves, your complaint there was – what was the nature of your  
10 complaint there?

**MS NGOYE:** Well in this regard, Chairperson, we were dealing with an issue where we believed that the Chairperson of the Board was interfering in management issues and the fact that she wanted to settle or had contemplated settling a particular matter which we, as PRASA and especially the fact that we were dealing with it in the legal department and believed that we had huge prospects of success she wanted it settled and she wanted it settled without the involvement of the legal function and  
20 had indicated that fact.

**ADV SONI SC:** Now you already gave evidence on that issue...[intervenues].

**MS NGOYE:** I have Chair.

**ADV SONI SC:** But there is, just for, again orientation, who was the party involved, the other party involved?

**MS NGOYE:** This particular transaction, Chair, which the Chairperson of the Board at the time sought to settle, was Siyaya and you'll recall, Chairperson, Siyaya is the company where Mr Makhensa Mabunda was involved and it's one of those which was under the S banner of companies, I think it was called, S companies.

**ADV SONI SC:** And the amount involved – it was an arbitration a series of matters that had been referred to arbitration.

10 **MS NGOYE:** That's correct Chair there was about five of them that had been referred to arbitration.

**ADV SONI SC:** And what was the total amount involved?

**MS NGOYE:** Roughly it was about 58 Chair, with interest it came to about 60 that we had to go fight in Court.

**ADV SONI SC:** Now one of the things that always strikes me as – in one of the matters you dealt with on the previous occasion where Ms Makhubela says, given PRASA's financial dealings every year, what is R60million, was that not her attitude?

20 **MS NGOYE:** It was her attitude Chairperson.

**ADV SONI SC:** Alright but now you dealing with a slightly although connected partly to Siyaya you dealing with a slightly different issue perflated.

**MS NGOYE:** Yes Chair.

**ADV SONI SC:** Now you refer in this to a meeting if you

look at paragraph 54 held on the 25 April 2019.

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

**ADV SONI SC:** And well firstly let me ask you were you present at that meeting?

**MS NGOYE:** I was not invited to this meeting Chairperson.

**ADV SONI SC:** But that means you were not present?

**MS NGOYE:** I was there Chair yes, I was not present.

**ADV SONI SC:** But you have subsequently been given a copy of the Minutes of that Meeting.

10 **MS NGOYE:** Yes correct I received a copy of the Minutes from the Acting Group CFO of PRASA Ms Thobeka Mohlati at the time.

**ADV SONI SC:** We will get to the circumstances and that that came to your notice. But what was the meeting about in general?

**MS NGOYE:** Chairperson this meeting was about various matters. In fact, the meeting was called by the DG, the Director General of the Department of Transport Mr Hlabisa – let me get his surname Chair. What is his name? Mr  
20 Chris Hlabisa was the DG of the Department of Transport. He had called this meeting Chairperson because apparently various suppliers of PRASA had complained to the Department about PRASA litigating you know unnecessarily and had suggested that their matters be settled and therefore had referred these matters to the Department and

requested the Department's intervention in the settlement of these matters.

**ADV SONI SC:** Now you cannot vouch for the correctness of the minutes because you were not at the meeting.

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

**ADV SONI SC:** But all we have are the minutes.

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

**ADV SONI SC:** Can I – I do not want us to go through the whole minutes but the minutes appear at page 367.

10 **MS NGOYE:** I have got it Chair.

**ADV SONI SC:** And what does the first page read?

**MS NGOYE:** The first page it is on the letter of the Transport Department Republic of South Africa. DG meeting with stakeholders that have financial disputes with PRASA. It is dated 25 April 2019 the time is 12:30 and the venue was the DG's boardroom DOT which is the Department of Transport.

**ADV SONI SC:** Yes. Can I then ask you to turn to the next page and Item 1. I am not going to go through everything.

20 **MS NGOYE:** Sure.

**ADV SONI SC:** Sorry who – you know what – how many matters were discussed at this meeting?

**MS NGOYE:** I do Chair. I do have roughly. I know two of the matters and they are significant matters that were discussed at this meeting was the Siyangena matter. The

settlement of Siyangena matter as well as the settlement of the Siyaya matter.

**CHAIRPERSON**: Hm.

**MS NGOYE**: And I know there was a Bigale [?] matter also that was referred to as part of the meeting.

**CHAIRPERSON**: Did you – did you not cover this last time?

**ADV SONI SC**: No.

**CHAIRPERSON**: This meeting?

**ADV SONI SC**: No.

10 **MS NGOYE**: No we did not Chair.

**CHAIRPERSON**: Is that so.

**MS NGOYE**: Yes.

**CHAIRPERSON**: Okay I see markings that I made so I may have made them when I was reading. But I also thought that I had heard you speak about a meeting where the DG was or acting DG I am not sure was trying to push for the settlement of certain matters.

**MS NGOYE**: It was not this one.

**CHAIRPERSON**: It did not cover this?

20 **MS NGOYE**: No it was not this one Chair.

**CHAIRPERSON**: Okay.

**MS NGOYE**: Ja.

**CHAIRPERSON**: Both of you cannot be wrong. Okay alright.

**ADV SONI SC**: You never can tell Chairperson. But I – my



note on my file.

**CHAIRPERSON**: Ja.

**ADV SONI SC**: Tells me that we had not.

**CHAIRPERSON**: Okay.

**ADV SONI SC**: Covered this.

**CHAIRPERSON**: Okay.

**ADV SONI SC**: I just want to say that paragraph 1.1 tells you what the meeting is about. Could you just read that into the record please Ms Ngoye?

10 **MS NGOYE**: Paragraph 1.1 reads:

“The acting Director General Mr Chris Hlabisa henceforth Chairperson welcomed all members to a meeting to discuss financial disputes with PRASA’s service providers that were invited to present their cases.

**CHAIRPERSON**: Did you not earlier on give a different name for the acting DG?

**MS NGOYE**: No I said Mr Hlabisa.

**CHAIRPERSON**: No the name of...

**MS NGOYE**: Chris Hlabisa.

20 **CHAIRPERSON**: I thought you said a name other than Chris. I see here they say Chris Hlabisa.

**MS NGOYE**: That is him – that is who I said Chair.

**CHAIRPERSON**: You said Chris.

**MS NGOYE**: Mr Chris Hlabisa.

**CHAIRPERSON**: Oh. Okay.

**MS NGOYE:** Yes.

**CHAIRPERSON:** I seem to have heard something else. Well I happened to remember that the acting DG or DG was Hlabisa but...

**MS NGOYE:** Hlabisa it is Mr Chris Hlabisa.

**CHAIRPERSON:** I heard something different. Ja.

**ADV SONI SC:** I know what happened Chairperson. The witness did not remember the first name.

**MS NGOYE:** The first name and I went back to check.

10 **ADV SONI SC:** Then she went back to check.

**CHAIRPERSON:** Oh – oh.

**MS NGOYE:** That is right.

**CHAIRPERSON:** That – ja. I think – I think that is – ja okay.

**ADV SONI SC:** Now I just want you to look at paragraph A and perhaps read paragraph A into the record.

**CHAIRPERSON:** Is that under ...

**MS NGOYE:** Is that of 1.2?

**CHAIRPERSON:** Under paragraph 1.2?

**ADV SONI SC:** Oh sorry 1.2A yes.

20 **CHAIRPERSON:** 1.2A.

**MS NGOYE:** 1.2A Chair the – it says:

“The Chairperson highlighted the following salient matters.

- a. The meeting was as a result of serious allegations by some companies and or service providers who claimed that they are owed monies for services rendered to

government especially its entities such as PRASA.”

Yes.

**ADV SONI SC:** And b.

**MS NGOYE:** B Reads:

“Other service providers went as far as reporting PRASA to Parliament to the Minister and to the Accounting Officer of the Department.”

**ADV SONI SC:** And C.

**MS NGOYE:** C.

10 “Parliament noted the accusations and referred the matter back to Minister and the Accounting Officer.”

**ADV SONI SC:** So these were service providers who were going to complain to if I may put it higher authorities.

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

**ADV SONI SC:** Against PRASA.

**MS NGOYE:** That is correct.

**ADV SONI SC:** But let me ask you this. At that stage in regard to Siyaya and Siyangena what was the position in regard to the court processes?

20 **MS NGOYE:** Chairperson we had not finalised the litigation processes with both companies in fact and in fact Siyaya was in the process of having its companies liquidated and Siyangena were – I mean it has been common knowledge and public knowledge that we have been in court with Siyangena you know for quite some time.

**ADV SONI SC:** By the time this meeting took place had your – had the issue that Judge Makhubela raised later had that been sorted out?

**MS NGOYE:** Yes Chair what becomes interesting is that this meeting happens after – you know we have been to court to go and you know retrieve the monies that you were unduly sought to be taken...

**CHAIRPERSON:** April 25, 2019?

**MS NGOYE:** That is right Chair. At this time the court  
10 process of getting the money back in relation to the Siyaya matters had been finalised. In fact, we had received the monies back from the sheriff. So this matter comes after that and it becomes interesting that you know it is still brought back to the Department for discussion. When in fact when we took it to court, we had to get the permission of the Minister Chairperson. If you recall part of the evidence that I gave was that...

**CHAIRPERSON:** Yes I remember that evidence.

**MS NGOYE:** Ja.

20 **CHAIRPERSON:** You and the then Chairperson were asked by the Minister to make reports and so on.

**MS NGOYE:** To go and make submissions.

**CHAIRPERSON:** Yes.

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

**CHAIRPERSON:** Yes. But I am – what I want to understand

now is whether insofar as Siyangena was concerned at this meeting what it was talking about was the money that they alleged they were being owed being the same money about which you had gone to court and – and you were waiting for them to take the next step as I understand your previous evidence. It was after you – you went rescission.

