

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

01 JULY 2020

DAY 228



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 1 JULY 2020

CHAIRPERSON: Good morning Mr Soni, good morning everybody. Are we ready?

ADV SONI SC: We are ready. DCJ I must apologise and so does the witness Mr Botes he came from Pretoria but he just lost his way.

CHAIRPERSON: Oh okay.

ADV SONI SC: And he apologises most profusely.

CHAIRPERSON: Okay no, no that is fine. I thought that
10 maybe the commission did not give him the correct address because I heard that he seems to have gone to the old venue.

ADV SONI SC: That is what seems to have happened.

CHAIRPERSON: Yes. Yes. Okay, no that is fine. We are happy that he is here. Thank you Mr Botes. Yes Mr Soni.

ADV SONI SC: Mr Soni before I...

CHAIRPERSON: Yes.

ADV SONI SC: Mr Chairperson before we start may I put Mr
20 Botes' evidence in context and then we can swear him in so that we know that the purpose of his evidence is and it can be directed at those issues.

CHAIRPERSON: No you can do it but maybe let us start with him being sworn in so then you can put his evidence in context.

ADV SONI SC: As you please Chairperson.

CHAIRPERSON: And then we – you – we begin ja. Thank you.

REGISTRAR: Please state your full names for the record.

ADV BOTES SC: Francois Weideman Botes.

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

ADV BOTES SC: No I do not.

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

10 **ADV BOTES SC:** Yes I do.

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

ADV BOTES SC: Yes I do, so help me God.

CHAIRPERSON: Thank you very much Mr Botes. Once again thank you for coming to give evidence. The file that I have got here has it got his affidavit?

20 **ADV SONI SC:** It is right – it is the last one Chairperson in Bundle G.

CHAIRPERSON: Well I have got Bundle H. I have now been given Bundle G. Is Bundle G the correct one? I have now been given Bundle G I had Bundle H.

ADV SONI SC: Oh I am sorry.

CHAIRPERSON: Okay. Ja okay.

ADV SONI SC: Mr Botes' affidavits appear at – as SS17 and at – they start from page 1 Chairperson.

CHAIRPERSON: From page?

ADV SONI SC: So it is a separate document. Chairperson the way this file has been prepared is because there are short witnesses which short affidavits, they decided to put everything into one file.

CHAIRPERSON: Hm.

ADV SONI SC: I do not know if they have put dividers into
10 file Mr Chairperson.

CHAIRPERSON: Well I am not sure what that means. Are you – do you mean that the files have not been paginated in the way they – they are supposed to be paginated sequentially from page 1 up to the last page?

ADV SONI SC: Yes. DCJ part of the problem was and I was not involved in it was that what we would have is a person's affidavit starting at page 15 or in this case it would be 100 and something and it was thought that it would be better to have them start with page 1 of the affidavit.

20 **CHAIRPERSON:** Ja, no remember we talked it was it on Monday.

ADV SONI SC: I know it is Chairperson.

CHAIRPERSON: Yes. Because we just need to consistent.

ADV SONI SC: Yes.

CHAIRPERSON: It helps when I pick up a file to know what

I am expecting.

ADV SONI SC: Yes.

CHAIRPERSON: If I am looking for page 50 or 250 I must not find that there are two 250's.

ADV SONI SC: Yes.

CHAIRPERSON: If I am looking for page 20 I must not find that there are three page 20's you know in the bundle.

ADV SONI SC: Yes.

CHAIRPERSON: And it is a simple thing it has been done all
10 along. It is – will you just prevail on those who do this because in the end...

ADV SONI SC: Yes Chairperson.

CHAIRPERSON: It is the evidence leader that takes responsibility for this. So when they do it just check that they have done it properly.

ADV SONI SC: Yes.

CHAIRPERSON: We do not have a choice now because Mr Botes is here we have to continue.

ADV SONI SC: He is here yes.

20 **CHAIRPERSON:** But it is not satisfactory.

ADV SONI SC: Yes.

CHAIRPERSON: We now need to be able to say on all the bundles the pagination is from page 1 up to whatever.

ADV SONI SC: No sure.

CHAIRPERSON: Even if there are different statements

inside. If they are in the same bundle the pagination covers everything sequentially.

ADV SONI SC: You want it from page 1 to ...

CHAIRPERSON: Yes, yes. Okay so how do I get to Mr Botes affidavit on this bundle?

ADV SONI SC: It is marked Exhibit SS17.

CHAIRPERSON: Okay alright.

ADV SONI SC: I again apologise to you Chairperson.

CHAIRPERSON: Ja okay alright. They must just fix the one
10 we discussed – was it Monday.

ADV SONI SC: Yes.

CHAIRPERSON: If they have not fixed it and then they must sort this one out afterwards.

ADV SONI SC: Yes.

CHAIRPERSON: Okay.

ADV SONI SC: DCJ before I lead the evidence of the witness because perhaps, I should place on record the background against which Mr Botes is being called because the matters that are contained in the documents before you
20 are much wider than what the commission is dealing with. But there is a significant part of Mr Botes' affidavit and statement to the Pretoria Bar Counsel that contains matters that are of interest to the commission. But I will just give the background Mr Chairperson.

You will recall Chairperson that Ms Ngoye gave

evidence that in regard to the Siyaya matters there – the matters had been in court and they had been referred to arbitration.

There were five matters that had been referred to arbitration. And the arbitrations we are going go on and then – and this now is the perspective from the PRASA Legal – the internal legal team. And they – they were told that the Chair – the newly appointed Chairperson Ms Makhubele now Judge Makhubele was going to be dealing with the matter
10 and you will recall that they said that when they contacted PRASA’s attorneys PRASA’s attorneys said to them PRASA’s attorneys had been instructed not to communicate with the internal legal team.

Then they found out that the matters had been settled and that there was going to be an application to court to make the arbitration awards and orders of court. When they found out about that they then approached their firm of attorneys different from the ones that had initiated the settlement or had concluded the settlement to have those
20 orders rescinded. Eventually it was rescinded.

So that is the perspective from the PRASA internal legal team. We are now going to deal with the perspective of communications between Ms Makhubele and the lawyers for the liquidators in the matter. Mr Botes was counsel for the liquidators in the matter and at issue was a

communication that Ms Makhubele had made to him saying that the attorneys who were applying for the rescission application had no authority to do so.

At issue again to put Mr Botes' evidence in perspective is that when this application was made Mr Botes was surprised having regard to the fact that in a previous communication Judge Makhubele had said to him the matters are settled and the matters in fact were settled. So he asked her by way of a Whatsapp message:

10 "Are you bringing the application?"

And it is that message that she sent to him to say those lawyers have no authority that is in issue in these proceedings because what it did was there was massive publicity around the issue at that time and Judge Makhubele then laid a complaint against Mr Botes for revealing in court and through his attorneys a communication she had sent to him. So there is no dispute about the communication as I understand it.

20 There is a dispute about whether Mr Botes should have revealed it at all. In Mr Botes' response to the complaint laid by Ms Makhubele to the Bar Counsel he revealed how the communications on this issue started between him and Ms Makhubele and it is for that reason that we are going to call – we are calling Mr Botes. So it is a very narrow issue as far as the commission goes as between

Mr Botes and Ms Makhubele there are other issues but with respect Chairperson they do not concern the commission.

CHAIRPERSON: No that is fine. I think that it is important also to mention other features that you might not have mentioned that make the commission to be interested in the interactions between the then Chairperson of the PRASA Board and Mr Botes. Namely that PRASA is one of those SOE's in respect of which for many years they have been in the public domain all kinds of allegations of serious
10 corruption and maladministration. And except for what we heard from Mr Popo Molefe who was Chairperson of the Board of PRASA at a certain stage except for the attempts that his Board tried to do it appears that not much has been done by anybody to deal with those allegations of corruption at PRASA.

And the former Chairperson of the Board now Judge Makhubele her assumption of duty and her appointment to – as Chairperson of the Board also happened under circumstances that are quite unusual. She appears to have
20 been appointed sometime in October I do not know if it was the 19 October.

ADV SONI SC: Yes it was the 19th.

CHAIRPERSON: 2017. Prior to that she had been nominated for appointment as a Judge of the High Court and I think early in October I do not know if it was the 2 October,

she had been interviewed by the JSC for the position of – of a Judge. Now – so there are questions about why she allowed herself to be appointed when she would have known either that she was about to be appointed to – as a Judge or that there was a very good chance she would be appointed as Judge.

I mean I am one of those people who know a lot about what happens in the JSC because I have been interviewed probably about six times over the past 23 years.

10 Very u – I mean very often when you have been interviewed by the JSC you get told either by the same day or within the next day or two whether the JSC will advise the President to appoint you. And the role of the JSC and the President also is such that the President – the general view is that the President is bound to go along with the advice of the JSC. But even if it was said what the JSC does as strong recommendation over the past 20 or whatever years I think it would be difficult to find any case where the JSC advised the President to appoint a person as a Judge and the President

20 did not appoint.

So there are questions about why would she have accepted appointment as Chairperson of the Board when she would have known that in all probability beginning of the year 2018, she would be expected to assume duty.

So there are those questions and then of course part

of the evidence of Ms Ngoye if I recall correctly was that after she had arrived as Chairperson of – she had arrived at PRASA as Chairperson of the Board her interest for purposes of settlement was on Siyaya matters even though according to Ms Ngoye there were a lot of other matters with even larger amounts involved.

ADV SONI SC: Yes.

CHAIRPERSON: She only showed interest in that one. So it is against that background that the commissions wants to
10 see what role she may have played and then the exchanges that she might have had with Mr Botes. You know that is the context.

ADV SONI SC: Yes.

CHAIRPERSON: So I thought I must just mention because also I think it important the public should just have as good background as possible.

ADV SONI SC: Yes. May I in fairness to Ms Makhubele Chairperson say that she has asked to consult with the commission?

20 **CHAIRPERSON:** Ja.

ADV SONI SC: So that she could answer those very issues.

CHAIRPERSON: Yes, yes.

ADV SONI SC: Oh well that is what she said to me in a telephone conversation.

CHAIRPERSON: Yes.

ADV SONI SC: Last Saturday.

CHAIRPERSON: Yes, yes.

ADV SONI SC: So – but Chairperson those are matters that will obviously have to be raised.

CHAIRPERSON: Yes.

ADV SONI SC: With her.

CHAIRPERSON: Yes, yes.

ADV SONI SC: But – but we would respect that is the full background against which Mr Botes' evidence must be
10 assessed.

CHAIRPERSON: Yes. No, no she definitely has recently indicated that she will co-operate and she makes herself available to be interviewed by the commission's legal team.

ADV SONI SC: Yes.

CHAIRPERSON: And the legal team has been in touch with her.

ADV SONI SC: Yes.

CHAIRPERSON: And certainly, her side of the story will be heard. I do not know whether Mr Soni you want to say
20 anything about a request for investigations – forensic investigations?

ADV SONI SC: Yes. Mr Chairperson as I understood what Ms Makhubele said is that because Mr Botes' evidence – well communication to the commission was based on some Whatsapp messages between him and Ms Makhubele his

phone had been subjected to a forensic analysis by the commission and she wanted the same in respect of her phone.

CHAIRPERSON: Hm. Hm.

ADV SONI SC: We indicated that we would have a person from the commission's forensic team at the interview – at the consultation with her and if it was necessary then those investigations or the inquiries would be made. But she would have to indicate what is it that is in dispute between
10 her and Mr Botes.

CHAIRPERSON: Hm. Hm. She is aware of course and she note that Mr Botes is going to give evidence this morning?

ADV BOTES SC: I told her on Saturday and I called her again last night.

CHAIRPERSON: Yes.

ADV SONI SC: Chair after we had finished Chair.

CHAIRPERSON: Yes.

ADV SONI SC: So I did tell her that – and she asked if her –
Mr Botes' evidence could be deferred until she gave
20 evidence and I pointed out to her that that is not how the commission operates. It is in fact very seldom if it has ever happened that when a person who is called by the commission gives evidence that the person so called implicated person is immediately called. But I did indicate to her that Mr Botes will be called today.

CHAIRPERSON: Okay no that is fine. I am sure that she will feel free to pursue if she believes she needs that forensic investigation to do so.

ADV SONI SC: Yes.

CHAIRPERSON: My understanding of what she really wants to be revealed by the forensic investigation because I have seen the correspondence. I have read an affidavit she has deposed to. My prima facie view is that the issue that she wants to be revealed is an issue that does not appear to me
10 to be relevant to the issues that the commission is looking at.

ADV SONI SC: Yes.

CHAIRPERSON: But that is not her final decision. She should feel free to persuade me that it is relevant and then if I am persuaded then we can look at that.

ADV SONI SC: Yes.

CHAIRPERSON: And she did mention about – I think she did mention something about wishing to cross-examine Mr Botes but you know you – everyone applied for Leave to
20 Cross-examine.

ADV SONI SC: Yes.

CHAIRPERSON: And there are certain requirements that need to be met. One of which obviously will be whether the cross-examination will be on issues that are relevant to what the commission is looking at or not.

ADV SONI SC: Yes. Yes.

CHAIRPERSON: So she can bring that application or move that application in due course if leave is granted, I have no doubt Mr Botes would make himself available after that.

ADV SONI SC: Yes.

CHAIRPERSON: Okay I think we – I think we have put everything on record properly but if there is something, I have left out you can indicate.

ADV SONI SC: No Chairperson just – just to point out that
10 we will point all of these matters out when we consult with her next.

CHAIRPERSON: Yes. Yes. Okay thank you.

ADV SONI SC: Mr Botes just if I can ask you – you have submitted to the commission two affidavits and your response to Judge Makhubele’s complaint against you to the Bar Counsel – to the Pretoria Bar Counsel, would that be correct Mr Botes?

ADV BOTES SC: Thank you very much Chairperson. Thank you very much Advocate Soni. Yes I provided the
20 commission with one affidavit that is the affidavit that appears on Annexure SS17 on page 57 58, 59 and at the top of page 60 that is my signature which appears on that affidavit.