**MS NGOYE**: That is Siyaya Chairperson.

**CHAIRPERSON**: That is Siyaya.

**MS NGOYE**: So we have got Siyaya.

10 **CHAIRPERSON**: Ja.

**MS NGOYE**: Which is the one that we went to rescission to court for.

**CHAIRPERSON**: Ja.

**MS NGOYE**: Siyangena is the one that is still in court.

**CHAIRPERSON**: Oh is this about Siyangena?

**MS NGOYE**: This is both of them.

**CHAIRPERSON**: Okay no I am now concentrating of Siyaya.

**MS NGOYE**: Siyaya is the one ...

20 **CHAIRPERSON**: Because Siyaya is the one where the former Chairperson got involved.

**MS NGOYE**: That is right.

**CHAIRPERSON**: So I am – so my question is whether insofar as Siyaya was in this meeting or was representing this meeting was that what they were about?

**MS NGOYE**: Yes Chairperson. So they wanted that money

that we went to go get back.

**CHAIRPERSON:** Yes.

**MS NGOYE:** Ja through the proper processes.

**CHAIRPERSON:** But the ball was in their court was it not?

**MS NGOYE:** Yes Chairperson.

**CHAIRPERSON:** Because you had obtained a rescission.

**MS NGOYE:** That is right.

**CHAIRPERSON:** And they needed to take the matter further if they wanted to.

10 **MS NGOYE:** Ja.

**CHAIRPERSON:** Ja. Okay.

**ADV SONI SC:** Sorry Ms Ngoye can I ask you to turn back to page 368 and I know I only asked you to read three of the paragraphs but can I also ask you to look at paragraph e and what does that paragraph say? Paragraph E.

**MS NGOYE:** So paragraph E of the minutes says:

“These accusations were to be addressed and concluded before the Adminis – before the new Administration is appointed.”

20 **ADV SONI SC:** So what is that in reference to the new administration?

**MS NGOYE:** Well Chair I mean I – one can only surmise. I mean – as I have indicated I was not at the meeting but this was just before. There was a change between the...

**CHAIRPERSON:** Before the elections.

**MS NGOYE**: That is it. Before the new Ministers were going to be appointed for the different portfolios and so on. And so this meeting was just before that.

**CHAIRPERSON**: Yes so....

**MS NGOYE**: It is interesting that the minutes record that it was important that these decisions were to be made before the new administration.

**CHAIRPERSON**: Hm.

**MS NGOYE**: You know came into effect.

10 **CHAIRPERSON**: Ja. The new administration is a reference to the administration that would follow after the general elections.

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

**CHAIRPERSON**: Ja. Okay.

**ADV SONI SC**: Now if you then look at page 369 and this deals with the presentation to be made on behalf of Siyaya.

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

20 **ADV SONI SC**: Can I just ask you if you look above in the block above that who represented Siyaya at these – at this meeting?

**MS NGOYE**: Chairperson Siyaya was represented by Mr Makhensa Mabunda together with Mr Prince Paweni.

**ADV SONI SC**: Right. Then we do not need to look at the discussions. I would just like you to turn to page 371 and look at the decision that was taken in relation to the Siyaya

matter. It is at page 371 paragraphs 3.1.9.

**MS NGOYE**: Yes Chair I have got it. It reads at a it reads?  
“The DOT will intervene to address the litigation issues and see if government was not unnecessarily losing money through this process. Siyaya DBI to assist the panel – this is b. by availing itself when requested to clarify additional facts in their submission should any of the submitted information be unclear.”

**ADV SONI SC**: Can I just ask you to look at the top of that  
10 page and in regard to amount that Siyaya said was owing to it what figure is – is set out?

**MS NGOYE**: Chairperson in paragraph c of the minute what I am reading here it says:

“The total litigation amount by Siyaya DB was R111 641 219.18. This amount is made up of capital expenditure of R82 978 039.84 plus interest of R28 663 179.34.”

**ADV SONI SC**: Now two years ago what was the amount that was the settlement amount?

20 **MS NGOYE**: It was interesting Chairperson because we are talking about the figure of about 60 million – 58/60 million so it has gone up now. In this meeting we talking 87 million Euros so it is interesting. But now it is plus interest. I mean 82 million plus interest it is about 111 million. It is almost double the amount that was initially the amount in dispute.



**ADV SONI SC:** Anyway, the DO – the Department of Transport was then to engage with PRASA and the contractors?

**MS NGOYE:** That is correct. But Chairperson may I say this? I have – you know I find it very interesting that this matter was dealt with in this manner. This matter was not coming to the Department for the first time. The Siyaya matter. As I indicated Chairperson when the Minister at the time took office, Minister Blade Nzimande we brought this  
10 matter to him because we were – we did not know where to go as I indicated previously in my evidence. And we raised this matter with him to say, Minister we need your help, can you please assist us in recovering this money for PRASA? It becomes interesting that the very same Department that you know had knowledge of this meeting – of this meeting and of the reports that we had given is dealing with it again as though it is a new matter and they did not know about it.

**ADV SONI SC:** And then ask you in the block under that there is a presentation by Bagele Construction.

20 **MS NGOYE:** It is Mogale.

**ADV SONI SC:** Mogale.

**MS NGOYE:** Mogale Construction. Yes Chair.

**ADV SONI SC:** Yes. Did you know anything about that – I do not want you to go into any details?

**MS NGOYE:** Ja. I knew about the Mogale matter.

Chairperson this was one of the matters that we were dealing with as the legal function within PRASA. We were once again in dispute with Mogale. It started a while ago it was a 2010 matter that related to the consultancy agreement that we had. And it is interesting also if I may Chairperson to indicate that in fact not so long ago PRASA was successful in this matter where Mogale was claiming about R36 million from PRASA that the matter was finally decided through an arbitration and we were successful and defeated  
10 Mogale in the matter.

**ADV SONI SC:** And yet the indication was if – if what was being contemplated the matter was – would have been settled with PRASA paying something or the other at least.

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

**CHAIRPERSON:** Before Siyaya approached the acting DG as a result of which the acting DG called this meeting had there been any time after the court proceedings in which PRASA was involved to stop to get the money from the sheriff was there a time when Siyaya came back to PRASA  
20 and say, let us talk about this matter? Or they just went straight to the acting DG of Transport without approaching PRASA again after that period of litigation?

**MS NGOYE:** To my knowledge Chairperson – I mean unless they approached the Group CEO I would not know.

**CHAIRPERSON:** Ja.

**MS NGOYE:** But to my – in fact if that was the case I would have expected to have been asked.

**CHAIRPERSON:** Ja.

**MS NGOYE:** As the Group Executive responsible for legal but to my knowledge there was no such interactions between and Siyaya at the time.

**CHAIRPERSON:** Okay.

**ADV SONI SC:** Mr Chairperson I am constrained in light of what Mr Molefe said to refer you back to paragraph 1.2 on  
10 page 368 because what the DG says there is:

“The meeting was as a result of allegation by some companies who claimed they were owed monies especially by – which they had – where they had rendered services to government.”

And then the point is that they had approached Parliament, they had approached the Minister and so on and so on. So I am merely making the point that it was not simply going to somebody it was that whole gambit of people that Mr Molefe was talking about. And I just submit that one needs to keep  
20 those nuances in mind Mr Chairperson.

**CHAIRPERSON:** Yes, no thank you.

**ADV SONI SC:** Alright then Ms Ngoye if you could look at paragraph – page 375. This is the third presentation and the presentation is now made by Siyangena.

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

**ADV SONI SC:** If I could ask you to go back to page 369 and just indicate who made the presentation on behalf of Mr Siyangena of ...

**MS NGOYE:** Siyangena.

**ADV SONI SC:** Siyangena yes. You will see it in the top block.

**MS NGOYE:** Siyangena – yes under 2.3 of the minute Chairperson it says:

“Mr P S Reddy MD Siyangena Technologies and Mr Tom  
10 Dubeck CFO Siyangena Technologies.”

And obviously Chairperson I have just read the opposing affidavit that was deposed to by Mr Dubeck himself.

**CHAIRPERSON:** Hm.

**ADV SONI SC:** Yes. So a presentation is made and then if you look at the next page 376 the decision is summarised. Could you indicate what is said at paragraph a?

**MS NGOYE:** a. At 3.5 paragraph a says:

‘The DG emphasised that he would not want government  
money to be wasted on litigation matters which would only  
20 benefit lawyers and not government. The CFO must take  
away the issue of the legal debacle re the September court  
date.’

**ADV SONI SC:** And when there is a reference to the September court date to your knowledge what does one – what was that a reference to?

**MS NGOYE:** They were supposed to have gone to court. Chairperson the – the Siyangena matter there has been quite a number of postponements you know in the matter. I mean we have now even postponed from January this year to now August this year so it obviously would have been a date where we were supposed to have gone to court with Siyangena.

**ADV SONI SC:** So – so it was supposed to have gone to court in September last year?

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

**ADV SONI SC:** And what seems to be the plan is to take it away from the hands of the court.

**MS NGOYE:** That is right.

**ADV SONI SC:** And leave it in the hands of the Department.

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

**CHAIRPERSON:** Hm. Hm.

**ADV SONI SC:** And the same Mr Dubeck who says, you do not have a case.

**MS NGOYE:** Ja.

20 **ADV SONI SC:** Is the person who goes with this request.

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

**CHAIRPERSON:** Hm. Hm.

**ADV SONI SC:** And then Ms Ngoye if you could just read paragraph 3 because it now comes back to you the DG asks the PRASA CFO to do certain things.

**MS NGOYE**: Which – sorry which paragraph Counsel?

**ADV SONI SC**: Paragraph 335B.

**MS NGOYE**: B. B reads Chair.

“The DG requested the PRASA CFO to check the submissions that are going to be emailed and describe and verify the amounts that are owed to them.”

Second bullet point says:

“The CFO should settle the claims as soon as PRASA had verified that they had a legitimate claim.”

10 **ADV SONI SC**: Yes.

**CHAIRPERSON**: Hm. So – so the acting DG is effectively saying the CFO of PRASA – is that the CFO of PRASA that you are talking about?

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

**CHAIRPERSON**: Should settle a claim about which PRASA has gone to court because PRASA believes Siyaya is not entitled to payment?

**MS NGOYE**: Siyangena Chairperson.

**CHAIRPERSON**: Siyangena.

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

**CHAIRPERSON**: Oh this is Siyangena.

**MS NGOYE**: This is Siyangena Chairperson.

**CHAIRPERSON**: You see I have this...

**MS NGOYE**: That is it.

**CHAIRPERSON**: Mixing them up. Oh are we on Siyangena

now not Siyaya?

**MS NGOYE**: We are on Siyangena now Chairperson.

**CHAIRPERSON**: Oh okay. Okay. I am re-orientating myself from Siyangena to – so from Siyaya to Siyangena.

**MS NGOYE**: Ja Siyangena remember you said Siyanbenga the last time.

**CHAIRPERSON**: I know.

**MS NGOYE**: Chairperson.

**CHAIRPERSON**: Ja. But [African language]. Okay. Alright.

10 Yes continue Ms – Mr Soni.

**ADV SONI SC**: Yes. So effectively it was not going to be let PRASA's lawyers tell us it was let the CFO who is a financial person because you do not want lawyers to make money but it does not matter if PRASA is to be paid – I mean if Siyangena is to be paid R5 billion.

**MS NGOYE**: That is correct Chair. That is the nett effect.

**ADV SONI SC**: And that is effectively the attitude.

**MS NGOYE**: That is the nett effect of what was happening here.

20 **CHAIRPERSON**: Oh so – so when he was talking – when the acting DG was talking about the CFO verifying the amount and paying he was talking about billions?

**MS NGOYE**: Billions Chair.

**CHAIRPERSON**: And that is the matters which he was saying should not go to court, should not be dealt with by the

courts.

**MS NGOYE**: Yes – Yes Chair.

**ADV SONI SC**: And then in the last bullet point under C he asks the CEO and could you just read that into the record Ms Ngoye.

**MS NGOYE**: Under C Chair.

**ADV SONI SC**: Yes the last bullet point.

**MS NGOYE**: The last bullet point.

“The DG requested the CFO to have both Siyangena and  
10 PRASA lawyers in one team however the DOT will initiate the  
meeting. PRASA CFO would instruct its lawyers to work with  
Siyangena’s lawyers.”

I do not know whether it is Chair I mean.

**CHAIRPERSON**: Did you understand that to mean Ms Ngoye?

**MS NGOYE**: It is – look Chair I mean it does not make sense to me.

**CHAIRPERSON**: Hm.

**MS NGOYE**: You know first and foremost I am the Group  
20 Executive Legal Risk and Compliance in the matter I do not  
get invited to this meeting and then they giving instructions  
to the CFO who is not even – who is not you know dealing  
with these matters on a daily basis and they are instructing  
the CFO to then get the lawyers of PRASA and the lawyers  
of Siyangena together. The whole to me just does not make



sense. I do not – I do not know.

**CHAIRPERSON:** So – so if one goes back to you the evidence you gave last time you have a situation where after the Chairperson got involved – well I know that the Chairperson from what you said was really interested in the Siyaya matter.

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

**CHAIRPERSON:** Not in the other matters.

**MS NGOYE:** That is right.

10 **CHAIRPERSON:** But you said in regard to her and in regard to the Siyaya matters after she got involved as Chairperson of the Board your department, you and Mr Dingiswayo got side-lined.

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

**CHAIRPERSON:** And you said that Ms Mogashoa who was PRASA's attorney.

**MS NGOYE:** Diale Mogashoa Attorneys. That is correct Chair.

20 **CHAIRPERSON:** Told I think Mr Dingiswayo that the Chairperson had said he should not deal with...

**MS NGOYE:** Yes. He is barred.

**CHAIRPERSON:** With you in – ja.

**MS NGOYE:** From dealing with the people.

**CHAIRPERSON:** In regard to the Siyaya claims.

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

**CHAIRPERSON:** So here now you are talking about Siyangena.

**MS NGOYE:** It is the same names.

**CHAIRPERSON:** But thereto you are saying that the acting DG of the Department of Transport which is responsible for PRASA calls a meeting at which claims allegedly owed by PRASA to various parties will be discussed but their legal department is excluded.

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

10 **CHAIRPERSON:** And yet they will be talking about whether those matters should be settled or not.

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

**ADV SONI SC:** Yes.

**MS NGOYE:** I mean I think Chair if I may the whole thing – look I suppose you know some things are designed that is my view, they are designed and – and the one thing that always comes to mind if that I would have obviously raised a lot of objections.

**CHAIRPERSON:** Hm.

20 **MS NGOYE:** At that meeting.

**CHAIRPERSON:** Hm.

**MS NGOYE:** To having these discussions.

**CHAIRPERSON:** Hm.

**MS NGOYE:** You know and I guess they did not want that.

**CHAIRPERSON:** Hm.

**MS NGOYE:** First and foremost, Siyaya was in liquidation.

**ADV SONI SC:** Hm.

**MS NGOYE:** One would say where is the liquidator.

**CHAIRPERSON:** Hm.

**MS NGOYE:** Because Mr Makhensa Mabunda you have got no authority to be here.

**CHAIRPERSON:** Ja, yes.

**MS NGOYE:** And those are things that the CFO nor the Group CEO of PRASA would not have known to raise you  
10 know but once again you know it is that thing that says that that legal department is problematic. In fact, they should just be kept out of these things.

**CHAIRPERSON:** Well it is also like even with regard to Siyaya that when the settlements – settlement was entered into it was not just the liquidators.

**MS NGOYE:** No.

**CHAIRPERSON:** Who were represented it was people who actually had no locus standi.

**MS NGOYE:** That is right Chair.

20 **CHAIRPERSON:** Because the liquidators take control of a company once it is in liquidation.

**MS NGOYE:** That is correct.

**CHAIRPERSON:** But the claims were being settled...

**MS NGOYE:** By the lawyers elsewhere.

**CHAIRPERSON:** With people – with lawyers acting for those

people.

**MS NGOYE**: Ja. That is correct. It goes to the conduct of those lawyers as well in my opinion Chairperson.

**CHAIRPERSON**: Yes. Yes.

**MS NGOYE**: Because honestly, I mean if you have to look at it you really cannot be conducting yourself in that manner.

**CHAIRPERSON**: Ja.

**MS NGOYE**: Also, in the legal profession he speaks about this meeting which they had with the DG and... and about  
10 these uh-uh-uh, service providers that were owed by PRASA. And obviously, my ears, you know, uh, were very keen to share what... what is this about now.

Um, and that is when I got to know about the meetings and I got to share who the service providers were and... and I took issue at exco, you know, with obviously what he was... what... what... what he was reporting to exco.

**ADV SONI SC**: Now, at that meeting, if you look at paragraph 57 of your affidavit, on page 301, you make the point that:

20 “At the meeting he allude to the possible settlement of these matters”.

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

**ADV SONI SC**: It is the third last line of uh, on that page of paragraph 57. Have you got that?

**MS NGOYE**: That is right here. “He alluded to the possible

settlement of these matters”. Yes. I made it very clear to Dr Sishi that the suppliers that he was referring to were all in litigation with PRASA and thus PRASA... as... as... as PRASA we were fighting these cases accordingly.

**ADV SONI SC:** Yes. Then if you look at the next page.

**MS NGOYE:** H’m?

**ADV SONI SC:** Oh, sorry. Perhaps you should read that in because it gives...[intervenes]

**MS NGOYE:** Ja.

10 **ADV SONI SC:** ...because it gives context to how he reacted.

**MS NGOYE:** “I also indicated that as the legal function and having consulted extensively with business on the various matters, we believed that PRASA’s prospects of success were good um, as the evidence in the CI Rescission matter which had saved PRASA some R 16 million which he had uh... which had been attached by Siyaya”.

**ADV SONI SC:** Okay. So if you could stop there for a minute? Clearly your attitude as expressed here and at the  
20 meeting was, we cannot settle these matters.

**MS NGOYE:** Ja.

**ADV SONI SC:** Uh, we have got good cases.

**MS NGOYE:** H’m.

**ADV SONI SC:** We have a right to do this.

**MS NGOYE:** H’m.

**ADV SONI SC:** What was his attitude? You then deal with it in the rest of that paragraph.

**MS NGOYE:** Ja. When I said that Chairperson, Dr Sishi state um, that there were complaints even amongst um... I will read it here, sir... uh, Chair. It says that:

“There were complaints in amongst PRASA staff members about how the legal function together with a particular law firm, whose name he did not mention, was treating employees”.

10 Shall I read further?

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

**MS NGOYE:** “I was surprised and asked him to provide details after the meeting. He suggested that a separate meeting would be held on the 9<sup>th</sup> of May 2019 to discuss these matters.