That is the so called – I see it is marked the second affidavit and the report that – the second or the first affidavit

is the affidavit that the commission – Mr Commissioner will find SS17 that is the first page, page 303 up until 06 and that is my signature which appears right on the middle of the page and the whole purpose of these affidavits were to introduce the response to the complaint that was lodged by the Honourable Justice Makhubele against me and that response Chairperson will find from FWB08 right until the end and that will be page 24 and right at the end of the document I have signed it on the 17 May 2019.

10 **CHAIRPERSON:** Okay thank you. Mr Soni I thought you should start by getting Mr Botes to tell us who he is?

ADV SONI SC: Yes.

CHAIRPERSON: He is an advocate and which bar, for how long he has been in practice those preliminaries just get them out of the way before we go into the affidavit.

ADV BOTES SC: Chairperson I have studied at the University of Pretoria obtained the degrees BLC and LLB. I joined the Pretoria Society of Advocates in 1996. I did pupillage, past pupillage and I commenced practice in 1997,
20 the 1 December 1997. Sorry I did pupillage in 1997, past pupillage then commenced practice on the 1 December 197. I remained a member of the Pretoria Society of Advocates. I am still a member of the Pretoria Society of Advocates. I was elected to the Bar Counsel in 2005. I was elected as the Deputy Chairperson of the Bar Counsel during this period

which is relevant for purposes of this commission. I served as the Chairman of the Pretoria Bar Counsel two years ago and I received – I was recommended for senior status in 2013 and the President, the former President Zuma signed my letters patent in September 2014.

CHAIRPERSON: Thank you I think that is the background that I wanted us to deal with first ja.

ADV SONI SC: Now Mr Botes the – do you know Ms Makhubele?

10 **ADV BOTES SC:** Chairperson I know Judge Makhubele very well. I know her since I have commenced my practice in 1997. We were members of the Bar Counsel for many years and allow me we have developed a very, very good relationship. A very cordial relationship.

I always encouraged her jokingly and seriously that she is ready to be appointed. She is ready to grace the bench and whenever I saw her, I said to her, but come on, come on you must do it now, the time is right. And we – we really, really established a very, very good relationship based on integrity,
20 based on trust. We were never opponents in matters.

We were never involved in – in litigation and – but we really, really got along very, very well. And I knew that she was about to – about to be interviewed by the Judicial Services Commission. I also knew then that in October – early October 2017 that the commission sat, Judicial

Services Commission and I also knew because in our society when one of our members receives news the day, on the day, the evening or the day thereafter that they have been recommended it spreads like a veld fire in our society and we also proud of it.

We pride ourselves to make our members available to – to do Judicial service and I was very pleased. I did unfortunately not phone her at the time I was little bit busy with – with other issues and when I received her call early in
10 November I was in my vehicle travelling from or to a destination. I had her cell phone number on my cellular telephone and when the phone rang and it said Nana Makhubele my first reaction was to congratulate her. I said, Nana this is now a very pleasant call congratulations upon your appointment.

My submission was it was overdue but I wish you a very pleasant, a very prosperous career on the bench and my words were still hopefully we will see you in higher echelons and maybe an appointment in the SCA. And Judge
20 Makhubele was extremely friendly like she always is. She is a friendly person. I have never experienced any animosity between us and yes so that is how the conversation started. I was totally unaware of her being appointed as the Chairperson of the interim Board of PRASA. It was never brought to my attention. I was simply totally unaware of it

and when she informed me that she was appointed as the Chairperson of the interim Board it did not come as a shock it just came as a surprise.

I said, oh well that is – that is good, good to hear. I did not know what the purpose of the interim Board was, I do not know how long her tenure would have been. I do not know what the background was, that was the first time that I have learnt about her appointment.

I thought that well now that she is appointed in that
10 position maybe the purpose of the phone call is to engage my services in some manner or another and I ask her, how can I be of assistance Judge Makhubele and she said to me that she was appointed as the Chairperson of the interim Board by the former President who deployed her there and I ask her but for what reason and she said to me unequivocally and in no uncertain terms to sort out the mess at PRASA and to clean up. Those were her words.

She then mentioned to me that it came to her knowledge that I am involved in pending litigation where Siyaya
20 Consulting Engineers is or was the plaintiff. I said to her, yes but before you go any further PRASA is represented by senior counsel Advocate Kennedy Tsatswane who is the current Chairperson of Johannesburg Bar Counsel who I know very well and who I have a very, very, very good relationship with and this matters there were five matters.

These matters have a history.

It is not something that just came about. We are literally Chairperson engaged in high, high profile litigation. If I just can go back – back one step. I got involved in the five matters during 2017 and that was when all these matters were set down for hearing in – on the same day in Pretoria High Court and at the call of the roll before the Deputy Judge President is Judge Ledwaba that was on the 30 May 2017.

10 The liquidators for Siyaya and PRASA's team of attorneys led by Advocate Kennedy Tsatswane SC decided, let us consolidate all five of the matters and refer it for arbitration. Because the issues Chairperson were crisp. There was one – there were two primarily issues.

1. Did Siyaya do the work that are reflected and contained in the invoices? If that is so the next question is:

2. What should the quantum be?

That – that was the litigation. We then prepared draft orders. We provided the court with those draft orders and
20 we then subsequently decided to engage retired Judge Fritz Brand who retired at the Supreme Court of Appeal to hear all these matters by way of arbitration. We made an appointment here in Sandton at the Chambers of Advocate Tsatswane SC to meet with Judge Brand. We ironed out the – the formalities and the procedure.

There were definite time lines that we agreed upon. Went to discover further particulars, experts etcetera. When – how many days we – we had in mind for the arbitration to be conducted etcetera. And of all that fell in place like we have arranged and how it was agreed upon.

However, Chairperson this arbitration never got out of the blocks. This kite did not get into the air for various reasons. One of the reasons were that further particulars from our side were not forthcoming. We were struggling to
10 get information but be that as it may Judge Brand was always available. He said to us, when you guys have sorted out your – your internal housekeeping, phone me I am in Stellenbosch we can make an arrangement, we can – we can arrange dates and we can let this arbitration get on its way.

So that is – that is the background to my involvement in the matter. But also, noteworthy Chairperson there were two attorneys, firms of attorneys involved on behalf of Siyaya. It was not only Siyaya there were two companies. Siyaya Consulting which were in liquidation and another
20 company which were not in liquidation. So the attorneys who dealt with this matters from the inception I only got involved shortly before the trial – before – ag in – in May 2017. That was Mr Tshepo Mathopo he is a well-known attorney in Johannesburg and Mr Mathopo and I went through all the pleadings, all the documents Chairperson.

The discovered documents were literally thousands and thousands of pages. 90% of it totally irrelevant but be that as it may and also Mr Johan Crouser from Crouser Incorporated he was in Pretoria and he also played a role because it was not only Mr Mathopo's correspondent in Pretoria but he was actively involved in these matters.

Be that as it may Judge Makhubele just to turn back to our – to our conversation, our telephonic conversation I said to her, Nana PRASA is represented by Mr Madimpi
10 Mogashoa from Diale Mogashoa Attorneys. He is a very senior attorney and PRASA is represented by senior counsel and junior counsel.

Why are you phoning me? And she said to me, I do not trust the internal legal department of PRASA. I do not trust what is being conveyed to me. The attorneys, she used the word is captured and she feels that she is being undermined. And I said to her, but why me? Why do you phone me? She said, no I want to establish the true facts. What is going on in this litigation? What is the status of this
20 pending litigation? I said to her, summonses were issued, pleas were filed, initially bare denials, later on amendments were effected.

I told her about the pending arbitration before Judge Fritz Brand and she asked me if I can give her more information. I said Nana what I can give you is the

pleadings, the summonses in each of these matters, the pleas, there was an insolvency enquiry Chairperson that was conducted over a period of five days in September.

The Commissioner prepared a very, very thorough report. I was in possession of that report. I can provide you with that report and there was also a transcription made of the insolvency enquiry. Just to put you in the picture, why did we decide to initiate an insolvency enquiry? Mr Mathopo and the liquidators at the time thought it was prudent to
10 decide or determine for once and for all are we chasing a ghost or is there genuine merit in these matters? For good reason because the – the estate did not have the funds to litigate ad infinitum and just to waste money.

There were claims by former employees and creditors and Mr Mathopo and the liquidators view was, we do not have that luxury of a war chest worth of millions that we can litigate rather err on the side of caution that was also my advice. And we then decided Chairperson rather spend 3, 4 or 5 days in the insolvency enquiry.

20 Call these witnesses from PRASA who was personally involved in these projects and to find out from them was the work done, is the monies due, what is the problem? And if their evidence is, listen your – the liquidator or the plaintiff, the liquidated company or the plaintiff did not do the work or there was fraud or whatever then we would have known how

to advise the liquidators so that they can report back to the –
to the creditors, the concursus creditorum.

So having said that that is exactly what we did but I
made the decision to inform Mr Mogashoa and to invite
Advocate Kennedy Tsatswane to be present at the insolvency
enquiry.

I said to them, guys be present, here you can hear
with your own ears what these witnesses are going to testify
to and then you can also decide how you want to go about.
10 If they decide or if their evidence under oath is detrimental
towards the plaintiffs well then so be it. And vice versa
because we cannot carry on like this and just waste
hundreds and hundreds of thousands of Rands in litigation.
Both Mr Mogashoa and Advocate Tsatswane SC accepted my
invitation, they were present.

We called witnesses Chairperson, witnesses who
were personally involved in these matters and they testified.
I asked them questions, listen this project, what was done
etcetera, etcetera? All of them had no reservation to testify
20 in front of the Commissioner and their evidence was – was
proper presented.

I also provided Advocate Tsatswane SC an
opportunity to cross-examine the witnesses that is on record.
I said to him, Kennedy you are welcome cross-examine the
witnesses. He said, no it is not necessary to do so they

received their rights.

So what Mr Kruger, he was the Presiding Officer in the insolvency enquiry he prepared a report. To cut the long story short Chairperson I made myself available. I took it upon myself and I said to Judge Makhubele, Nana what I will do is I will make copies of all the pleadings, the summonses and the pleas, the insolvency, a copy of the transcript of the insolvency enquiry and Mr Kruger's report. So that will give you a clear indication of what the status of the – of the
10 matters are.

She asked me, what is your – what do you think? What is your view? I said, the evidence that was led in the insolvency enquiry I am not convinced that the quantum has been addressed. I think that is an enquiry for another day but that some of the work was done. Yes it seems like it. There was one witness Chairperson who said that he still wanted to go and do a quantification. He was not hundred percent sure and we allowed him that opportunity.

Be that as it may Judge Makhubele then asked me
20 will I then collate those documents which I did and I then after our – our conversation Chairperson I immediately like the next telephone call alerted both Mr Mathopo and Mr Crouser because having regard to the ethical rules I was extremely, extremely I will not say nervous, I will not say anxious, I was worried and I informed them. I said, guys it is

very important that our approach in this instance and specifically what transpired now we must either continue on this path or we must terminate this communication because this can lead to – to big problems.

We then took the decision assist the Judge. Judge Makhubele was appointed as the – as the Chairperson of the interim Board of PRASA assist her insofar as we can but remain alerted. Do not go into the arena. Do not do anything that is unethical. And very important we
10 communicate with each other. Me communicating with the two sets of attorneys and me communicating with Judge Makhubele, everything was transparent.

I then prepared the bundle. I indexed the bundle. I paginated the bundle and I made an appointment to meet with Judge Makhubele at the offices of PRASA and that happened on the – on the 14 November 2017. Judge Makhubele explained to me where PRASA's headquarters were judge... uh-uh, Chairperson. Um, I have lived in the vicinity as a... as a student because it is in the heart of the
20 student um, community.

I made my... I attended the... the uh, building. I was taken up to the top floor, very impressive, and I was made... I was invited into a big boardroom and I was... I sat there and I was armed with my bundle of documents.

Judge Makhubele um, entered the room. Once again,

very friendly. Very cordial. Um, very humble. She is a humble person. And she discussed the various matters with me. I told her what the bundle of documents consist...[intervenes]

CHAIRPERSON: But I want to interrupt you Mr Botes. I am very sorry.

ADV BOTES SC: Yes, Chair.

CHAIRPERSON: Maybe it is not so serious. I wanted to tell earlier. In uh, either... in her affidavit, she also says here
10 you... you are... you are a very good person. I think you said you are charming. [laughs]

ADV BOTES SC: [laughs] I am not going to.. [laughs]

CHAIRPERSON: [laughs] She... she... she may days apart where she says uh, you know, you... you... you are very... a very good person. You know each other quite well and uh, you know, you are friendly and so on.

So I just thought because you have been uh, you know, saying very good things about her. I must just tell you that she also has...[intervenes]

20 **ADV BOTES SC:** Thank you.

CHAIRPERSON: ...good thing to say about you.

ADV BOTES SC: Thank you.

CHAIRPERSON: Yes, I interrupted you I am sorry.

ADV BOTES SC: Thank you. No, Chairperson I do not want to delve into... into matters which are irrelevant. The long

and the short is. I have provided her with the documents and I also said to her:

“Take these documents. Take it whoever, the board. Study these documents. Make up your mind. But we must somehow or another get the arbitrations finalised. It is not in the interest of justice to let these matters just grown old”.

And that in essence, that was it. Then... and allow me Chairperson. Judge Makhubele and I communicated via
10 WhatsApp and telephone calls regularly thereafter.

All of those WhatsApp's, all of those communications I revealed to the investigators of this Commission. I had no objection whatsoever for them to make copies of my cell phone.

They made a mirror copy of my cell phone and my iPad which I have with me. I have got absolutely nothing to hide and there is nothing absolutely nothing untoward what... what happened.

Then it culminated into a settlement. In December,
20 Chairperson, Judge Makhubele and I um, during our discussions, she then informed me that PRASA's board was satisfied that the work was done, the money is due and payable, and that these matters should be settled.

And I said:

“Very well. If that is the decision. Well, then that is

the decision. Inform your attorneys as such so that we can get um, the boat or the train out of the station”.

Madimpe... Mr Madimpe Mogashoa then prepared a formal tender in terms of Rule 34 of the Uniform Rules of the High Court and that tender entailed Chairperson, the capital amounts in all these matters.

I then informed Mr Mathopo and Mr Crouse that is not how I understood the communication between Judge
10 Makhubele and I because she also mentioned interest.

And there is also a letter to that effect which PRASA’s interim board despatched to their attorneys in which they instructed the attorneys, like the tender and provide for the capital plus interest but not legal costs.

So then there was a... there was communication exchanged and eventually, their letter came back and said:

“Sorry, we made a mistake. It is the capital plus the interest. The interest must be calculated.”

And I prepared then a draft award because the... the...
20 the plan was to inform Judge Brand:

“Do not spend any more time on... on these matters. We have reached the settlement. What we will do is, we will approach you and then you can make the settlements and award”.

And I took it upon myself Chairperson to prepare those

awards. Those awards are attached to my affidavit. And I despatched the awards to Mr Madimpe Mogashoa. He took instructions and he was satisfied. There is also correspondence to that effect.

Judge Brand was coincidentally busy with an arbitration in Pretoria and the offices of Adams & Adams Incorporated in Brooklyn Bridge.

He then communicated to us. He said:

10 “Guys, if you are on the same page, I can make myself available in a lunch hour. Um, whenever it is convenient for you, come and then I will make uh, the awards... awards of the arbitration”.

But Judge Brand asked me and Mr Mogashoa both to present because he wants to be satisfied that this is a proper settlement. His words to us um, were:

“I do not want to come back here”.

And that is exactly what we did. I prepared the um, draft awards. We then um, made an appointment and we saw Judge Brand at the offices of Adams & Adams on the
20 7th of February...

I just want to get the exact... lay my hand on the exact date. Uh, Chairperson, that was on the... ja, 7th of February 2018. And Judge Brand made all these awards, awards of the arbitration in my presence and in Mr Mogashoa’s presence.

We were all satisfied the settlement was reached. And that is pretty much when the communication between myself and Judge Makhubele also stopped because there was nothing more to communicate about. Everything was settled.

But Chairperson, money was not forthcoming. Money did not flow. There was provision made where the money should be paid into um, into Mr Crouse's um, trust account.

And what subsequently transpired, but I did not play a role in that, is that the attorneys then decided to um, bring
10 an application for these awards to be made orders of court in accordance with the provisions of the Arbitration Act and I became involved.

Then I prepared all the applications. The notice of motions, the founding affidavits with the annexures and all those applications were properly served on Mr Madimpe Mogashoa's office and they were set down for hearing in Pretoria on the unopposed motion court roll for Friday, the 9th of March 2018.

In that week, the attorneys for... for... for the liquidators
20 started receiving correspondence from Bowman Gilfillan. Correspondence to the affect that their... their instructions to oppose these applications.

Mr Mathopo, Mr Crouse and I, Chairperson had various discussions and our biggest challenge was, what do we about this? Should we say to them, "Very well. We are

going to remove the matters and allow him an opportunity to file affidavits.

Or, are we going to persist with these matters? And we then decided, let us rather give them the benefit of the doubt and ask them to produce authority in accordance with the provisions of Rule 7 of the Uniform Rules of Court.

Unfortunately, they could not. They could not provide us with uh, board resolution on a piece of paper which emanated from PRASA's board that they are duly appointed
10 as PRASA's attorneys to oppose these matters.

We then said to ourselves:

“Well, if they... they are unable to do so let us... let us proceed with these matters.”

On the 9th, Friday the 9th, three applications were the unopposed motion court roll before one judge. Both acting judges. Acting um, Judge John Holland-Muter and acting Judge Petersen.

Bowman Gilfillan, on the instructions from, I assume, PRASA's legal department, instructed counsel who was at
20 court with the whole team. I think Ms Lata(?) [00:09:05] Mabuya was also there.

Uh, another gentleman whose name also appears on the papers, Mr Fani Dingiswayo. He was also present and that... and we started... we started interacting with these people. They are colleagues.

And I said to them:

“But guys, how on earth can you oppose these applications without a mandate?”

And they... Chairperson, they persisted. They said:

“But we have a mandate. We are entitled to be here and to oppose these applications”.

And my response was:

“But what on bases? We have settled it. There is the awards.”

10 And they said:

“Listen, we were not consulted with all of this. We want an opportunity to ventilate the disputes and to put...”

I took it upon myself, Chairperson. This is where the dispute emanated from what I did. I then despatched a WhatsApp or an SMS to Judge Makhubele and I asked her:

20 “Does Bowman... or did PRASA’s board instructs Attorneys, Bowman Gilfillan or counsel to oppose these matters which have been set down in this court?”

And her response form part of the correspondence in which she unequivocally answered that to me and she said:

“No, they do not have that authority. They do not have instructions on behalf of PRASA”.

And Chairperson, I was satisfied with that message on

my cell phone that we were right. We were entitled to persist in the applications and to ask for judgment.

We then uh, by my colleague and I, on behalf of PRASA, under the instructions of Bowman Gilfillan, approached Judge Petersen and said to him:

10 “We... we... we do not think it will make sense for two courts to hear exactly the same sets of facts. It is the unopposed motion court. They are going to... or PRASA is going to apply for a postponement so as to give them an opportunity to enter into the... into the litigation. Can we not take the two or the three files with him and transfer it to Court-2A to Judge Holland-Muter and then we can make our submissions before Judge Holland-Muter?”

He allowed us to do so. And when I stood up eventually after all the unopposed matters were entertained, I directed um, Judge Holland-Muter’s attention to what we are dealing with. What... to the whole background and the history. And I also said to him:

20 “Our learned friends are here today because their instructions are to oppose and to uh, prevent these matters from proceeding today”.

And Judge Holland-Muter asked me:

 “Do you know on what basis?”

And I explained that to him. So then the arguments

commenced before Judge Holland-Muter in um, in open court and Judge Holland-Muter quite correctly said to me:

“But Mr Botes, it is either they have instructions. There is such a decision by the board or there is not. I mean, if there is such a decision, I am not going to give judgment to the tune of more than R 45 million if the opposition is bona fide and genuine”.

And I said:

10 “But of course not. I agree hundred percent with you. So all that I can present you with M’Lord, is my cell phone. There is Exhibit A. This the question and there the answer comes”.

And Judge Holland-Muter took it into consideration and Chairperson, when he read it, he said to my opponent:

“But is there anything better? I mean, you... are you going to present me with something better than I have in front me?”

And they said no. And on that basis judgment um, was
20 granted and each and every of these matters, as applied for in the notice of motion. And what transpired then is Mr Mathopo and Mr Crouse instructed, armed with these judgments, applied for a writ to be um, issued by the registrar in Pretoria.

And then instructions were given to the sheriff in

Pretoria, Pretoria East, Ms Lana Burger to attach the funds in PRASA's account. Chairperson, do not keep me to it but it was in excess of R 16 million. Or just below sixteen or just in excess of 16 million but it was a substantial amount of money.

And the sheriff um, executive those writs, attached the monies in PRASA's bank account. It was withdrawn and kept in her trust account for the, I think the 14-day period or the 15-day period to um, expire so as to give PRASA an
10 opportunity to do whatever they deemed prudent in the circumstances.

That... and that is what Advocate Soni referred to. That must be met with an urgent application. Actually, two urgent applications. One in Cape Town which is irrelevant for purposes of this inquiry and one application in Pretoria where PRASA asks for interim relief, pending an application to have those awards made by Judge Brand on the 7th of February 2018 to have that reviewed and set aside.

All that they ask for interim relief for the sheriff not to
20 pay over the funds to um, to the liquidators pending this process. I was not involved in the application because I had other commitments in Umtata but the um, liquidators briefed senior counsel uh, from Johannesburg to attend to the application.

The application came in the urgent court before his

Lordship, Mr Justice Ranchod and Judge Ranchod's view was a proper case has been made out for interim relief. There was a *prima facie* case and so um, he granted an interim order.

And eventually Chairperson um, the matter became uh, there was a return day. The return day came before the Honourable Mr Justice Neil Tuchten.

There was no opposition and our stance was, we had to decide, are we going to oppose this application? But
10 Chairperson, regard being had to the serious allegations. The serious allegations that were made by PRASA's legal department in their papers.

Um, my view was and my... my... my advice to the liquidators um, was:

"Listen guys, one... if half of this true... I mean, there is... there are serious problems. And some... somebody is... is playing with fire. And secondly um, how we are going to rebut it? We do not know. I mean, we are simply standing outside in the cold.
20 We got now an idea what the internal mechanisms and workings are. I would advise anybody to throw good money after bad money and to oppose these applications. Rather, allow them an opportunity, set it aside. Set the uh, awards also aside but go back to Judge Brand and start afresh with these um,

arbitrations”.

And that is exactly what happened. Unfortunately, or fortunately, Judge Tuchten had all the documents before him. He did not have any opposing affidavits before him but Chairperson, he correctly, in my view, deemed it prudent to prepare a proper judgment which he did.

He considered all the facts before him and he made certain remarks pertaining to the manner in which these matters were attended to and conducted.

10 He mentioned Judge Makhubele’s name in... in his judgment and that led to two... to two issues. One, the complaint that Judge Makhubele initiated against Judge Tuchten.

Um, I read the complaint. I had the um, opportunity to read his response and that was referred to the Judicial Services Commission and he was um, subsequently found... the Judicial Services Commission under the chairmanship of the Honourable Justice Goliath then found that there were no merit in the complaints against Judge Tuchten.

20 But similarly, there was no this complaint against me and the veracity of the complaint Chairperson was that the communication between Judge Makhubele and I, she regarded as personal and as privileged. That is what she said in her complaint.

And she was extremely upset because I have provided

the court with this specific message and she, in her view, that was untoward. That was not the manner in which she thought that the matter is going to be dealt with notwithstanding earlier messages which are also canvassed and provided for in my report which since the inception of our communication, she sent me a WhatsApp and she said to me:

10 “Francois, it is of paramount importance that we are transparent. We play open cards. We are above board. We do not want to become embroil in a situation, he says she says or, there is something unethical”.

And that is also contained in this. And I was very comfortable with that. Judge... ag uh, Chairperson when I received the complaint... ag, like all of us are, you... you... you are disappointed.

20 Uh, the complaint was filed in a Lever Arch file. I think it was more than a hundred, a hundred-and-fifty pages and I literally had to sit and to work through this because a lot is at stake.

Um, I am Deputy Chairperson of the Bar Council. Um, I am the Chairperson of the Financial Committee of the Pretoria Bar. I am a senior counsel. I have been acting various as various things in Pretoria.

Um, this is serious and I prepared a very comprehensive

um, answer or response which then served before the Ethical... Professional and Ethical Committee of the Pretoria Bar Council.

Chairperson, I believe that invitation was extended to Judge Makhubele to reply to the allegations. My... my response Chairperson um, was approximately 55-pages because I realised that I have got one opportunity to tell my whole story. Exactly which I did.

Um, I believe that Judge Makhubele then decided not to
10 reply to the allegations that I made and I was down this year.

That the recommendation by the Professional and Ethical Committee to the bar council was that they have thoroughly investigated the complaint and there was no um, I was not... I did not make myself guilty um, towards any um, unprofessional or unethical conduct.

And then I received a letter Chairperson from the bar council on the 22nd of May this year that the bar council has also decided to vindicate me from the charge.

CHAIRPERSON: Thank you very much Mr Botes.

20 Uh...[intervenes]

ADV SONI SC: Yes.

CHAIRPERSON: ...I think Mr Soni, he did not have to...
[laughs]

ADV SONI SC: I... I... this was expected...[intervenes]

CHAIRPERSON: To... to less... of course... of course he

knows exactly what uh [laughs] what the issues are.

ADV SONI SC: Yes and...[intervenes]

CHAIRPERSON: And he... he has been very involved. I... I am... obviously, if there are something that you want to...[intervenes]

ADV SONI SC: Yes, yes.

CHAIRPERSON: ...cover or clarify.

ADV SONI SC: Yes.

CHAIRPERSON: But that was quite comprehensive. Thank
10 you Mr Botes.

ADV SONI SC: And... and I did not want to interrupt.

CHAIRPERSON: Yes. No, no, no.

ADV SONI SC: While he told the whole story.

CHAIRPERSON: No, it was fine. It is... it was quite comprehensive. I doubt if I have any questions but let me allow you to ask if there is anything to ask.

ADV SONI SC: Yes but it is more housekeeping for the purposes of record. Now, your uh, response to Judge Makhubele's complaint against you uh, I have not called the
20 judge because at the time this happened, she was not a judge although she had been appointed. So perhaps I should call her judge.

ADV BOTES SC: Correct.

ADV SONI SC: Is at... it starts at page...[intervenes]

CHAIRPERSON: What... well, the appointment was to in

actual fact the following year.

ADV BOTES SC: Correct.

ADV SONI SC: Yes, yes.

CHAIRPERSON: So... so technically when she started communications uh, she was not a judge yet.

ADV SONI SC: Ja, I.. I accept that Chairperson.

CHAIRPERSON: She... she had been recommended for appointment. She became a judge when the appointment ...[intervenes]

10 **ADV SONI SC:** Yes.

CHAIRPERSON: ...took effect.

ADV SONI SC: Took effect. Yes, yes.

CHAIRPERSON: That is my understanding of how...[intervenes]

ADV SONI SC: Yes.

CHAIRPERSON: ...uh, how these things go.

ADV SONI SC: I... I... I must accept that uh-uh Chairperson.

CHAIRPERSON: H'm.