However, to date this meeting has not happened but on the 22<sup>nd</sup> of May 2019, he placed me on special leave”. And I have dealt with being placed on special leave in another portion of the affidavit which I believe Chair, is going  
20 to be... a matter dealt with on papers.

**ADV SONI SC:** Yes. Chair, may... may I just deal with that issue because ...[indistinct 01:04:22]

**CHAIRPERSON:** [No audible reply]

**ADV SONI SC:** Uh, in that issue... now, in that affidavit Ms Mboya deals with concerns about a possible contract

between PRASA and the DBSA.

Ms Kweyama, at the end of the last week, filed a one hundred page response to that and it would not be fair to Ms Ngoye to deal with that matter.

And we thought we would exercise it for now and possible deal with it on the papers or if it becomes necessary but uh, certainly it should not occupy us now because it is a completely separate matter.

**CHAIRPERSON:** Okay. No, that is fine. But the suspension  
10 that you are referring to here, is that the suspension separate from... ja, it would be separate from the other one because the other one was during Montana's time.

**MS NGOYE:** Montana's time.

**CHAIRPERSON:** Yes.

**MS NGOYE:** Yes, Chair.

**CHAIRPERSON:** So was there a second, third, fourth suspension or what?

**MS NGOYE:** [laughs] Chair, it was my fifth but I lost count of how many suspensions I had. Probably it was the... it is  
20 the probably the second, third one...[intervenes]

**CHAIRPERSON:** Ja.

**MS NGOYE:** ...suspension because remember, I was dismissed.

**CHAIRPERSON:** H'm.

**MS NGOYE:** I was dismissed. I was suspended.

**CHAIRPERSON**: Yes.

**MS NGOYE**: This time it was... there were threats of suspension by the... by the chairperson. She... she left before having done that.

**CHAIRPERSON**: H'm.

**MS NGOYE**: And then here uh, I was placed on suspension.

**CHAIRPERSON**: H'm.

**MS NGOYE**: It was... it was special leave. It was not called suspension.

10 **CHAIRPERSON**: H'm.

**MS NGOYE**: It was called special leave.

**CHAIRPERSON**: [laughs]

**MS NGOYE**: Whatever that meant.

**CHAIRPERSON**: Did that give you any comfort?

**MS NGOYE**: No, it did not Chairperson. [laughs] Because bottom line is that my name was out there tainted under the guys that I was corrupt.

**CHAIRPERSON**: Ja.

20 **MS NGOYE**: You know, that was the... the... the... the message that was sent out there.

**CHAIRPERSON**: Ja. So this is the suspension with which you have not dealt in evidence, oral evidence?

**MS NGOYE**: I have not dealt with suspension in this.

**CHAIRPERSON**: Ja. And we will deal with it some other time.



**MS NGOYE:** Ja.

**ADV SONI SC:** It is such.

**CHAIRPERSON:** Oh, okay. Okay. All right.

**ADV SONI SC:** It just...[intervenes]

**CHAIRPERSON:** Is the reason why you cannot deal with it now because there is a response from somebody or...?

**ADV SONI SC:** From Ms ...[indistinct 01:06:38] to... to... it... because the suspension...[intervenes]

**CHAIRPERSON:** But she was the chairperson of the board  
10 at the time?

**ADV SONI SC:** That is right.

**CHAIRPERSON:** Oh, oh.

**ADV SONI SC:** And it appears to be somewhat related to that.

**CHAIRPERSON:** Oh.

**ADV SONI SC:** The suspension.

**CHAIRPERSON:** So that suspension is related to the development then?

**MS NGOYE:** Ja. Chair, you know, I... I think it... you know,  
20 one can... it... all these things happened roundabout the same time.

**CHAIRPERSON:** Yes.

**MS NGOYE:** You know, this... this one happened in May. The development of bank issues happened in May.

**CHAIRPERSON:** Ja.

**MS NGOYE:** I mean, I raised these issues in this meeting  
...[intervenes]

**CHAIRPERSON:** Yes.

**MS NGOYE:** ...towards the end of April. So, you know.

**CHAIRPERSON:** Okay but.. but I guess that the reason why you cannot deal with it is because uh, she... she must still look at um, Ms Ngoye's latest affidavit.

**MS NGOYE:** [Indistinct 01:07:24]

**ADV SONI SC:** Yes.

10 **MS NGOYE:** Ja.

**CHAIRPERSON:** And deal with it.

**ADV SONI SC:** Yes.

**CHAIRPERSON:** Okay. All right.

**ADV SONI SC:** It is... it is a long, long... a hundred pages.

**CHAIRPERSON:** Oh, okay. And... and... and in part, that... that deals with her special leave or not?

**ADV SONI SC:** I do not think it deals with the special leave.

**CHAIRPERSON:** Oh, because I am... I am trying to see why we cannot deal with the suspension part. Uh...

20 **ADV SONI SC:** Ja.

**CHAIRPERSON:** Or... or the suspension...[intervenes]

**ADV SONI SC:** Chairperson, when... when this affidavit...[intervenes]

**CHAIRPERSON:** That everyone be complete.

**ADV SONI SC:** When this affidavit was being settled with

Ms Ngoye...[intervenes]

**CHAIRPERSON:** H'm.

**ADV SONI SC:** ...we understood it... it related to that matter.

**CHAIRPERSON:** H'm. H'm. Is that...[intervenes]

**ADV SONI SC:** And that is why we... we just exercised it from this part of the...[intervenes]

**CHAIRPERSON:** Ja, ja. But is that still the same understanding now because I am trying to see whether...  
10 because if it is not really related, I would like us to finish the suspension uh, and so on.

If it means that uh, if there was not preparation to deal with it, that... that is fine but maybe she can come back later this week. I just do not know how... how involved it would be so that we try and finish with that.

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

**CHAIRPERSON:** I am just keen to finish with that.

**ADV SONI SC:** I... I must confess Chairperson uh, it has been a busy period...[intervenes]

20 **CHAIRPERSON:** Yes, yes.

**ADV SONI SC:** ...because we have been getting lots of dots. So I have not considered...[intervenes]

**CHAIRPERSON:** Yes.

**ADV SONI SC:** ...whether I should deal with the suspension separately from that.

**CHAIRPERSON**: Yes.

**ADV SONI SC**: Can I look at it and come back to you?

**CHAIRPERSON**: That is fine.

**ADV SONI SC**: Uh, uh, that is tomorrow or ...[intervenes]

**CHAIRPERSON**: Ja. Maybe tomorrow you can let me know?

**ADV SONI SC**: Yes.

**CHAIRPERSON**: If... if... if necessary uh, depending on how much uh, Ms Ngoye will have to say on the suspension ...[intervenes]

10 **ADV SONI SC**: Yes.

**CHAIRPERSON**: ...that maybe later in the week, she can come back and...[intervenes]

**ADV SONI SC**: Yes.

**CHAIRPERSON**: ...complete it. Ja.

**ADV SONI SC**: Yes, indeed she can. Yes, Chair.

**CHAIRPERSON**: Okay. All right.

**MS NGOYE**: That is in order Chair.

**CHAIRPERSON**: Yes, thank you.

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

20 **CHAIRPERSON**: But I do see that the affidavit it... the suspension is already dealt with in an affidavit that you already have, hey?

**MS NGOYE**: Yes.

**ADV SONI SC**: That is... that is...

**CHAIRPERSON**: That is...[intervenes]

**ADV SONI SC:** [Indistinct 01:09:33]

**CHAIRPERSON:** That is with the Commission?

**MS NGOYE:** That is right Chair.

**ADV SONI SC:** Yes.

**CHAIRPERSON:** Ja.

**ADV SONI SC:** Yes.

**CHAIRPERSON:** So... so the affidavit is there. It is a question of going through it and reflecting uh, the other. It is not like a statement must still be taken.

10 **ADV SONI SC:** No.

**CHAIRPERSON:** Ja.

**ADV SONI SC:** H'm. H'm.

**CHAIRPERSON:** Uh, so possible uh, let us continue. Uh, reflect on it. If possible, even tomorrow uh, she... she could come in. I know we have a number of witnesses but those...[intervenes]

**ADV SONI SC:** It will be short.

**CHAIRPERSON:** ...are supposed to be very short.

**ADV SONI SC:** Yes.

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

**CHAIRPERSON:** So there... there will be time.

**MS NGOYE:** H'm.

**ADV SONI SC:** Yes.

**CHAIRPERSON:** Depending what... but later in the week is another possibility as well.

**MS NGOYE:** Yes.

**CHAIRPERSON:** Okay.

**ADV SONI SC:** Now, you say that another meeting was to be held. Was there another meeting?

**MS NGOYE:** It was never held Chairperson.

**CHAIRPERSON:** H'm.

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

**CHAIRPERSON:** H'm.

**ADV SONI SC:** ...although you were... you were on  
10 suspension, do you know what happened to this initiative,  
initiative to settle Siyaya and the Siyangena matters?

**MS NGOYE:** Well, I do not think any... anything happened  
Chairperson because uh, the one thing that I must state is  
that the Group CFO, the acting Group CFO at the time, after  
the meeting came to my office and said, "listen, I was very  
uncomfortable to deal with these matters because I do not  
favour them and unless you as the Group executive of Legal  
are involved in all these matters, I am not, you know, to  
continue with these matters".

20 As far as I know Chairperson um, these matters  
really effectively died an assured death and... and um, for as  
long uh-uh-uh that... the Group CEO, acting Group CEO was  
around at the time. So I do not think anything happened of  
it.

**ADV SONI SC:** Then coming back to what the acting DG

said at the meeting.