20 **ADV SONI SC:** But in an application in Cape Town, unite behind...

CHAIRPERSON: H'm.

ADV SONI SC: And that is the complaint before the uh, uh, Judicial Conduct Committee.

CHAIRPERSON: H'm.

ADV SONI SC: Saying that as soon as the pronouncement

is made, she becomes a judge.

CHAIRPERSON: [laughs]

ADV SONI SC: I... I... just make the point Chair.

CHAIRPERSON: Yes.

ADV SONI SC: And that is why ...[intervenes]

CHAIRPERSON: Yes. No, no, no. Uh, they... uh, they... it is fine. They have put that.

ADV SONI SC: Yes.

CHAIRPERSON: We have our own understandings.

10 **ADV SONI SC**: [laughs] Yes. Yes, Chair.

CHAIRPERSON: Uh, when uh... when I was appointed as an acting judge in 1997, I think I got the letter of appointment uh, early in January and my acting appointment was to start on the 1st of February 1997. Between the time when I got the letter and the time and the 1st of February, I did not go around saying I am judge, an acting judge.

ADV SONI SC: Ja. [laughs]

CHAIRPERSON: [laughs]

ADV SONI SC: Yes. [laughs]

20 **CHAIRPERSON**: And my colleagues in the profession did not start calling me a judge.

ADV SONI SC: Yes. [laughs]

CHAIRPERSON: [laughs] But um, I am just saying how...

ADV SONI SC: Yes, yes.

CHAIRPERSON: I understand it. Yes.

ADV SONI SC: Uh, Mr Botes. So you... you have filed... uh, you made this affidavit uh, at the request of Mr Oellerman from the Commission on the 14th of October.

ADV BOTES SC: Correct Chairperson.

ADV SONI SC: Now, it... uh, again, it is not to test anything there but to the affidavit you attached your response to the complaint by Judge Makhubele and that is marked X. Is that correct?

ADV BOTES SC: That is correct Chairperson.

10 **ADV SONI SC:** And then to that complaint you also... ah, sorry to that response, you also attached a few documents.

ADV BOTES SC: That is correct Chairperson.

ADV SONI SC: One document that you attached is this letter that contains the communication that became the source of controversy if I can put it that way.

ADV BOTES SC: That is correct Chairperson. That is the letter...[intervenes]

ADV SONI SC: One ...[intervenes]

ADV BOTES SC: ...dated 8 March 2018. Yes.

20 **ADV SONI SC:** Yes. So this is the letter on the 8th of March. This was written by your attorney but uh, uh, I just want to point out that Judge Makhubele takes offence or she is unhappy that you communicated it to your attorney and I am going to deal with that in a moment but I just want to put into perspective.

That is the importance of this letter. Would that be correct?

ADV BOTES SC: That is how I also understand it Chairperson.

ADV SONI SC: And then you also annexed as B the report of the liquidator.

ADV BOTES SC: No, that is the report of the Commissioner.

ADV SONI SC: Oh, sorry. The Commissioner. Sorry.

ADV BOTES SC: Yes.

10 **ADV SONI SC:** Yes.

ADV BOTES SC: He had to report to the master of the high court. What the uh, status of the inquiry was because the inquiry was then postponed *sine die* on the last day.

ADV SONI SC: Yes. Now in regard to this document. In her communications internally to the PRASA's legal team, Judge Makhubele says that this is the document that persuaded her that PRASA has no defence. I am... I am just placing that on record.

20 But did you give her this document before she made up her mind. I think you have met on the 14th of November at the PRASA building.

ADV BOTES SC: Uh, Chairperson, the reason why this was provided to Judge Makhubele on that very first meeting, you will see that if you turn to Annexure B, if you turn the page and you see there is a two. That is my handwriting. That is

my... I paginated the whole bundle.

ADV SONI SC: Oh, I see.

ADV BOTES SC: And it started on page 1 and this was the first document in this bundle of... of... of um, documents which I provided Judge Makhubele with when I saw her for the first time at PRASA's office, and attached to this, was the um, pleadings in the various matters which were pending.

ADV SONI SC: And... and then you attached as C the... a
10 further communication by Judge Makhubele to you and this is a... a WhatsApp message.

CHAIRPERSON: That is correct Chairperson.

ADV SONI SC: And what is the relevance of this?

ADV BOTES SC: The relevance of this document was to demonstrate that all communication between Judge Makhubele and I were open, were transparent and there was no suggestion by either her or myself that we are communicating within a privileged space.

In other words, we should not disclose our
20 communications to any third parties, especially not bring it into the open public domain because it is between two counsel who communicate and attend, and may I add, a very, very serious attempt to settle all these matters.

And I took it upon myself from the first day that we have communicated with each other, to share Chairperson, each

and every WhatsApp, each and every email, each and every SMS to Mr Mathopo, to Mr Crouse and also to those um, who then formed of our team.

Nothing was swept under the carpet. Nothing was um, was... was kept in secrecy. Everything was properly um, and transparently disclosed to those concerned.

CHAIRPERSON: Mr Soni?

ADV SONI SC: Yes?

CHAIRPERSON: When Mr Botes was giving evidence, I did
10 not have to look at documents. Uh, I focused on listening to him. Uh, now I have to look at them because you are referring to this.

ADV SONI SC: Yes.

CHAIRPERSON: Uh, just tell me again where you are how this works?

ADV SONI SC: Oh.

CHAIRPERSON: Page?

ADV BOTES SC: It is page 45 Chairperson, SS17.

CHAIRPERSON: Uh...

20 **ADV BOTES SC**: Page 45.

CHAIRPERSON: Page 45. Uh... oh, is that the one that has got a "see"?

ADV SONI SC: That is... that is the one Chair.

CHAIRPERSON: Oh, okay.

ADV BOTES SC: That is "see". Ja, that was... that is only

to see to my response...[intervenes]

CHAIRPERSON: Okay.

ADV BOTES SC: ...to the bar council.

CHAIRPERSON: Okay.

ADV BOTES SC: That is where Judge Makhubele said to me:

10 “I would forward the letter to PRASA with instructions to enquire from Mogashoa if he received this and to forward same asap. Our instructions were transparent. Hence, I have forwarded a copy to you. The intention was to have an open discussion with you and our attorneys but due to your unavailability, we instructed him to engage with your clients. I think the correctness of the calculation of interest will be verified by PRASA finance. The principle is acceptable and those were the instructions”.

The... the... or the suggestion Chairperson that was... how we understood it from PRASA’s legal team is that the Board of PRASA was not aware of what was happening here.

20 This somebody was on his or her own frolic and the legal department was kept in the dark. So was the other um, members of PRASA’s board also kept in the dark.

And why I decided to attached this document to... to um, my response to the bar council. Mr Mogashoa in correspondence took exception to one communication that I

have forwarded to him.

And I have alluded to it a little bit earlier on. You will recall that I testified that Mr Mogashoa tendered to pay the capital of the three or the four matters.

I did... and he... he directed an email to me to that effect and I responded and I was naughty because I said to him “no, that is not your instructions. Your instructions are to tender capital plus interest”.

And he then said to me “but how do you know what my
10 instructions are?” I say, “Well, there is the email. I received the... the chairperson when she despatched your instructions to you, she copied me into it”.

CHAIRPERSON: So, of course, you... you would uh, uh, [laughs] you would know that uh, it... it... it would be quite surprising to the attorney on the other side if he was unaware ...[intervenes]

ADV BOTES SC: Yes.

CHAIRPERSON: ...of the communication. So how... how... how do my opponents know what my instructions are? But
20 uh... but... but what you are saying and with reference to this uh, email or was it your email...[intervenes]

ADV BOTES SC: The WhatsApp Chair.

CHAIRPERSON: WhatsApp.... WhatsApp message.

ADV BOTES SC: The WhatsApp Chairperson.

CHAIRPERSON: Is you... you are putting it up to

substantiate what you were saying, namely, your communications with the chairperson of the board were transparent. Were meant to be open and transparent and that is why you felt quite free to say to mister...[intervenes]

ADV BOTES SC: Mr Mogashoa.

CHAIRPERSON: ...Mogashoa that this... those are not your instructions because I know your... what your instructions and uh, the chairperson of the board did not in turn that like keep it secret.

10 **ADV BOTES SC:** Chairperson, quite correctly. If you just turn the page to Annexure D on page 46?

CHAIRPERSON: H'm.

ADV BOTES SC: That is the... the... the letter that was despatched to Mr Mogashoa by the Group Company Secretary of PRASA at the time. Um, Chairperson, you will find that at the foot of page 48. It was signed by Lindikaya Zide, Group Company Secretary on the 15th of December 2017.

20 I was copied in this document. That is how I got hold of it. And this is also the document that form part of when we had the four unopposed motions um, set down on the 9th of March 2018 before uh, the Honourable Justice Holland-Muter.

I took... I had this document in my possession and I gave it to my opponents. I said to them:

“There is the instruction. You must verify the correctness of this because this is not sent under the hand of the chairperson”.

I got the impression, right or wrong, is that that represented the board um, resolution. That is the reason it was signed by the Group Company Secretary. But I could not take it further Chairperson.

ADV SONI SC: Mr Botes, just on that point ...[intervenes]

CHAIRPERSON: I am sorry, Mr Soni, I see we are at half
10 past – actually nearly twenty five to twelve.

ADV SONI SC: Oh, I am so sorry.

CHAIRPERSON: We are long past quarter past eleven but what is important is how much more time do you need with Mr Botes?

ADV SONI SC: I am going to need at least 15 minutes to be fair to Judge Makhubele’s side.

CHAIRPERSON: Yes.

ADV SONI SC: That I can put what – she has now responded by way of affidavit.

20 **CHAIRPERSON:** Yes.

ADV SONI SC: And I just need to put that ...[intervenes]

CHAIRPERSON: To put her side of that, ja.

ADV SONI SC: And then, of course, her affidavit will come at a different time.

CHAIRPERSON: Yes, yes.

ADV SONI SC: But I did undertake to her that I will put her version to Mr Botes for him to respond.

CHAIRPERSON: No, no, that is fine. My own understanding is there seems to be very – the issue - , disputes which is very narrow, very limited.

ADV SONI SC: Limited.

CHAIRPERSON: Ja.

ADV SONI SC: In fact, I could do it in about five or ten minutes, Chairperson.

10 **CHAIRPERSON:** Yes.

ADV SONI SC: And it may be better because then you can release Mr Botes for one.

CHAIRPERSON: Yes.

ADV SONI SC: But then we start with something new when we come back.

CHAIRPERSON: Yes. No, no, that is fine, but I think let us take the tea break now. Let us make it 15. I was thinking of making it ten but we might rush too much. 15 minutes, so we will resume at ten to twelve.

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

CHAIRPERSON: And then with the aim that we should finish about 12 o'clock, or five past twelve or thereabouts.

ADV SONI SC: Yes.

CHAIRPERSON: Okay, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us proceed. Put on your mic, Mr Soni.

ADV SONI SC: Sorry, Chair.

CHAIRPERSON: I do not know why you always forget.

ADV SONI SC: I am sorry. Annexure D to your response to Judge Makhubele's complaint. Where did you get it from?

ADV BOTES SC: Chairperson, I got this – sorry, page 46,
10 Chairperson, page 46.

CHAIRPERSON: 46, okay.

ADV BOTES SC: Yes. This document I have received electronically via email from Judge Makhubele.

ADV SONI SC: That was about the time that the letter was written which would be around the 15 October.

ADV BOTES SC: Chairperson, it was either 15 December 2017, it was either the same day or the day thereafter. Just be mindful, the 16th was a public holiday. I have every reason to believe I received it on the 15th.

20 **ADV SONI SC:** And then annexures E, F, G and H are in fact the awards, the arbitration awards issued by Judge Brand.

ADV BOTES SC: Quite correct, Chairperson.

ADV SONI SC: Now I take it these are all the documents – the only documents you submitted to the Bar Council.

ADV BOTES SC: This was – these documents and my response were the only documents that I have provided the Bar Council with, quite correct, Chairperson.

ADV SONI SC: And the Bar Council then effectively exonerated you, they said that there was no merit in Judge Makhubele’s complaint against you.

ADV BOTES SC: Just before that, how our internal Bar affairs work, once there is a complaint, especially if it is a complaint from a judge or minister that is referred to, the
10 Professional Ethical Committee, Chairperson, if it is a complaint against the senior member, what we normally do is we constitute a committee comprising of more than one senior member to investigate and to have regard to all the evidence, so to speak. In this specific instance there was more than one silk who investigated it, I do not know who comprised of the entire committee but I was informed subsequently that the decision of that committee was unanimous in to make recommendation to the Bar Council because the subcommittee only make a recommendation to
20 the Bar Council and the Bar Council can still decide whether it accepts that recommendation or not because the same papers serves before the Bar Council and that is what emanated in the letter of the 22 May 2020 that I was exonerated by the committee and by the Bar Council.

ADV SONI SC: Chairperson, just for the record that letter

from the Bar Council appears at page 62, Chairperson.

ADV BOTES SC: That is the last letter in this bundle, quite correct, that is page 62.

CHAIRPERSON: Yes, I see it, thank you.

ADV SONI SC: Now after you submitted your first affidavit you were asked to make a further affidavit and that is the second affidavit that you have already referred to which you made on the 20 May this year.

ADV BOTES SC: That is quite correct, Chairperson.

10 **ADV SONI SC:** Now I just want to confirm again that what is contained in the two affidavits you made is true and correct.

ADV BOTES SC: Yes, Chairperson, I take my responsibility and my duty, not only as an officer of court, but also as a citizen of the Republic of South Africa extremely – it is important for me that we should get rid of what should not – what is not supposed to be in society, so I am a very serious person if it comes to the values enshrined not only in the Constitution but also in all the
20 legislation.

ADV SONI SC: Now, Mr Botes, I want to get to the last part. In both the affidavits you refer to your response to Judge Makhubele's complaint.

ADV BOTES SC: Correct, Chairperson.

ADV SONI SC: And you confirm the correctness of what is

contained in the response as well.

ADV BOTES SC: Unconditionally and irrevocably,
Chairperson.

ADV SONI SC: I just want to now come to the nub of the
dispute between you and Judge Makhubele as contained in
her affidavit. There are two areas of dispute and I will just
put them to you.

The first is, she says that it is not you who initiated
– it is not she who initiated the communication in relation
10 to the Siyaya matters but it is you.

Now you deal with that in paragraph 11 of your
affidavit and you have already given evidence on that.

CHAIRPERSON: I must just check something, Mr Soni,
you might have read her affidavit much more thoroughly
than I did. At some stage when I was reading it, I was not
sure whether she comes out categorically that Mr Botes
initiated the discussion. I seem to get the impression that
she was not committing herself but she was saying I want a
forensic investigation to be done on my cell phone as well
20 to determine who initiated without her saying he initiated
or I initiated. I know that what I am certainly true in regard
to maybe other things but I am not sure. So I am just
checking whether it is something that you had a look at
carefully that she does say he initiated.

ADV SONI SC: Yes.

CHAIRPERSON: But if you are sure that is fine.

ADV SONI SC: Mr Chairperson, let me – I perhaps looked at the affidavit, if I may put, jaundiced eyes, because it was informed by my conversation with her. In my conversations with her.

CHAIRPERSON: Ja.

ADV SONI SC: All my conversations.

CHAIRPERSON: Yes, she is quite clear.

ADV SONI SC: She has – she is adamant.

10 **CHAIRPERSON:** Oh, okay.

ADV SONI SC: That that is the nub of the dispute.

CHAIRPERSON: Okay, okay, no, that is fine. I mean, when I was looking at it, I was saying – at least, on the impression that I had, I was saying well, she needs to put up her version first.

ADV SONI SC: Yes.

CHAIRPERSON: So that we know if there is a dispute.

ADV SONI SC: Yes.

20 **CHAIRPERSON:** There is an issue, before we can have an inference in this stage because there is no point, she having a forensic investigation if there is no issue.

ADV SONI SC: Yes.

CHAIRPERSON: Or no dispute on the issue. But I think put it to Mr Botes because ...[intervenes]

ADV SONI SC: I will certainly put it.

CHAIRPERSON: Ja.

ADV SONI SC: And it is just for his – so that when she comes, we can say that we have put it to Mr Botes.

CHAIRPERSON: Yes, yes.

ADV SONI SC: Mr Botes, you have heard that and I just want to say to you in paragraph 11 you respond to what you point out in paragraph 10, namely her allegation that it was the liquidators who approached her through yourself around the second week of November in regard to this
10 dispute and what is your reaction to that? And I ask purely for the – I know what your evidence was but I am just asking as a response.

ADV BOTES SC: Chairperson, to put Mr Soni's statement to me in perspective, that is what one of the complaints were that Judge Makhubele laid and that was the allegation. May I just direct your attention to page 11 of the bundle and that is paragraph 10 of my response in which I verbatim clarified what Judge Makhubele said in paragraph 9.1, Chairperson, of her statement. That was
20 the complaint that she laid, she says:

“The liquidators approached me (first through Adv Botes SC on or about the second week of November 2017) followed by a letter (towards the end of the month) to intervene in a dispute that had ensued with regard to whether there was a need to proceed

to arbitration in view of the evidence at the inquiry.”

And premised on that, Chairperson, I then put the correct facts into perspective in paragraph 11 of this document.

To answer your question, Adv Soni, one, I was totally, totally unaware of the fact that Judge Makhubele was at PRASA. I laboured under the apprehension that she was recommended by the Judicial Services Commission and that her appointment was imminent as a Judge. One. That is the first aspect that I want to clarify.

10 And secondly, I will never in my life, especially not in the light of the various judgments of the SCA pertaining to various applications for advocates whose names were removed from the roll. The name of Adv Seth Nthai comes to mind. I will never approach my opponent’s client in order to solicit some of a settlement or some sort of intervention, Chairperson.

I think that is the biggest atrocity in the legal fraternity that one can come across and that is when – especially when senior counsel decides well, I am going to
20 shoot over the heads of everybody and I am going to the client directly.

No, Chairperson, the answer to this dispute, this crisp issue, is simple and straightforward, you take my itemised billing – and may I add, Chairperson, I do not have a landline. I do not practice in my office from a

landline, I do not use a landline, I have taken my landline out years ago because it just distracts you. If attorneys want to get hold of me it is on my cell phone or on my iPad, so there is no suggestion that I could have phoned her on the landline. I only use my cellular telephone, that is all I use, to take my itemised billing, to take her itemised billing for the month of November 2017 to compare it. It will be a matter *res ipsa loquitur*.

ADV SONI SC: Because that will tell you who initiated the
10 call.

ADV BOTES SC: Of course it will.

ADV SONI SC: And that will put an end to that.

ADV BOTES SC: Common sense and logic dictate that.

CHAIRPERSON: Ja. I wonder whether any forensic investigation is needed to establish that, but ...[intervenes]

ADV SONI SC: It does not look like, Chairperson.

CHAIRPERSON: Yes, yes.

ADV SONI SC: As Mr Botes correctly points out.

CHAIRPERSON: Ja.

20 **ADV SONI SC:** It is simply looking at receives calls and calls made.

CHAIRPERSON: I mean, if she accepts that the first discussion that she had with Mr Botes on the matter was on the phone, then – and if she accepts that Mr Botes could not have spoken from a landline then he could only

have spoken to her on his cell phone so therefore Mr Botes says here is my cell phone, whoever wants to check whether there was any call I made to her between that time and that time, here is the phone.

ADV SONI SC: Yes.

CHAIRPERSON: And then she can provide her own to say, you know, let us have a look.

ADV SONI SC: Yes.

CHAIRPERSON: I am not sure that you need a forensic
10 investigation. But again, as far as this Commission is concerned, on the face of it there does not appear to be an important issue to the Commission but she might persuade me when she gets a chance that there is something relevant in regard to who initiated. Okay, alright, yes.

ADV SONI SC: The second issue and in a sense, Mr Botes, it seems to be tied to the first issue, is that you say she initiated the call, you congratulated her and it is at that time that she pointed out the circumstances or the purpose of her appointment as Chairperson of PRASA's
20 interim board.

ADV BOTES SC: Correct, Chairperson, as I have alluded to earlier, I was surprised that she was deployed as intern or Chairperson of PRASA's interim board and I specifically asked her whether – what the reason was for that deployment because it is not ordinarily done in that fashion

and she then confirmed to me that she was deployed by the former President so as to clean up the mess and to sort the mess out and what I understood, Chairperson, and she also said to me there was numerous litigation and matters that were outstanding and I got the impression she wanted to wrap all of it up and see which of the matters can she dispose of, which there is really no real disputes or there is no aspects which should go to trial. And the others, to streamline it so to make them trial ready or not.

10 That is the impression that I got. But we have not discussed that.

ADV SONI SC: Can I – and to get past this point, Mr Botes, can I take it what you recorded at paragraph 11 in your response, that is 11 – the whole of paragraph 11 is what really happened and we can accept that that is your version.

ADV BOTES SC: Chairperson, you can accept it irrevocably and unconditionally, yes, that is how it transpired.

20 **ADV SONI SC:** Now in response the question of deployment – so she said to you I have been deployed by former President Zuma. She may not have used the word former President Zuma.

ADV BOTES SC: Right.

ADV SONI SC: He was not former at that time.

ADV BOTES SC: No, she used the words – I remember, recall the words, I was deployed by the President.

CHAIRPERSON: Well, I also wanted to ask on that but I think you have made it quite clear because she denies that and the actual use of the term deployed, is that the term she used or is it your term of – that you used in terms of what you understood her to be saying? Do you recall whether she used that term or she may have used another terminology but you understood it to be deployment?

10 **ADV BOTES SC:** Chairperson, I cannot recall if specifically the word deployed was used, it was definitely made – I was definitely informed by Judge Makhubele that the purpose of her presence at the interim board of PRASA was at the insistence of the President and that her function and her role was to clean up the mess and to sort things out.

In Afrikaans they say *nuwe besems vee skoon* and that is the impression that I got. This was new broom and she had to clean up the stage.

20 **CHAIRPERSON:** Okay.

ADV SONI SC: So this is where, Chairperson, I am going to – I have read her affidavit and it does not seem as if she says categorically she did not say this but what she say is, I do not know Mr Zuma and so on. But I am going to put two versions to you , Mr Botes, just for the purposes of not

having to recall him.

CHAIRPERSON: No, no, that is fine. My understanding of her affidavit – but again, one might need to double-check and you can ask questions to Mr Botes on your own understanding of Judge Makhubele’s affidavit. My impression was that she was denying that she told Mr Botes that she had been deployed by President Zuma. And that is one.

And two, she certainly did say she had never met
10 former President Zuma before her appointment to the PRASA, I think, but she does say subsequently and in 2019 she was within the presence of President Zuma at a function at the University of Limpopo in a graduation ceremony or something.

ADV SONI SC: Yes.

CHAIRPERSON: But I think she says she had never spoken to him or something like that.

ADV SONI SC: Yes, yes, yes.

CHAIRPERSON: So but put it as you understand it. I was
20 not sure whether she was denying using the word deployed as opposed to appointed but she does she was appointed by the minister.

ADV SONI SC: That is right, she does.

CHAIRPERSON: Yes. So put it the best way you can to put her version.

ADV SONI SC: Mr Botes, she will come and explain but I just want to put two possibilities to you. She seems to say at one level that she was not appointed or deployed by the President, that she had never spoken to him. Now by implication she seems to be saying that she did not tell you. What is your response to that?

ADV BOTES SC: First of all, Mr Commissioner, I did not read Judge Makhubele's affidavit, I confirmed unconditionally that she informed me that she was
10 deployed or appointed as PRASA's – as the Chairperson of PRASA's interim board by the President, not by the minister.

ADV SONI SC: And she gave you at that time the purpose of that appointment/deployment.

ADV BOTES SC: That is what appears in paragraph 11 of my response to the Bar Council, yes.

ADV SONI SC: Now she also seems to say that she did not mention President Zuma in the conversation. I am – as I say, I am not entirely sure, but whatever her version is I
20 would like you to sort of respond to all possibilities as appears from the ...[intervenes]

CHAIRPERSON: Well, I am sure the answer has been given.

ADV SONI SC: It has, no sure.

CHAIRPERSON: Ja, ja.

ADV SONI SC: Finally, Mr Botes, I just want you, in fairness to you, because she is likely to come and make this allegation. She says in her affidavit that in 2018 you tried to approach her to resolve a dispute that Siyangena had with PRASA. Can you recall that?

ADV BOTES SC: Yes, I can, it was shortly before Christmas. Mr Johan Crouse, who was one of the attorneys together with Mr Tshepo Mathopo. They were also involved in a separate dispute, Chairperson, where
10 Siyangena featured. Senior counsel deals with that matter, I have got no idea what that matter consist of. Judge Makhubele is hundred percent correct, during one of our conversations I mentioned to her that I spoke to Johan Crouse and he mentioned to me that the Siyangena matter – apparently, Mr Chairperson, I have not seen the papers or the documents, I think the quantum exceeds R1 billion. They asked me – and in the light of the effective manner that we were able to settle Siyaya, I mean it was in the open public domain that this – there was not one shot fired
20 and we settled it very, very easy, so to speak.

And Mr Johan Crouse did approach me and he said to me that the manner in which this matter with Siyaya was settled reached the ears of other litigants who have matters against PRASA. It seems that you and Judge Makhubele is on the same – you are on the same line and

you are singing from the same hymn book, what will your attitude or your response be if we engage you, Botes, in that other matter as well? Surely it will also assist the parties to come to a settlement.

And yes, I did mention it to her. I said to her, Nana, I believe that there is also pending litigation between PRASA and Siyangena, what is happening there because I did not know what has happened there and her response was, that is a matter which is much more complicated than
10 what we are dealing with, there is – that quantum is something else and we simply did not pursue it.

ADV SONI SC: She – just again for context, she puts it on the basis that she is saying because you initiated the Siyangena with her you must have also initiated the Siyaya. That is what her affidavit – because I will just put that so that it is not out of context.

She is saying I am mentioning the question of Mr Botes' approach to me to settle this Siyangena matter, she says I am mentioning all this as a basis to rebut the
20 allegation that I initiated the settlement of Siyaya claims and that I told Adv Botes that I have been deployed to settle the matters. I just put that to you.

ADV BOTES SC: Chairperson, the attorneys for Siyangena, Mr Gert van der Merwe, did approach me. He phoned me and he asked me whether him and his client

can – I think it is Mr Mario Ferreira, make an appointment with me so I can become involved in that matter’s counsel as well. I declined, I said Gert, listen, Nic Maritz SC, Werner Lüderitz SC, that is a big, big heavy silk team that you guys have on board. There was a review application, I understood, Chairperson, that exceeds 3000 pages and that they approached the Deputy Judge President for the allocation of a special court to deal with it and I did not at the time had the appetite to concentrate on a matter of that
10 magnitude.

The counsel that was appointed at that stage I think is some of the best legal minds that money can buy. So no, I did not pursue it at all.

CHAIRPERSON: Okay.

ADV SONI SC: Just finally on that point and perhaps in terms of your evidence, Mr Botes, she says that in regard to this, in January 2018 you sent her letter. Can you recall that?

ADV BOTES SC: No, Chairperson, I did not send any
20 letters, I saw that that was something that was mentioned. If I did communicate, and that is my style, I communicate very often on WhatsApp and SMS for one reason, Chairperson, you have a paper trail.

And secondly, yes, I did communicate with Mr Mogashoa via email. There was a lot of emails that was

exchanged between us. All explained – and the one email there and the reason being, Chairperson, one of the – there was a postponement of the arbitration and then a dispute ensued, who is liable for the costs occasioned by the postponement? And Judge Brand did not want to hear submissions on it.