**MS NGOYE**: H'm.

**ADV SONI SC**: He says that there were complaints even amongst PRASA staff members ...[intervenes]

**MS NGOYE**: Ja.

**ADV SONI SC**: ...about how legal function together with a particular law firm was treating employees. Was he talking about from a resources point of view or was he talking about the fact that you would advise that this ought not to be done  
10 and you could not proceed with this contract and so on?

**MS NGOYE**: Chairperson, a... as the legal function, we have been under siege ever since uh-uh Dr Pop Molefe initiated the... the investigation process and PRASA.

And unfortunately, the role that we played within the organisation, I guess everybody assumed that we were the enemy, you know, in dealing with the matters.

Our role was to deal with the matters as... as... as they happened and uh, obviously, we were not necessarily involved in the investigations per se because they were run  
20 by the board.

But when it came to litigation and in disciplinary matters, the legal function was quite involved. And... and if you... if you recall Chairperson, the second affidavit of Siyangena was deposed to by me.

Now, I... I... I am a colleague and... and... and, you

know, I sit with these colleagues within... within exco and uh, clearly people complaint about me uh, and they took it that I did what I did in my capacity as Martha Ngoye and not in my capacity as the Group Executive Legal, Risk and Compliance on behalf of PRASA.

So a lot of people because they found themselves to be found wanting as a result of these uh-uh investigations and the outcome thereof. They took issue with me personally and reported me, you know.

10           At one instance, two of my colleagues reported me to the chairperson to the... uh-uh, to the... to the Judge Makhubele... uh, Chairperson Makhubele.

And that too became such an issue within the organisation that I did not even have authority, you know, to deal with these matters on behalf of PRASA.

So, you know, all these investigation and all these litigations that required us as a legal function to deal with uh, stood us in negative effect with the organisation.

20           And I guess uh, the powers that be also, you know, would use this when they found us being a nuisance of some sort to relation to matters which they wanted to do with.

So they would bring it back, you know uh, ever so often as to how, you know, the legal function has conducted itself. And I guess for me Chairperson, the law firm that... that... that was referred to uh, by... by... by Dr Sishi there.



For me it could only be one law firm and that was the Werksmans Law Firm, you know.

I mean, I... I think I have been accused of many things as far as the Werksmans Law Firm is concerned. And when I stepped back and think about it, I think [laugh] when the board decided to... to appointed the... the... the law firm, I was not even there.

I was on suspension but they forget about that. But because it had to deal with the legal uh-uh, firm, Martha  
10 Ngoye is involved and... and therefore...

So I... I mean, I must say, I... I guess I was state enemy number one in... in... in PRASA as far as these matters were concerned and that is why I think he felt bold to bring this up because I guess he... he just also probably felt that uh, these matters needed to be dealt with in a particular way and we were being difficult. This the Group CEO at the time.

**CHAIRPERSON:** Well, you know uh, the evidence of how the legal department at PRASA was being dealt with, the  
20 evidence you are giving and the evidence you gave last time as to how the legal department was being treated, yourself and miss and so on and so on, you know uh, resonates in some way and also how, according to Mr Molefe, how he and his board were treated.

**MS NGOYE:** H'm.

**CHAIRPERSON:** Resonates in some way with how uh, Minister Nene and Minister Gordan, Pravin Gordan in... as Ministers of Finance at different times and how Mr Fuzile as DG of Treasury, how they testified as to how National Treasury ...[intervenes]

**MS NGOYE:** Was dealt with.

**CHAIRPERSON:** ...was being attacked.

**MS NGOYE:** Ja.

**CHAIRPERSON:** Even by the executive at cabinet level uh,  
10 for standing for what is right and making sure that things are done properly.

**MS NGOYE:** H'm.

**CHAIRPERSON:** So... so... so when I listen to the evidence you are giving... giving and having heard that evidence uh, I have to remember ...[intervenes]

**MS NGOYE:** H'm.

**CHAIRPERSON:** ...what they were saying about how, on their evidence, National Treasury was being dealt with...[intervenes]

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

**CHAIRPERSON:** ...and they were being attacked um, even by members within the cabinet.

**MS NGOYE:** H'm.

**CHAIRPERSON:** And I think they said even the former president was uh, um, hostile to the National

Treasury...[intervenes]

**MS NGOYE**: H'm.

**CHAIRPERSON**: ...at a certain time.

**MS NGOYE**: H'm.

**CHAIRPERSON**: Uh, of course, I have had evidence also of what happened according to certain senior officials, how Mr McBride, Mr Koven, Mr Seshego, how they said, while they were standing for what is right and refusing to do wrong, how they were suspended...[intervenes]

10 **MS NGOYE**: H'm.

**CHAIRPERSON**: ...and subjected to disciplinary actions. They had to go to court.

**MS NGOYE**: H'm.

**CHAIRPERSON**: They had to go to arbitrations and uh, so when I listen to all of this evidence, I have to remember what I have also heard from other departments...[intervenes]

**MS NGOYE**: From other...

**CHAIRPERSON**: ...which have got nothing to do with...[intervenes]

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

**CHAIRPERSON**: ...PRASA but similar things happened there. Um, and of course, I have to also remember evidence that we have heard of um, senior officials at SAA...[intervenes]

**MS NGOYE**: H'm.

**CHAIRPERSON:** ...uh, Dr Dowa, I think is one of the... Ms Moshe was one of them and um, there was uh, miss if I am not mistaken. They also have stories that they have told before this Commission of how they were treated...[intervenes]

**MS NGOYE:** H'm.

**CHAIRPERSON:** ...when they sought to stand for what was right.

**MS NGOYE:** What was right.

10 **CHAIRPERSON:** And refused to do what was wrong.

**MS NGOYE:** H'm.

**CHAIRPERSON:** And how some of them were... were suspended for long periods...[intervenes]

**MS NGOYE:** Ja.

**CHAIRPERSON:** ...without any disciplinary hearing.

**MS NGOYE:** Ja.

**CHAIRPERSON:** And uh, ultimately, they were forced into a situation where they had to settle because they did not have enough money to pay lawyers to fight for their rights.

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

**CHAIRPERSON:** All of these things uh, they seem to create a pattern ...[intervenes]

**MS NGOYE:** Ja.

**ADV SONI SC:** Yes.

**CHAIRPERSON:** ...of what was happening. And... and it is

all roundabout the same years.

**MS NGOYE**: H'm.

**CHAIRPERSON**: You know. Even with SAA, you are looking at around 2015, you know uh, 2016/2017 but other things happening earlier on. You go to IPAD, McBride... Mr McBride's challenges. Mr Koven. So the years seems to, more or less, be the same years ...[intervenes]

**MS NGOYE**: Ja.

**CHAIRPERSON**: ...when these things seemed... seemed to  
10 have been happening.

**MS NGOYE**: Ja. But also Chair, I think what... what comes to my mind and... and what... what is troubling is the fact that in almost all instances the people that behave in this manner are the people that say they are fighting corruption.

**CHAIRPERSON**: H'm.

**MS NGOYE**: And... and fighting corruption.

**CHAIRPERSON**: H'm.

**MS NGOYE**: We can unpack that.

**CHAIRPERSON**: H'm.

20 **MS NGOYE**: To say, "what is that you are fighting?"

**CHAIRPERSON**: H'm.

**MS NGOYE**: You are removing the people that you know are a nuisance...[intervenes]

**CHAIRPERSON**: H'm.

**MS NGOYE**: ...and will stop you from doing what you want

to do under the guys that you are fighting corruption.

**CHAIRPERSON:** H'm. H'm.

**MS NGOYE:** As I say and I am... I am happy to deal with my... my special leave Chairperson.

**CHAIRPERSON:** H'm.

**MS NGOYE:** I was painted and tainted as this corrupt official.

**CHAIRPERSON:** H'm.

**MS NGOYE:** Only to be brought back...[intervenes]

10 **CHAIRPERSON:** H'm.

**MS NGOYE:** ...to PRASA without even being charged.

**CHAIRPERSON:** H'm.

**MS NGOYE:** Chairperson.

**CHAIRPERSON:** H'm. H'm.

**MS NGOYE:** But when you go to Google...[intervenes]

**CHAIRPERSON:** H'm.

**MS NGOYE:** ...you will not find Martha Ngye.

**CHAIRPERSON:** H'm.

20 **MS NGOYE:** The first thing you will find under Google is.. is corruption and... and so on.

**CHAIRPERSON:** H'm.

**MS NGOYE:** Allegations which were never proven.

**CHAIRPERSON:** H'm.

**MS NGOYE:** Now as an employee, I do not have the powers to go after the... you know...[intervenes]

**CHAIRPERSON:** H'm.

**MS NGOYE:** ...to go to the media and say the Board of PRASA together with the Group CFO of PRASA have tainted me.

**CHAIRPERSON:** H'm.

**MS NGOYE:** You know, I fought internally and nothing gets done.

**CHAIRPERSON:** H'm.

10 **MS NGOYE:** In fact, they just disregard the issues that I raised.

**CHAIRPERSON:** H'm.

**MS NGOYE:** Even referring to the policies within the organisation.

**CHAIRPERSON:** H'm.

**MS NGOYE:** It has been a nightmare Chairperson.

**CHAIRPERSON:** H'm.

**MS NGOYE:** If one must say. Um, but the reality is, I guess, if you believe in what you are doing...[intervenes]

**CHAIRPERSON:** H'm.

20 **MS NGOYE:** ...you will continue to do so.