My proposal was that it should be cost in the arbitration. Mr Mogashoa's client insisted that the liquidated company should pay the cost and that is actually
10 where the correspondence ensued.

I then sent Mr Mogashoa a very harsh-worded email and I said to him Madimpe but that is not what transpired, these are the facts and this is what transpired because he started communicating with me directly via email and all of that culminated and they filed heads, we filed heads of argument. At the end Judge Brand said he could not – he cannot determine who is at fault and I think costs were – the award was each party to pay its own costs.

So to answer your – the statement or what you put
20 to me, Mr Soni, no, I did not initiate, I did not write letters it is not my function, my authority or my – I do not have *locus standi* to write letters. Letters were exchanged between Mr Mathopo and there are various letters and also Mr Crouse. I did not write letters, no.

ADV SONI SC: Chairperson, those are the questions.

CHAIRPERSON: Thank you very much. Thank you very much, Mr Botes, for coming to give evidence, we appreciate it and you are excused.

ADV BOTES SC: Thank you very much, Chairperson.

CHAIRPERSON: Thank you.

ADV SONI SC: Yes, thank you so much, Mr Botes, on behalf of the Commission's legal team.

CHAIRPERSON: I want us to adjourn for a few minutes and I would like to see you Mr Soni and Mr Nkatha.

10 **ADV SONI SC:** Yes.

CHAIRPERSON: Okay. We adjourn

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Mr Soni? Your mic.

ADV SONI SC: Chairperson I have noticed you're having difficulty following the numbering in the bundles and they are not – they have not been done in the usual manner. We would ask if we could be given leave to put the bundles right and ask if we could take an early lunch adjournment
20 so we can sort that out and we could start again at two o'clock and go through the witnesses thereafter. I apologise again, but it is not fair to you especially because we may be familiar with the documents but I noticed you were struggling to keep up with the witnesses and tally what was said, what is contained in the documents.

CHAIRPERSON: Okay, we will adjourn early for lunch and I will give you a little bit more time. There are two ways of doing this, one is to paginate this bundle afresh, even manually, so that in the bundle I know that the pagination starts from page one and goes up to the last page and the sequential. At the moment the problem is that different sections of documents in the bundle are paginated on their own.

ADV SONI SC: Yes.

10 **CHAIRPERSON:** So if you say to me page 20 I have got to ask page 20 of which section, whereas if you do it the way it is normally done, if you say page 20 on this bundle, I know there is only page 20.

ADV SONI SC: Yes.

CHAIRPERSON: So I can find it easily.

ADV SONI SC: Yes.

20 **CHAIRPERSON:** There are two ways of doing it, the ones that I have just said or you could take out of this bundle Mr Botes' documents and make them – put them into a separate bundle and then you keep the numbering that is on his – I am assuming that, ja you keep that numbering and then later on you go on record, to place on record that it has been taken out of this bundle is now on its own and we give a separate exhibit number and confirm that the numbering that was used, the page numbers that were

used to refer to various documents during his evidence remains the same.

ADV SONI SC: The same, yes.

CHAIRPERSON: Okay. And then you then come to this bundle which would then be minus Mr Botes document and then paginated from page 1 up to the last document.

ADV SONI SC: Yes.

CHAIRPERSON: And prepare an index as one would do, which would be at the beginning and then it retains the same bundle number and the same exhibit number, but the
10 pagination is sequential.

ADV SONI SC: Yes.

CHAIRPERSON: Okay, it is now nearly twenty five to one, so I think we will resume – we will adjourn and resume at two, it gives you I think enough time to attend to this and to have lunch and then to the extent that it may be necessary we will sit until latish to try and finish as many of the witnesses as possible, obviously we will check their availability if we go beyond, when we go beyond four
20 o'clock but from my point of view we could go even up to six.

ADV SONI SC: Yes.

CHAIRPERSON: But we will talk and if tomorrow – tomorrow we are meant to have only one witness or how many?

ADV SONI SC: Two witnesses.

CHAIRPERSON: Two, but both of them are short? Or one is longer?

ADV SONI SC: Yes.,

CHAIRPERSON: Mr Dingiswayo

ADV SONI SC: Yes.

CHAIRPERSON: Is it, and then ja okay so let's see how it goes. Okay we will then adjourn and resume at two o'clock.

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

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Soni is everything ready now? Your mic. Your mic, turn it towards you otherwise you're sitting far from it.

ADV SONI SC: Yes, yes, we hope it is Chairperson, we have tried and we have done as you liked it to be, and as it should be, starting with the – the first page being
20 numbered one and then continuing, sequentially, until the end of that bundle.

CHAIRPERSON: Yes.

ADV SONI SC: Chair we are on Bundle G, we have removed affidavit of Mr Boulters from that bundle and we will put it in a separate bundle.

CHAIRPERSON: Okay, alright.

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

CHAIRPERSON: Okay and you will deal with that at some stage to place on record what we will call that bundle.

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

CHAIRPERSON: Ja, or do you want to deal with that now?

ADV SONI SC: Yes, so as you have suggested DCJ the numbering will be the same, it will just be a different
10 bundle number.

CHAIRPERSON: Yes, now what I mean is we will need for purposes of the record to say what bundle it is and what exhibit it is so that somebody who reads the transcript will not look for the number that was mentioned earlier and would not look for it in this bundle.

ADV SONI SC: No indeed, yes.

CHAIRPERSON: Ja, okay, alright.

ADV SONI SC: We will try and do it by tomorrow so it will save time.

20 **CHAIRPERSON:** Okay, no that is alright. Okay.

ADV SONI SC: Chairperson our next witness is Mr Nicholas Johannes Loubser. May he be sworn in.

CHAIRPERSON: Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR LOUBSER: Nicholas Johannes Loubser.

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

MR LOUBSER: No.

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

MR LOUBSER: Yes.

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

MR LOUBSER: So help me God.

NICHOLAS JOHANNES LOUBSER: (d.s.s.)

CHAIRPERSON: Thank you very much, you may be seated. You may then continue Mr Soni.

ADV SONI SC: As you please Chairperson.

CHAIRPERSON: Thank you.

ADV SONI SC: Chairperson may I take ...[intervenes]

CHAIRPERSON: Well you just want to mention where I
20 find Mr Loubser's affidavit.

ADV SONI SC: Page 106 in Bundle G Chairperson.

CHAIRPERSON: Okay, we're using Bundle G, which is – and the Exhibit for his affidavit is SS16.

ADV SONI SC: SS16.

CHAIRPERSON: Ja, and it is page 106?

ADV SONI SC: 106 Chairperson.

CHAIRPERSON: Well the covering note starts at 104 and then there is an index at 105 and then the actual affidavit starts at 106.

ADV SONIC SC: Yes.

CHAIRPERSON: Okay for purposes of this bundle see we normally when we refer to page numbers, we normally refer to the red numbers on the pages, so let's announce for the purposes of those who will read the transcript that – how
10 this one is. Is it the handwritten numbers, pagination that we follow from the beginning to end or is there a mix of red numbers and the handwritten numbers?

ADV SONI SC: It is the handwritten numbers.

CHAIRPERSON: Throughout?

ADV SONI SC: Throughout.

CHAIRPERSON: Okay in this particular bundle the pagination for the purpose of the record well it can't be Mr Soni because I see Mr Mogashoa's affidavit doesn't have handwritten pagination.

20 **ADV SONI SC:** Chairperson what we intend doing here is we will handwrite that as well so there's consistency and people are not looking in different places. So just those numbers will be the same but they will be handwritten as well.

CHAIRPERSON: Yes, I can't say that we will follow the

handwritten numbers until everything is handwritten, so I won't say anything about the pagination because it means it is not consistent, okay, but for purposes –so for present purposes there are – there is pagination that is read and pagination that is handwritten, is that right?

ADV SONI SC: That is so.

CHAIRPERSON: But the red pagination will – you will paginate by hand but the numbers, page numbers will be the same.

10 **ADV SONI SC:** Will be the same for Mr Mogashoa's affidavit.

CHAIRPERSON: Ja, I just wish somebody had just done the whole thing from the beginning to end and we could announce before we start using it that this is the arrangement, because all the other bundles the pagination is – we tell the witnesses look at the red numbers, that is the pagination, so here we have got to say handwritten, but now if I say handwritten then that is not correct for the other one, so we will say handwritten for – or maybe we
20 won't say anything we will just say we know that for his affidavit and documents it is the handwritten ones and then later on somebody will then do the earlier ones.

ADV SONI SC: Do the Mogashoa affidavit.

CHAIRPERSON: Okay, alright. You may proceed.

ADV SONI SC: Chairperson may I just give an

introduction to the evidence of Mr Loubser, because one needs to indicate what his – what the nature of his evidence is going to be.

Mr Chairperson you would have known that in respect of the property deals that Ms Ngoye dealt with in her affidavit and we canvassed quite extensively, even yesterday, a person whose name features quite prominently is Mr van der Walt and you would know that the allegation is that he was at some stage or the other an attorney for
10 Siyangena and the context is that Siyangena which had that major contract or contracts with PRASA amounting to four odd Billion Rand.

Now Mr van der Walt is no longer in the country, he was an attorney in the firm Loubser, Van der Walt Incorporated. He left in 2019 and we understand presently he is in Austin in the Texas in the United States. We have received the cooperation of his former partner, Mr Loubser, who then kindly made certain documents available to us and is here to explain what he knows about some of these
20 transactions, but you – he will explain why his knowledge in this matter is somewhat limited.

CHAIRPERSON: Well I don't know whether for purposes of enabling those who are listening and those who are maybe viewing the proceedings on television or elsewhere whether it is not necessary to mention the property

transactions to say this is what appears to have been done and this is how the law firms appears to have been involved, or Mr van der Walt to have been involved and then so that when they hear Mr Loubser's evidence they can see where it fits in.

ADV SONI SC: As you please Chairperson. Now Chairperson you will recall that in regard to Mr van der Walt and why Ms Ngoye in her founding affidavit, and replying affidavit in the Siyangena matter says the
10 Siyangena contract with PRASA is tainted. She says there were four property transactions involving Mr Montana and Mr van der Walt, or is company which is called Precise Trade and Investment 02 Pty Limited.

The first Mr Chairperson is a property that Mr Montana owned and which his own banker had valued at about R3.5million in 2012. In 2014 Mr van der Walt bought that property from Mr Montana for R6.8million, he effectively made a profit, Chairperson, of more than R3million on the estimated value of the property.

20 **CHAIRPERSON:** You mean Mr Montana made a profit of about...[intervenes].

ADV SONI SC: Mr Montana made a profit yes.

CHAIRPERSON: Ja.

ADV SONI SC: The second property that is in question, Chairperson, is a property in Waterkloof in Pretoria and

we're hoping to have a witness, the owner of the property, to come and give evidence this afternoon, who will indicate that the property was – the first person to express an interest in the property was Mr Montana and then gradually he withdrew from the scene and Mr van der Walt, through Precise Trade became the owner of the property and that property was in the region of R11million Mr Chairperson. The third property is a property in Sandhurst and the estate agent who sold the property is here, he will be giving evidence on that property, he sold that property for R13.9million, having entered into a contract originally with Mr Montana but then again Precise Trade entered into the scene and they became – the property was transferred into its name. the fourth property, Chairperson, is a property in Hurlingham which Mr Montana bought and that was in the region of R13.5million and that property, they attempted to transfer into the name of Precise Trade but the owner would have nothing to do with it and you will see from documents, as to why that was the case...[intervenes].

20 **CHAIRPERSON:** That's the owner of the property?

ADV SONI SC: At Hurlingham yes.

CHAIRPERSON: Not the owner of Precise Trade?

ADV SONI SC: Yes, and eventually the property was transferred to Mr Montana. Now the evidence that is available in respect of the payment of the properties,

Chairperson, is that it does not appear as if Montana – Mr Montana paid any money for any of these properties. Now, we accept that he sold one and two were transferred into the name of Precise Trade but the fact of the matter is, Mr Chairperson, he bought a property in his own name, it transferred to his own name, thirteen odd million rand but the documents that we have which show payment for these properties doesn't reflect that he, himself, paid even a cent for these properties. So, that is the value of Mr
10 Loubser's evidence because although he can't give first-hand information, they confronted Mr van der Walt about this, he and his partner, Mr van Wyk...[intervenes].

CHAIRPERSON: And Mr van der Walt was not just a partner in the law firm, namely Loubser van der Walt but he was the sole Director, is it, of Precise Trade?

ADV SONI SC: That is so Chairperson yes.

CHAIRPERSON: Ja, ja, okay.

ADV SONI SC: And what we will also show through Mr Loubser is, that when they confronted him, Mr van der Walt
20 gavel Mr Loubser and Mr van Wyk a set of documents which contain some of these property dealings but more importantly the funders for these property dealings and there are three main individuals who are the funders. We will go through them, perhaps I must just mention them now, there's a Mr Clansey, there's a Mr Plimental and there

is an organisation which you've heard of already, TMM which had entered into a contract, TMM and Mr Ferreira had entered into a contract with Mr van der Walt to have joint ventures in property matters and in respect of some of the payments, payments were made into Precise Trade's account and soon thereafter withdrawals were made to pay for some of these property transactions but that will be shown via a bank statement that Mr van der Walt gave to Mr Loubser. So those are the matters I'm going to lead Mr
10 Loubser on Chairperson.

CHAIRPERSON: Okay, no that's fine, you may proceed.

ADV SONI SC: As it pleases Chairperson. Mr Loubser, sorry you've heard the introduction.

MR LOUBSER: Yes.

ADV SONI SC: Can I just ask you, are you still practicing as an attorney?

MR LOUBSER: Yes.

ADV SONI SC: And how many partners are in your firm at the moment?

20 **MR LOUBSER:** Presently just two.

ADV SONI SC: That's you and Mr...[intervenes].