**CHAIRPERSON:** H'm. H'm.

**MS NGOYE:** But um, it... it is not fair.

**CHAIRPERSON:** H'm.

**MS NGOYE:** And... and I must state it ...[intervenes]

**CHAIRPERSON:** H'm. H'm.

**MS NGOYE:** ...that the manner in which some of this has been conducted...[intervenes]

**CHAIRPERSON:** H'm.

**MS NGOYE:** ...has really caused um, us um, a lot of funeral... heartache.

**CHAIRPERSON:** H'm.

**MS NGOYE:** But we are there. And I guess for me, it is always been about the... the... the... commuter Chairperson.

**CHAIRPERSON:** H'm.

10 **MS NGOYE:** And I always ask myself “why are you still at PRASA?”

**CHAIRPERSON:** H'm.

**MS NGOYE:** And when I think about the plight of our people out there...[intervenes]

**CHAIRPERSON:** H'm.

**MS NGOYE:** ...is to say somewhere somehow maybe, you know, some of us will remain to... to get this organisation right.

**CHAIRPERSON:** H'm.

20 **MS NGOYE:** For the sake of our people.

**CHAIRPERSON:** H'm. H'm.

**MS NGOYE:** Because nobody speaks for them. They are not an ...[intervenes]

**CHAIRPERSON:** Ja, I mean...[intervenes]

**MS NGOYE:** You know, it is just... it is just for me. It... it...



it... it is one of those things Chairperson that... that really has... it... it lives with me on a daily basis.

**CHAIRPERSON:** H'm.

**MS NGOYE:** To say, I do not know what it is that I am doing wrong.

**CHAIRPERSON:** H'm.

**MS NGOYE:** Or that people detest me in the manner that they do...[intervenes]

**CHAIRPERSON:** H'm.

10 **MS NGOYE:** ...to have me be subjected to what I have been subjected to within the organisation.

**CHAIRPERSON:** H'm.

**MS NGOYE:** But be that as it may Chairperson. I mean, you know, I believe in what I believe in.

**CHAIRPERSON:** H'm. Well uh, of course, I should not have uh, not mentioned Themba Maseko. I should have mentioned Themba Maseko as well.

**ADV SONI SC:** Yes.

20 **CHAIRPERSON:** You know. Because his evidence was uh, one of the first stories that the Commission heard uh, of how he was transferred from GCIS to another department...[intervenes]

**MS NGOYE:** H'm.

**CHAIRPERSON:** ...uh, because, on his evidence, he had refused to cooperate with the... with... with the Guptas.

**MS NGOYE**: H'm.

**ADV SONI SC**: Yes.

**CHAIRPERSON**: Yes. Okay.

**ADV SONI SC**: [throat clearing]

**MS NGOYE**: Sorry, ja.

**ADV SONI SC**: I just want to get back to a point. When you say when Dr Sishi says that employees complained, is it that you were challenged the validity of contracts they concluded?

10 **MS NGOYE**: H'm.

**ADV SONI SC**: Or is it that you took disciplinary steps?

**MS NGOYE**: Well, Chairperson, you know, it just did not make sense for me, actually, what he meant because especially in relation to these matters, Siyaya.

I had dealt with the executives um you know, responsible for... for those specific areas where Siyaya was owing all the money. And those executives were right here.

20 They say, "we do not own Siyaya money". I... so I did not know what he was talking about to uh, as far as that was concerned.

And I was very clear in my mind to say, at the end of the day, as the legal function, we do not also just attend to matters where we do not have uh, where our prospects of success are not... are not there Chairperson.

We engage with the business quite extensively. The

only understanding that I had where he speaks about employees not being happy, for me were those matters were those employees who were found wanting within the organisation, were being dealt with.

And what was interesting Chairperson was that in those matters and Mr Dingiswayo can speak to this, he was the... the... the witness of PRASA who managed to have those employees, you know, being dismissed but obviously, that is not been spoken about.

10           It is always, you know, the powers that be that... that are fighting corruption. So the work that the legal function did was never recognised as far as these work... this work was concerned.

But those people that felt that they needed to complain about us, you know, would use that opportunity when they realised that uh, under the powers that be, also did not necessarily support the work that we were doing.

So if you unpack it Chair, I just listened and I thought “okay, it is just one of those again but be it as it may”.

20    **ADV SONI SC:** In your evidence on the previous occasion you were here, you made the point that if you look at the Siyangena contract, many of the matters could not have been taken place if people have behaved properly.

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

**ADV SONI SC:** I mean, you take Dr Pongola...[intervenes]

**MS NGOYE:** Ja.

**ADV SONI SC:** Mr Gansho.

**MS NGOYE:** Yes.

**ADV SONI SC:** And... and a number of them whom you named on the advocacy.

**MS NGOYE:** Ja..

**ADV SONI SC:** Now clearly, as I understood your evidence on the previous occasion, they seem to have an investment in the contract itself.

10 **MS NGOYE:** That is correct Chair. I mean, I have just proven. Mr Gansho is out of the organisation today because it was found that in the Siyangena matter he benefited with the property in Durban.

You know, I was not there, you know, when these things were happening but I mean, the fact that now it was the legal function that was running with this matter, just it was the legal function that... that had a vendetta against Mr Gansho. It is always absurd things.

20 **ADV SONI SC:** So if... if there were legitimate... well, not legitimate but if there were complaints that were made, it would have been employees of that elk if I can put it that way.

**MS NGOYE:** It would. And also those Chair, those that were still around whose matters had not been finalised because obviously, some of the matters are still happening even now,

you know. Um, so they had not been finalised.

**CHAIRPERSON**: But I guess that uh, if an associate thought there were proper grounds or any complaints by employees of PRASA against you in that you have done something wrong, he would have had all the power to take action against you, would he not?

**MS NGOYE**: He would.

**CHAIRPERSON**: Ja. Or to report you to the board or whatever.

10 **MS NGOYE**: Yes, Chair.

**CHAIRPERSON**: And did he ever do that?

**MS NGOYE**: Well, he... he... he... no, he had not done that Chair...[intervenes]

**CHAIRPERSON**: Oh, he attempted or what?

**MS NGOYE**: No, not actually that he attempted to... to do it but... but uh, the CEO before him uh, mister uh...[intervenes]

**CHAIRPERSON**: [Indistinct]

**MS NGOYE**: Mr Sithole.

**CHAIRPERSON**: H'm?

20 **MS NGOYE**: Sithole. Uh, Chair, I... I... I have been taken to the cops. I have been, you know, subjected to arrests.

**CHAIRPERSON**: H'm.

**MS NGOYE**: Because of the work that I did.

**CHAIRPERSON**: H'm.

**MS NGOYE**: And as the CEO at the time, he believed that it

was necessary for the board to deal with me in a particular way.

**CHAIRPERSON**: H'm.

**MS NGOYE**: Let me say, I stood my ground Chairperson.

**CHAIRPERSON**: H'm.

**MS NGOYE**: And... and nothing came of that.

**CHAIRPERSON**: H'm.

**MS NGOYE**: Because, once again, you know, I had identified an area within the organisation. This is not part of my evidence Chair but I am just saying.

**CHAIRPERSON**: H'm.

**MS NGOYE**: I had identified an area within the organisation

**MECHANICAL INTERRUPTION**: [01:27:54]

**MS NGOYE**: ...organisation where there was corruption of the highest note.

**CHAIRPERSON**: H'm.

**MS NGOYE**: Uh, in relation to us dealing with um, components...[intervenes]

**CHAIRPERSON**: H'm.

**MS NGOYE**: ...within the organisation. At the time, I was the acting CEO of PRASA Rail Chairperson.

**CHAIRPERSON**: H'm. H'm.

**MS NGOYE**: And this issue had come to me.

**CHAIRPERSON**: H'm.

**MS NGOYE**: Then I was accused of assaulting an employee.

**CHAIRPERSON:** H'm.

**MS NGOYE:** One of the things that I said to the board Chairperson, I said, "Chairperson, if I in my capacity as the Group CFO of... of... of... I mean, C... the acting CEO of PRASA Rail and the legal person for them, had done so, I would have handed in my resignation".

**CHAIRPERSON:** H'm.

**MS NGOYE:** I would not even, you know, uh-uh-uh oppose to this thing.

10 **CHAIRPERSON:** H'm.

**MS NGOYE:** I had the cops come to fetch me there at PRASA...[intervenes]

**CHAIRPERSON:** H'm.

**MS NGOYE:** ...because of this allegation. The Group CEO was pursuing this issue with a particular employee that was there...[intervenes]

**CHAIRPERSON:** H'm.

**MS NGOYE:** ...that had alleged that I assaulted her in a meeting filled with eight people Chairperson.

20 **CHAIRPERSON:** H'm.

**MS NGOYE:** Who came back and said there was no such assault.

**CHAIRPERSON:** H'm.

**MS NGOYE:** But he believed that I did.

**CHAIRPERSON:** H'm.

**MS NGOYE:** Because I had clearly pinned something that he possible was involved in.

**CHAIRPERSON:** H'm.

**MS NGOYE:** But because I had found that, I... I was really a nuisance.

**CHAIRPERSON:** H'm.

**MS NGOYE:** So all these... all these things Chairperson come and... and I reported these things to the board.

**CHAIRPERSON:** H'm.

10 **MS NGOYE:** I... I made reference to these things to the board.

**CHAIRPERSON:** H'm.

**MS NGOYE:** In fact, the person that was prosecuted was me and not necessarily the person that I had indicated to have possible been involved in the corruption in relation to those matters.

**CHAIRPERSON:** H'm.

**MS NGOYE:** To that person, that nothing was done.

**CHAIRPERSON:** H'm.

20 **MS NGOYE:** But I was somebody who was vilified within the organisation and... and... and treated as though as I am the one that is causing problems within the organisation.

**CHAIRPERSON:** H'm.

**ADV SONI SC:** Ja, Ms Ngoye...[intervenes]

**CHAIRPERSON:** Well, when you met them, causing



problems by identifying all these areas of corruption.

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

**CHAIRPERSON**: [laughs] Yes.

**ADV SONI SC**: Ms Ngoye, when... right at the outset of your affidavit one of the things you pointed out was that there were certain people who exercised undue influence at PRASA.

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

**MR SONI SC**: Now you in your affidavit in your conclusion  
10 with the same theme and can I just ask you to summarise  
what you say or what you said in the conclusion as  
contained in the affidavit?

**MS NGOYE**: Can read it, I think it is – let me read it,  
there is so much. Under paragraph 58 I say:

20 “I submit that the a foregoing matters prompt the  
following concern. PRASA concludes contracts with  
service providers running into ten so hundreds of  
millions of Rands. As I have pointed out, some  
contractors have undue influence with persons in  
key positions at PRASA. When disputes arise,  
usually about payment, often legitimate questions  
are raised about the validity of the award of the  
tender or the terms and scope of the contract.  
Given that these are often constitutional issues  
involving Section 217 of the Constitution and

administrative actions, such dispute ought to be properly decided by the courts.”

I most cases you find that the tender processes were not followed, Chair, we have given that evidence here where, you know, and then you say was the process fair? Section 217 of the Constitution requires as a state of organ to behave in a particular way. That was the approach that was adopted by the legal function because we are trying to protect the interest of PRASA, Chair, and to do what is  
10 right.

However, what I have described above demonstrate that that approach is often undermined by senior persons at PRASA. Settlements are concluded and when the legal function attempts to act in PRASA’s best interests, steps are taken against us. Should I continue, Chair?

**MR SONI SC:** Yes, yes.

**MS NGOYE:** “This cannot be in the best interest of

PRASA, for our experience is that the settlement route is adopted not only when influential persons  
20 are involved but is extended to others as well, to PRASA’s grave prejudice. Allied to this is the pattern of appointing people in acting capacities and such persons are easily manipulated.”

People get scared, Chair, and we have seen it. You know, I mean, when Mr Montana fired me he appointed a guy who

did not have a legal experience to head up the legal function.

**MR SONI SC:** Say that again please?

**MS NGOYE:** When I was fired in 2015 by Mr Montana, the person who acted in my stead was actually a gentleman who reported to me and had no legal background. He was petrified. He was petrified. I mean, because immediately after that what he was required to do was to sign invoices of law firms that they knew, Mr Montana knew, were not  
10 agreed to sign. So the unfortunate, you know, gentleman, was subjected to that and found himself signing, but petrified.

**CHAIRPERSON:** You did not cover that last time, did you?

**MS NGOYE:** No, I did not, I am just saying, you know, as just as an example of ...[intervenes]

**CHAIRPERSON:** You just remember that?

**MS NGOYE:** Ja, of this thing, you know, and ...[intervenes]

20 **CHAIRPERSON:** Were there no legal people in your department, legally qualified people [inaudible – speaking simultaneously]

**MS NGOYE:** There were, Chairperson, but he went and got somebody who was not a lawyer.

**CHAIRPERSON:** Yes.

**MS NGOYE:** To come and head up the legal function.

**CHAIRPERSON:** Who was that?

**MS NGOYE:** Mr Thokolo Mohlake..

**CHAIRPERSON:** Is he still there?

**MS NGOYE:** He is still there. He reports to me. He is the general manager responsible for insurance.

**CHAIRPERSON:** Yes. I think it would be important to get a statement from him.

**MS NGOYE:** At the time, yes.

10 **CHAIRPERSON:** As to how it came about.

**MS NGOYE:** Sure.

**CHAIRPERSON:** How he was approached and how...[intervenes]

**MS NGOYE:** How he felt and that.

**CHAIRPERSON:** Ja, he dealt with matters when he had no legal qualification and so on.

**MR SONI SC:** Yes. And the type of pressure that had been put on hm.

20 **CHAIRPERSON:** The type of pressure that he may have got.

**MS NGOYE:** Ja.

**CHAIRPERSON:** He might be prepared to speak now.

**MS NGOYE:** Sure.

**CHAIRPERSON:** Ja, ja, ja. Yes.

**MS NGOYE:** And then I say, Chair:

“The same I submit applies to appointing interim boards.”

That was the position at PRASA for nearly 30 months. Now it is obviously more. However, at present, PRASA does not even have an interim board, it is someone called an administrator. That is a position that is not provided for in law that applies to PRASA who, in effect, is PRASA's accounting authority and Group CEO all at the same time. I do not believe that this is lawful and I provided an attached opinion to that effect, Chairperson.

**MR SONI SC:** Now concerning that, I just want to conclude it with that, Chairperson, because there has been – well, perhaps not a development but I should place this on record. You know #UniteBehind have challenged the validity of the appointment of an administrator, is that correct?

**MS NGOYE:** They have, Chairperson, the matter is in the Cape Division and it is before Judge Erasmus.

**MR SONI SC:** And what is the position at the moment?

**MS NGOYE:** Well, they are waiting for judgment, Chairperson, my understanding is that we are waiting for judgment.

**MR SONI SC:** The matter has been argued, though?

**MS NGOYE:** Yes, that matter has been argued. In fact, the judge had requested the parties to go and settle the

matter but I understand that there was no settlement reached, so one does not know where it is now.

**MR SONI SC:** Mr Chairman, have no further questions.

**CHAIRPERSON:** Earlier on when Mr Molefe was giving evidence, one of the matters he talked about was the fact that it would appear – and, of course, he is outside of PRASA so his knowledge might be limited – it would appear that notwithstanding the fact that the contract between PRASA and Swifambo was declared invalid, not  
10 much seems to have been done since then to try and recover about R2,6 billion that had been paid. Do you know anything about what is happening or whether there have been any steps that have been taken in the meantime?

**MS NGOYE:** Yes, Chair. In fact, we are currently dealing with that matter. Mr Mashaba brought obviously a liquidation application to have Swifambo Leasing and some of its companies ...[intervenes]

**CHAIRPERSON:** Liquidated.

20 **MS NGOYE:** Yes, liquidated. He wanted it to be a voluntary liquidation. So we joined as PRASA and said no, it cannot be voluntary, it needs to be compulsory.

**CHAIRPERSON:** Ja.

**MS NGOYE:** So we intervened there and the liquidator was appointed. So the liquidator is in the process of

dealing with getting monies back for PRASA. In fact what has happened is that about six, seven locomotives were sold as part of the liquidation process but obviously, Chair, if you look at the amount of money that was paid by PRASA, 2.6 billion, what the liquidator has in his account right now is only R65 million in relation to the six locomotives that he has sold.

There are others obviously that are still in Spain that did not come through because we only received 13 of  
10 the locomotives. So there are seven that is here, that must still be dealt with and there was one that was involved in an accident.

What is actually interesting with that matter, Chair, as we speak, is that we still have attorneys on board that are representing PRASA on that and obviously we cannot let that matter go, Chairperson.

What we are dealing with currently is the fact that Mr Mashaba – this is also a Mashaba – is busy bringing application after application to try and prevent this matter  
20 from – the liquidators from actually, you know, carrying out their function.

The latest is that initially obviously our claim, he opposed the fact that we, as PRASA, were entitled to bring a claim. We are the biggest creditor, Chairperson, you know, for that amount of money. We had to fight that and

so we are in the process of dealing with those matters and it is preventing obviously the liquidators from continuing with their work in relation to dealing with that and coming – and finalising it because they have to deal with all these various applications that Mr Mashaba keeps bringing.

In fact, right now one of the matters that we are dealing with is him challenging the appointment of the liquidators themselves. It is very convoluted. You know, one minute he is challenging the appointment of the liquidators, the next minute he is saying to PRASA you are supposed to join forcefully in the proceedings and so it is so – it is a delaying tactic that is there but I think from a PRASA perspective, Chairperson, we have not let that matter go, we are dealing with trying to get our monies back.

**CHAIRPERSON:** When was this Swifambo judgment, SCA judgment out? When did it come out?

**MS NGOYE:** SCA was 20...

**CHAIRPERSON:** '17?

20 **MR SONI SC:** Yes.

**MS NGOYE:** '17/'18, ja.

**CHAIRPERSON:** 2017?

**MS NGOYE:** '18.

**CHAIRPERSON:** 2018?

**MS NGOYE:** Ja, 2018, I think. Ja, '18, I think, Chair. So



there has been those delaying tactics.

**CHAIRPERSON:** Because, I mean, people who have received money, who claim that they received that money lawfully, they will do ...[intervenes]

**MS NGOYE:** Whatever it takes, yes.

**CHAIRPERSON:** Whatever to – so PRASA has to really adopt a strategy that will match those delaying tactics.

**MS NGOYE:** Yes, ja.

**CHAIRPERSON:** Because otherwise if it does not adopt a  
10 strategy that will be up to those challenges, it will find  
after some time that anyway, there is no money.

**MS NGOYE:** That is right, Chair.

**CHAIRPERSON:** So – and time is of the essence.

**MS NGOYE:** Yes, Chair.

**CHAIRPERSON:** So I just hope that – because that is a  
lot of money.

**MS NGOYE:** It is, Chair. You know, we have had a  
challenge, Chair, and I am sure you would have known  
where our lawyers withdrew for non-payment issues and it  
20 is a known fact that PRASA has struggled with finances  
and one of the law – the law firm that is dealing with this  
matter pulled out because their fees were not paid. But we  
have since managed to sort those issues out and, you  
know, we have made it clear that these are the matters that  
we cannot afford not to deal with, within PRASA.