CHAIRPERSON: I'm sorry Mr Loubser, although he's asking the questions, you tell me the answer so you look towards me most of the time and then you can just raise your voice.

MR LOUBSER: Sorry Chairperson, there's currently – there's only two Directors in the firm, myself and Mr van Wyk.

CHAIRPERSON: I don't know whether it's the aircon, please just repeat that, the aircon made your voice not to be clear, just repeat what you have just said.

MR LOUBSER: Sorry Chairperson, presently it's only myself and Mr Robert van Wyk as Directors of the firm.

CHAIRPERSON: Okay.

10 **ADV SONI SC:** Now Mr Loubser your firm is still called Loubser Van Der Walt.

MR LOUBSER: No, it's not – following Mr van der Walt's resignation and the sale of his shares, we changed the name to Loubser van Wyk as it is presently.

ADV SONI SC: Alright, now how long had you and Mr van der Walt and Mr van Wyk been in partnership?

MR LOUBSER: Mr van der Walt and I started a firm in 2000 and about three years later Mr van Wyk joined us, first as an article clerk, then professional assistant and
20 later became a Director.

CHAIRPERSON: Look at me Mr Loubser.

MR LOUBSER: Let me repeat that then.

CHAIRPERSON: Ja please repeat that.

MR LOUBSER: Myself and...[intervenes].

CHAIRPERSON: Maybe what you can do as you speak,

come a little closer to the mic or bring it a little closer ja, okay.

MR LOUBSER: We started a firm in 2000...[intervenues].

CHAIRPERSON: That's much better ja.

MR LOUBSER: Myself and Mr van Der Walt started a firm, we were the only two Directors and about three/four years later Mr van Wyk joined us, first as a candidate attorney, then as a professional assistant and later on became a Director in the firm.

10 **ADV SONI SC**: And after – sorry when did Mr van der Walt left?

MR LOUBSER: Sorry?

ADV SONI SC: When did he leave?

MR LOUBSER: He left in June/July 2019.

ADV SONI SC: Now before he left though, there were concerns that you and Mr van Wyk entertained about certain dealings that Mr van der Walt appeared to be having and that had received adverse publicity, would that be correct?

20 **MR LOUBSER**: That's correct.

ADV SONI SC: Would you tell the Chairperson the circumstances of that?

MR LOUBSER: We – myself and Mr van Wyk became aware of newspaper reports that mentioned Mr van der Walt and his company, Precise Trade and Invest. There

were certain allegations made against Precise Trade and Invest, never really, it involved the firm, the law firm and then in – I think it was in September/October 2015 there appeared certain newspaper articles which, once again, makes reference to the company Precise Trade and Invest and then mentions the – and his law firm. Mr van der Walt, Precise Trade and Invest and his law firm. At that stage, Mr van der Walt at all times maintained that Precise Trade and Invest is his company it's got nothing to do with anybody else but we were concerned that the law firm, even though the name was not mentioned specifically, but Mr van der Walt and his law firm by association our name is being tarnished and we were placed in a difficult situation. At that stage we decided to call a meeting with – there was speculation, allegations in the newspapers and stuff which we don't have personal knowledge of and we decided to have a meeting and explain to us exactly who is Precise Trade and Invest what properties they bought, he bought. So, it was the first meeting we had and we addressed a letter to him, in writing, following that meeting which he responded to.

ADV SONI SC: Now, just to put it on record you've described all these matters in an affidavit which you made on the 18th of June, is that correct?

MR LOUBSER: That's correct.

CHAIRPERSON: 18th of June 2020?

ADV SONI SC: 2020, yes Chairperson and in this affidavit, you attach a number of documents which Mr...[intervenes].

CHAIRPERSON: Maybe for the sake of – I don't know if you already mentioned but that affidavit appears at page - from page 106 to 113 that is the affidavit of Mr Loubser in Bundle G.

ADV SONI SC: As it pleases Chairperson.

10 **CHAIRPERSON:** Ja.

ADV SONI SC: Now, you confirm the correctness of what's stated in our affidavit?

MR LOUBSER: Yes.

ADV SONI SC: Okay so you say you confronted Mr van der Walt.

MR LOUBSER: Yes.

ADV SONI SC: And following that confrontation, what happened then?

20 **MR LOUBSER:** He explained certain things to us and we said – we agreed that we will pose these questions in writing to him to explain which we then drafted the letter which we addressed to him by myself and Mr van Wyk and asking to confirm in writing what he'd told us in a meeting or provide more clarification.

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

CHAIRPERSON: Sorry Mr Soni, let's start with this. First you became aware of certain allegations in the media, in the newspaper relating to Mr van der Walt or Precise Trade or both but also those allegations or those articles or that article mentioned your law firm in whatever they were saying, is that right?

MR LOUBSER: That's correct, they didn't mention the firm by name but...[intervenes].

CHAIRPERSON: But it said Mr van der Walt and his law
10 firm, ja.

MR LOUBSER: Yes.

CHAIRPERSON: What was your impression of what was being said about Mr van der Walt or Precise Trade that made you concerned and want to confront him?

MR LOUBSER: There appeared to be – he always maintained that Precise Trade and Invest, is the sole Director – ja sole shareholder and Director of the firm and he bought properties and we heard that he's previously also involved in other property transactions but there was
20 some allegation about his law firm and we wanted to know is there any truth in certain allegations made, explain to us who is Precise Trade and Invest and which properties did you acquire...[intervenes].

CHAIRPERSON: Were there allegations of some wrong doing made in the media about Mr van der Walt and/or

Precise Trade which you were concerned people could associate with your law firm because the reference to his law firm was a reference to your law firm as well?

MR LOUBSER: Yes, there was mention made of money paid by his law firm to somebody.

CHAIRPERSON: But it give the reader, did the article give the reader the impression of some wrong doing, allegations of wrong doing or not, why were you concerned about what was said in the media about him and the law
10 firm?

MR LOUBSER: It was by association, we didn't know anything specifically but because the law firm is mentioned and there was mention made of monies paid by his law firm, we were concerned about, was there money involved through the firm.

CHAIRPERSON: Okay what I'm trying to understand is, whether you were prompted to confront him simply because from what you read in the newspapers it appeared that there may have been money that, according to the article,
20 was either paid to the law firm or was paid by the law firm to buy some properties without your knowledge irrespective of whether there was wrong doing or not or whether the impression you got on reading the article or articles was that, whatever Mr van der Walt or Precise Trade was involved in or was allegedly involved in, was having a –

may have a negative impact on the law firm. It created the impression that the law firm might be involved in wrong doing, precisely what made you say, look, we must confront him about this. Is it simply because there might have been some money transactions involved in the law firm that you knew nothing about, even if there was nothing wrong about them or was there – did there appear to be allegations of wrong doing of one kind or another?

MR LOUBSER: Chairperson we were more concerned
10 about monies that was paid through the law firm, because the rest was allegations in the newspaper with – we didn't deal with that aspect we were more concerned about monies that was, somehow, through our law firm and it was not – the meeting was not a confrontational meeting it was, explain to us this, where – who's Precise Trade and Invest, did these transactions flow through our firm, that was our concern. Not the allegations that he had some wrong doing we were more concerned about the firm.

CHAIRPERSON: Ja but was the – were the allegations or
20 was the impression you got from the article that some monies had allegedly been paid from the law firm to buy some properties that you knew nothing about or was the allegation or was the impression that some monies were paid in to the law firm without your knowledge in regard to some properties, which exactly...[intervenes].

MR LOUBSER: Yes we were – there was mention made of money that was paid by or from or from our law firm which we were not aware of, myself and Mr van Wyk were not aware of.

CHAIRPERSON: Okay.

ADV SONI SC: Just to give some context to this, you wrote to Mr van der Walt on the 14th of October right, and that appears at page 120, that's Annexure NLJ2 to your affidavit – sorry NJL2 to your affidavit, would that be
10 correct, if you look at the bottom...[intervenes].

MR LOUBSER: I see it as page 119.

CHAIRPERSON: Ja it starts on 119.

ADV SONI SC: Yes, and your signature and Mr van Wyk's signature is at page 120, is that right?

MR LOUBSER: That's correct.

ADV SONI SC: Yes, and it's dated the 14th of October?

MR LOUBSER: That's correct.

ADV SONI SC: Can I ask you just to turn back to an Annexure before that which is NJL2?

20 **MR LOUBSER:** Yes.

CHAIRPERSON: On what page?

ADV SONI SC: Sorry page 117 Chairperson. Is this the nature of the article, because I see you say in your affidavit you couldn't find the article in question but you give a – there is a summary of the article which you

Annexed to your affidavit, is this the nature of the article that was written?

MR LOUBSER: Yes we couldn't find the original article it appeared, I think it was in the Rapport and City Press, we couldn't find the article anywhere on the internet but we managed to find – Mr Ollerman asked me if I can refer to the article and this was – this seems to be a synopsis of what was said in the newspapers.

ADV SONI SC: And the date of this News24 article is the
10 4th of October 2018, is that right?

MR LOUBSER: That's correct.

ADV SONI SC: So that's – two things, the articles or the media reports start early in October and you confront him about two weeks later, is that correct?

MR LOUBSER: Yes.

ADV SONI SC: And if you – this is what the Chairperson...[intervenes].

CHAIRPERSON: I'm sorry...[intervenes].

ADV SONI SC: This is what the Chairperson was asking
20 about, the nature of the article. Would you just – you don't need to read the whole article but would you just read the headline of the article as it appears on page 117.

MR LOUBSER: It says

“Lawyer forks out R25million for Montana's mansions”.

ADV SONI SC: And if you could just read the first paragraph of that article...[intervenes].

CHAIRPERSON: Before that, Mr Soni, have you indicate from what publication this article comes?

ADV SONI SC: Chairperson you – sorry I should – Mr Loubser you'll see under that headline the end is blotted out but it seems to be a News24 article, is that correct? If you just look at the headline and under that on the left-hand side, do you see that?

10 **MR LOUBSER:** Yes, under the headline, "Lawyer forks out R25million for Montanan's mansion", it says News24.

CHAIRPERSON: Ja.

ADV SONI SC: Right could you please just read...[intervenes].

CHAIRPERSON: And – I'm sorry, I see on the right-hand side there, I see the name Pieter-Louis Myburgh and then I see Rapport. Do we know whether the article was written by Pieter-Louis Myburgh or we don't know?

20 **ADV SONI SC:** It would be written by him and it would be a News24 report, based on what was contained in Rapport.

CHAIRPERSON: Okay.

ADV SONI SC: So, if you could read the first paragraph of that article.

MR LOUBSER: "A lawyer of close ties to a company that won large tenders from Passenger Rail Agency

South Africa, when Lucky Montana was at its helm bought Montana two upscale properties worth almost R25million and paid for it in cash”.

ADV SONI SC: Now, is the name of the lawyer mentioned, if you look at the second page of that article?

MR LOUBSER: Yes, it’s mentioned on the second page.

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

CHAIRPERSON: Well maybe he could read a few more sentences.

10 **ADV SONI SC:** Yes.

MR LOUBSER: “The lawyer, Riaan van der Walt, from Pretoria, strongly denies that his shelf company acted as a proxy for Montana”.

ADV SONI SC: And then just so that your concern is noted, what does the next paragraph read?

MR LOUBSER:

20 “Van der Walt’s law firm has in the past represented a company featured in a Public Protector’s Madonsela’s recent report on PRASA following an irregular tender worth billions of Rands”.

ADV SONI SC: And then the article gives a synopsis of some of the matters that they had uncovered...[intervenes].

CHAIRPERSON: I think, Mr Soni, it’s fine he can just read and finish that article ja.

ADV SONI SC: As it pleases.

CHAIRPERSON: Just read and finish it Mr Loubser.

MR LOUBSER: Ja then it gets to a paragraph that starts
– it says,

10 “Vander Walt’s law firm paid a deposit of R5million
towards the Sandhurst transaction and confirmed in
a letter that the house new owner was Montana.
The purchase agreements for both properties were
ultimately altered to reflect Precise Trade and
Invest 02 as the legal owner, whilst Montana
himself took possession of the property keys.
Montana said he wished not to comment, van der
Walt maintained that his shelf company was, in no
way, related to Montana or any other third party”.

ADV SONI SC: Mr Loubser...[intervenes].

CHAIRPERSON: I’m sorry...[intervenes].

ADV SONI SC: There’s a paragraph that you didn’t
read...[intervenes].

CHAIRPERSON: Ja I think so too, I thought – the
paragraph that starts, “Van der Walt’s shelf company”.

20 **MR LOUBSER:** My apologies,

“Van der Walt’s shelf company, Precise Trade and
Invest 02 paid R13.9million for a house in
Sandhurst Johannesburg and R11million for a house
in Waterkloof Pretoria, November 2014 and
February this year respectively. Both properties

were paid for in cash, however, early 2013 Montana himself signed a contract of sale to buy the house in Waterkloof. In October 2014 he signed an offer to purchase the house in Sandhurst”.

CHAIRPERSON: Ja, thank you.

ADV SONI SC: And then the last paragraph – the second last paragraph, about van der Walt’s relationship with Mr Montana, what does he say about it, according to the Rapport?

10 **MR LOUBSER:** “Van der Walt maintained his shelf company was in no way related to Montana or any other third parties”.

ADV SONI SC: Yes, and then it says the full report appears in Rapport and City Press.

MR LOUBSER: Yes,

“And a full report, Rapport and City Press”,

It’s a bit – some of the page is a bit cut-off.

ADV SONI SC: Yes, now you confront – well perhaps I should – you raise the issue with Mr Montana, is that
20 correct, after this article or after the Rapport article?

MR LOUBSER: No, we did not raise the issue with Mr Montana...[intervenies].

ADV SONI SC: Sorry with Mr van der Walt.

MR LOUBSER: Van Der Walt yes, we raised the issue with Mr van der Walt regarding this shelf company, Precise

Trade and Invest...[intervenes].