So there is a cage management process that has been dealt with also by our senior counsel, you know, with the liquidators to ensure that all these, you know, little matters that are brought by Mashaba can be dealt with in one so that we do not have to waste time.

**CHAIRPERSON:** Yes, but – ja, I guess, you know, you legal team I am sure with apply their minds also.

**MS NGOYE:** Sure.

**CHAIRPERSON:** To the question of to what extent must  
10 PRASA be confined to getting – recovering these monies from Swifambo which is being liquidated.

**MS NGOYE:** Sure.

**CHAIRPERSON:** As opposed to also looking at certain persons who may have been responsible in a criminal way.

**MS NGOYE:** Yes, Chair.

**CHAIRPERSON:** For PRASA losing this money or taking this money.

**MS NGOYE:** Ja.

**CHAIRPERSON:** Because otherwise you will have a  
20 strategy where people will establish a company, a legal entity, to use it to do business, do crime and then when they get found out they say do not touch me, go only to the company. Then they liquidate the company. But they have benefited from the money.

**MS NGOYE:** That is right, Chair. Ja.

**CHAIRPERSON:** So you never get the money back all the time because you limit yourself to the entity, so I am sure that they must look at all of those things.

**MS NGOYE:** Yes, Chair.

**CHAIRPERSON:** This a lot of money from the taxpayers.

**MS NGOYE:** Sure.

**CHAIRPERSON:** Ja.

**MS NGOYE:** And we have pushing the Hawks, Chairperson, to do their work as well.

10 **CHAIRPERSON:** Yes, yes.

**MS NGOYE:** Because it has been frustrating for so long where the evidence has been there.

**CHAIRPERSON:** And what is holding back, as you understand the position now? That was the other matter I was going to find out.

**MS NGOYE:** Chairperson, you know, it has been so frustrating dealing with the Hawks because they come back with the same issues all the time and you just do not understand what they want. For me the experience has  
20 been, you know – and it is with the greatest respect that one has, that we have in certain instances been given people where you can see this ...[intervenes]

**CHAIRPERSON:** They are not up to the job.

**MS NGOYE:** No, they are not up to it, Chairperson.

**CHAIRPERSON:** Up to the challenge, ja.

**MS NGOYE:** We have given information and they come back and they say we have not given information. But, you see, the other issue that we found at least as a legal function to be problematic is that since the Chairperson, Popo Molefe's board left, everybody that has subsequently come in has come in and they have excluded the legal function when they deal with these matters.

We were the ones that would go to the Hawks and we would know what documentation was given to the  
10 Hawks.

**CHAIRPERSON:** Yes.

**MS NGOYE:** So naturally when we are not there they will tell whoever they tell, who is meeting with them, what they want and they would not be, you know, countered on the information that they are given. So those delays have been there within the organisation and they have been frustrated to say we are there.

**CHAIRPERSON:** You mean even during Ms Kweyama's board ...[intervenes]

20 **MS NGOYE:** Even during Ms Kweyama's board.

**CHAIRPERSON:** The legal department was excluded?

**MS NGOYE:** They want to meet the Hawks to the exclusion of the legal function, I mean – and when we met with the head, Hermione, and told her what she know, she was astounded because she said in a meeting that she had

with the board, it is like they did not know what they were talking about. You see, they would not have known because they were not there. We do not understand why they left us out.

**CHAIRPERSON:** Had the board consulted with you before going there?

**MS NGOYE:** No.

**CHAIRPERSON:** To say tell us what is the story?

**MS NGOYE:** No, Chairperson. What we offered in all  
10 respects, if anything, was to say to the board these were  
the investigations that were done. We would then invite  
the law firm, Werksmans, to come and give the board a  
summary of what had transpired because obviously it has  
been a subject of a lot of interest to say what has  
happened but what you found, Chairperson, is that as they  
met with, you know, the senior people with the Hawks, you  
know, General Khana, I remember they met – they went to  
a meeting with General Khana and we have met so many  
times this General Khana and we know what information  
20 General Kana is saddled with but he in that meeting told  
the Chairperson of the board that we had provided nothing,  
no information to them about the Swifambo and the  
Siyangena and they could not obviously countenance that  
because they were not there to say no, but that is not true,  
that is not what we know.

So when you find that these things are happening what do you do, Chairperson, you know, you just suppose, leave it.

**CHAIRPERSON:** So at this stage the PRASA is under an administrator. Instead of a CEO there is an administrator. Are you able to communicate directly with the Hawks?

**MS NGOYE:** Yes.

**CHAIRPERSON:** To the highest level and say we are frustrated because we give information and then the next  
10 time people in the Hawks say we did not give them the information, this thing has been going on for a long time. Do you have that freedom to communicate directly?

**MS NGOYE:** Well, in fact, Chair, I have insisted that I be allowed to do that because it has been frustrating and the administrator has arranged a process internally that he has given the head of the human capital, the executive responsible for HR within the organisation to be the person that deals directly with the Hawks. So if the Hawks want to talk to any of us they would via through them.

20 So I made it very clear that I am not meeting with these people, I want the senior people within the Hawks because I have been here before.

**CHAIRPERSON:** Yes, yes, yes.

**MS NGOYE:** And I met not so long ago, about last month, I think, Chairperson, I met with the Brigadier General,

Makinyana(?) who we had met with then when Dr Popo Molefe was the Chairperson. I said to him, I said but Tata Makinyana you cannot come to me now but what I found interesting, Chairperson, was the fact that when the State Capture sat and they heard the evidence that I had given around Siyangena, they came back full force to say no, Martha, we want to give – we want to meet with you, we want to – we heard your evidence at the State Capture. And I was saying guys, this is not acceptable, you have  
 10 had this information, what has happened? Why have you not dealt with these matters?

I mean even last week Friday I had a meeting with Colonel Trollip and I said to Colonel, Colonel, I am here to help, you know, I know the information, should you need anything, let us talk, these things have been outstanding for a while. He has given one assurance that, you know, something will be done but one must see it happening, Chairperson.

**CHAIRPERSON:** You know, Mr Soni, I need to have  
 20 evidence from the Hawks with special reference to the PRASA cases, what they have been doing. I need to hear evidence. I need to hear what is going on. There is a lot of money for taxpayers that is involved the complaints of crime that have been – that I have been told about. It should be in their own interest to come and – I know they

are going to come at some stage to talk about a lot of things but I want to hear about the PRASA cases between you and Mr Harley(?) but I think with regard to the PRASA ones you can deal with them because that is PRASA but you can talk to him in terms of whatever background might be happening.

I need to hear – I need this whole thing to be cleared as to what is it that over the years they have done and what is it that they have not done and why have they  
10 not done what they need to do? If they make out a proper case, if there are some things that must not be heard publicly because they might interfere with investigation or whatever, then appropriate measures should be taken but I want to know exactly what has been done all along about it.

**MR SONI SC:** Yes.

**CHAIRPERSON:** Okay and Ms Ngoye obviously is a source of a lot of information because she will be able to tell you, to give all the information about what has been  
20 done.

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

**CHAIRPERSON:** And I think that what should happen is there should be an affidavit, if there is not one already, which just talks about this is when we laid the complaints with the SAPS.



**MS NGOYE:** Yes.

**CHAIRPERSON:** This is when the complaints were transferred to the Hawks, this is when we had contact with the Hawks for the first time. This is how many times we have met with them and gave them briefings.

**MS NGOYE:** We can do that.

**CHAIRPERSON:** Here is everything that they have asked for and we have given them everything that they have ever asked for. Here is when they asked us again for something  
10 that we had given the previous year. Here are the people who have been involved, we would be dealing with one person and then they get changed and then we are dealing with another person who then asked us for the same thing. Let me get all of that.

**MS NGOYE:** Will do that, Chair.

**CHAIRPERSON:** Ja.

**MS NGOYE:** Will assist.

**CHAIRPERSON:** Let us get all of that because as the delays continue cases get weakened.

20 **MR SONI SC:** Yes.

**MS NGOYE:** Ja.

**CHAIRPERSON:** You know, they ...[intervenes]

**MR SONI SC:** Then money dissipates, Chair.

**CHAIRPERSON:** Yes and money dissipates, ja. Okay, alright, so I will get a report back at some stage on that.

**MR SONI SC:** Yes. Chairperson, may I just place on record that the Swifambo judgment in the SCA was handed down on the 30 November 2018.

**CHAIRPERSON:** 2018?

**MS NGOYE:** 2018, yes.

**MR SONI SC:** 2018, yes.

**CHAIRPERSON:** Okay, okay.

**MS NGOYE:** Thank you.

**CHAIRPERSON:** Thank you. No, I think that is the  
10 question that I – those are the questions I wanted to ask,  
otherwise you have got nothing further?

**MR SONI SC:** I have got nothing.

**CHAIRPERSON:** Yes. Thank you very much, Ms Ngoye,  
we appreciate that you came.

**MS NGOYE:** Thank you, Chair.

**CHAIRPERSON:** You might or might not come back but  
you will continue to work with the Commission.

**MS NGOYE:** Sure.

**CHAIRPERSON:** In regard to all investigations.

20 **MR SONI SC:** Yes.

**CHAIRPERSON:** Thank you very much.

**MS NGOYE:** Will do.

**CHAIRPERSON:** We adjourn then and we will start at ten  
tomorrow.

**MR SONI SC:** As you please.

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS TO 1 JULY 2020**