CHAIRPERSON: Look on this side again Mr Loubser.

MR LOUBSER: We raised the question of the company Precise Trade and Invest, we wanted to know more details of that.

CHAIRPERSON: So you had a meeting with Mr van der Walt?

MR LOUBSER: Just enquiring, who's this Precise Trade and Invest because it was not known to us.

10 **CHAIRPERSON:** Now that meeting that you had with Mr van der Walt, yourself, Mr van der Walt and Mr van Wyk, it's very important that I get as much of what was discussed there as possible. It may be that it was a short meeting because it was agreed that you must put your request in writing but I want to hear the full discussion but if there is not much other than that you put the question and you said, put your questions in writing, just talk more to me about that discussion.

MR LOUBSER: I can honestly not recall the exact nature
20 but it was brief and it was agreed that we will – base our concerns in writing and give him an opportunity to respond.

CHAIRPERSON: Okay.

ADV SONI SC: So just taking up the theme, is it because you wanted it to be – you wanted there to be something in writing so there's no dispute about what the real facts are

or did he ask you for more time or did you say, give us time to prepare a proper enquiry to you?

MR LOUBSER: Sorry I don't understand your question.

ADV SONI SC: Okay so let me put...[intervenes].

CHAIRPERSON: Okay, alright who asked that there be a written request for information, did you and Mr van Wyk say to him- to Mr van der Walt, we will give you something in writing to tell you what we would like you to deal with or did he, that is Mr van der Walt, say to you, please send me
10 something in writing then I will respond in writing.

ADV SONI SC: Once again I cannot recall but I'm pretty sure that we – I cannot recall who raised whether it should be in writing or not, I cannot recall but I assume...[intervenes].

CHAIRPERSON: Well if you can't remember it's fine but in the end, it was agreed that you would put your request in writing, request for information.

MR LOUBSER: Yes, that's right.

CHAIRPERSON: And he would respond in writing?

20 **MR LOUBSER**: Yes, that's right Chairperson.

CHAIRPERSON: Okay.

ADV SONI SC: Mr Loubser why I asked that is, you are three partners and it would be unusual where you have a partnership of lawyers, for one partner to say, put it in writing or another partner to say, I will put it in writing. It

looks like there were concerns about what the real facts are or am I wrong, am I just speculating?

MR LOUBSER: No there was not concerns about the real facts we just wanted to – we were – at that stage we were three Directors and there was two other attorneys involved in it and we all run our own departments and each of us had a couple of hundred piles that we deal with and I don't really know what Mr van der Wyk deals with or one of my PA's deals with or what Mr van der Walt deals with. So, it
10 was not a thing of accusations we wanted to – who is Precise Trade and Invest and exactly how – it was more an enquiry than saying there was something untoward.

ADV SONI SC: Yes okay, anyway that meeting is held on the 12th and then on the 14th you send...[intervenes].

CHAIRPERSON: Is that 12th October?

ADV SONI SC: 12 October 2015 Chairperson and one finds that in the first line of – in NJL3, Chairperson.

CHAIRPERSON: What page?

ADV SONI SC: Page 119.

20 **CHAIRPERSON:** Right, first line?

ADV SONI SC: Yes, now under the heading “van vergadering gehou op 12 Oktober.”

CHAIRPERSON: There's an English translation isn't it?

ADV SONI SC: There isn't an official, Mr Ollerman made ...[intervenes].

CHAIRPERSON: I thought some of these documents that were in Afrikaans there was some English translation provided?

ADV SONI SC: Mr Ollermann provided an informal translation for us.

CHAIRPERSON: Who provided it?

ADV SONI SC: Clint Ollermann.

CHAIRPERSON: Oh okay, well if it's accepted as correct then that's fine, I don't know if Mr Loubser has seen it, that
10 translation.

ADV SONI SC: No, he hasn't Chairperson.

CHAIRPERSON: Is it not here?

ADV SONI SC: No.

CHAIRPERSON: Oh it's not here.

ADV SONI SC: It's not part of the record no.

CHAIRPERSON: Oh, okay, alright well my Afrikaans is much worse than it was when I was at school, it was much better when I was at school, that's centuries ago, so it would help if we could have, maybe, an official translation
20 unless Mr Loubser is happy, later on to just provide an English translation, I think he's fluent in English. Mr Loubser is that something that would be easy to do or you would rather we should have an official translation?

MR LOUBSER: No that's fine I'm happy...[intervenes].

CHAIRPERSON: You can provide, yes okay.

ADV SONI SC: Of this – of all four letters Mr Loubser.

MR LOUBSER: Yes, obviously I will just want insight into to confirm whether it is a correct reflection of the record.

CHAIRPERSON: Yes, what of course, you can do today, is when a reference is made to a letter that is in Afrikaans you can tell us what you were saying in English because it's your letter you know it.

MR LOUBSER: Ja.

ADV SONI SC: So just on that theme, Mr Loubser, would
10 you tell us, more or less what – well summarise the contents of NJL3.

MR LOUBSER: In the first paragraph we refer to the meeting...[intervenes].

CHAIRPERSON: I'm sorry.

ADV SONI SC: That's still page 119 Chairperson.

CHAIRPERSON: You are talking about NJL3?

ADV SONI SC: Yes, that's the letter of the 14th of October Chairperson.

CHAIRPERSON: But I don't have anything written NJL3 at
20 page 119.

ADV SONI SC: I think...[intervenes]

CHAIRPERSON: Is it the red writing?

ADV SONI SC: No, it's the black writing above the red writing.

CHAIRPERSON: Well that looks like an odd – an O6 NOL3

to me. Why don't you just use the pagination number.

ADV SONI SC: As you please, yes.

CHAIRPERSON: Ja because – I think today
...[intervenes].

ADV SONI SC: Has not been the best of days.

CHAIRPERSON: Has not been the best of days.

ADV SONI SC: I'm sorry Chairperson.

CHAIRPERSON: Okay alright. I think just repeat the
question to him.

10 **ADV SONI SC:** Yes. Now if you could please summarise Mr
Loubser what this is?

CHAIRPERSON: Your letters starting at page 119.

MR LOUBSER: The first paragraph referred to a meeting
and just introductions or requests. Second paragraph is
physically asked him to confirm which immovable properties
are currently registered in the company Precise Trade and
Invest. And then ask him if there is any properties
registered in her name, provide us with exact details of the
property. Copies of the purchase agreements and how and
20 when the purchase price was paid for the properties so
acquired.

We continued to ask him whether the – if there was
money paid by Precise Trade and Invest was that money that
it flow through our trust account and if the money was
through our trust account specify who paid money into the

trust account and to whom those monies was paid because they are going to ask him to confirm who the current shareholders were in Precise Trade an Invest. And then on page 120 there was a general question about a statement from I think it was a Mr – from the reporter.

ADV SONI SC: Mr Myburgh.

MR LOUBSER: Myburgh.

CHAIRPERSON: Hm.

MR LOUBSER: I do not know if should I repeat that – the
10 statement which was made by the reporter. The reporter – maybe just – reporter basically stated that Mr Van Der Walt visited Mr Mario Ferreira at the offices of TMM Holdings frequently through 2014 sometimes twice a week. These meetings occurred at about 6:30. Also learnt the documents were free to be taken from TMM Holdings to Loubser Van Der Walt Incorporated where Loubser Van der Walt’s receptionist took possession of such envelopes. When I asked him about this allegation by the reporter. Final question posed to him.

ADV SONI SC: Now that letter was written on the 14th.

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

ADV SONI SC: Did he respond to that letter?

MR LOUBSER: He responded to that.

ADV SONI SC: Yes.

MR LOUBSER: And on page 121.

ADV SONI SC: Yes.

CHAIRPERSON: I am sorry before that. The unofficial translations that Mr Oellerman had prepared are they available?

ADV SONI SC: I can make it ...

CHAIRPERSON: [Indistinct 00:03:23] because if they are available I would like them to be unofficially sent to – handed up to me so I can...

ADV SONI SC: Yes.

CHAIRPERSON: I can have a look at them as he deals with
10 the letters that are in Afrikaans. Because I did have hard copies earlier on that were given to me.

ADV SONI SC: I just want to see if my hard copies are there
Chairperson.

CHAIRPERSON: Because if I had known they were not here I would have conditioned myself to reading Afrikaans and try and resuscitate my knowledge of Afrikaans.

ADV SONI SC: Chairperson can I do this? I have a copy of Mr Van der Walt's responses in English.

CHAIRPERSON: Hm.

20 **ADV SONI SC:** So I have got translations of his responses. Can I hand those up?

CHAIRPERSON: Okay that is fine ja.

ADV SONI SC: I am sorry I left the other two.

CHAIRPERSON: Yes.

ADV SONI SC: In chambers.

CHAIRPERSON: No that is fine. Okay. But in the meantime, we can continue.

ADV SONI SC: So Mr Van Der Walt Ms Loubser responded on the 20 October, is that correct?

MR LOUBSER: That is correct.

ADV SONI SC: And his response appears from page 121?

MR LOUBSER: That is correct.

ADV SONI SC: Is that correct? Now again very briefly could you just for the record indicate what his response was?

10 **MR LOUBSER:** He personally indicated he listed paragraph 1 and paragraphs 1.1 to 1.5 of the letter he listed the properties that was currently registered in the company Precise Trade and Invest.

He then attached copies of the purchase agreements which we requested him to do so and he attached a bank account – a bank statement reflecting the monies received. Well it is bank account statement from Precise Trade and Invest indicating which monies was paid into that account and also paid. That is at paragraph 3. At paragraph 4 he
20 say that that money paid into Precise Trade and Invest account was paid by three entities. One entity namely TMM and then two other persons, America Pimentel and Mark Clancy.

Then to that he attached certain agreements between himself personally and TMM himself personally and Pimentel

self personally and Mark Clancy. He attached those agreements to that to explain why the money was paid into Precise Trade an Invests account.

Then in the second paragraph he confirmed that he is the sole director and shareholder in Precise Trade and Invest. The following paragraph he confirmed that over a period of eight years at various occasions and at various times sometimes as early as six o'clock in the morning and after hours he consulted together with advocates, with TMM,
10 ESS, TMM Rental and Siyangena Technologies.

ADV SONI SC: Yes.

MR LOUBSER: Then – ja he continues he mentions a number of names of persons that he consulted with.

ADV SONI SC: Could you just read those names please?

MR LOUBSER: Okay, right I will do so. He mentions then Ronel Wardalg, Karel Sanchez, Ray Ferreira, Mario Ferreira, Sheila Dos Santos, Tom Dubek, Alwin Wilsnach, Mannie Marx, Martino Marx, Anton Verster, Jacques Verster, Jacques Van Jaarsveld etcetera. On different occasions over a period
20 of eight years consulted by Loubser Van Der Walt. Due to the fact that Loubser Van Der Walt through Tanya Kruger and Dina Boshoff were responsible for various conveyancing transactions for TMM Rental. They were the conveyancers of – for TMM Rental. Further various allegation matters were dealt with by Loubser Van Der Walt and

documentations was delivered to TMM Group or delivered to them through the offices.

CHAIRPERSON: I see that in that letter or that correspondence Mr Van Der Walt's style or tone of writing seems to be very official and he does not seem to be just writing as himself or maybe it is out of habit when you write a letter on behalf of your law firm to other people. I see that in paragraph 9 he says, we – ons plaas [indistinct 00:10:07] deur die skrywer en die aangehegte dokumentasie bla, bla, 10 bla. And in the next paragraph wrote and says: Ons vir – ons versoek. So this we makes me think he is being very official.

ADV SONI SC: Yes.

CHAIRPERSON: Is that right or it might be out of habit of writing like that when he writes [indistinct 00:10:35].

MR LOUBSER: It seems to be because of the requests is also all together it formalised that my request is in writing and your responded in writing as per habit almost you draft a legal document which you do and provide it exact clarity.

20 **CHAIRPERSON:** Hm. It is not a reflection of any tension that these issues that you raised caused among the partners?

MR LOUBSER: I do not – I do not know what he...

CHAIRPERSON: Ja.

MR LOUBSER: What he perceived.

CHAIRPERSON: What he might have said ja.

MR LOUBSER: Perceived my request were meant to be.

CHAIRPERSON: Ja okay.

ADV SONI SC: So in – attached or annexed to that letter were a number of other documents.

MR LOUBSER: That is correct.

ADV SONI SC: Right. I – I am more interested in some of them and Chairperson I do it purely in the interest of time not all of them concerned the matters raised in the
10 Siyangena and I just want to concentrate on those matters that are there.

CHAIRPERSON: Hm.

ADV SONI SC: If there is something else it will come up on a – at a later stage.

CHAIRPERSON: Ja that is right.

ADV SONI SC: Just in the interest of time I thought I would just deal with those matters that are of concern to us.

CHAIRPERSON: Ja, no that is fine.

ADV SONI SC: I also – I should also say that if I do not
20 mention for example certain transactions involving these properties it is because they will be dealt with when the transactions as a whole are being dealt with. The purpose of referring to these documents here is to indicate the – the importance of the documents to the matters that we are dealing with in the commission.

CHAIRPERSON: I did not hear an earlier sentence. You said you do not – I do not know whether you said you do not mention the properties or something?

ADV SONI SC: Yes. So for example, Chairperson he deals – if you look at page 123.

CHAIRPERSON: Hm.

ADV SONI SC: That is the first annexure.

CHAIRPERSON: Hm.

ADV SONI SC: He deals with a property being sold by Mr
10 Isaac Roy Mogojane to Precise Trade. Now that is not a matter that has been mentioned in the Siyangena matter or a matter appearing to involve Mr Montana.

CHAIRPERSON: No, no, obviously we only interested ...

ADV SONI SC: That is right.

CHAIRPERSON: In only certain matters and those are the ones that involve Mr Montana.

ADV SONI SC: That is correct Chairperson.

CHAIRPERSON: As well as Siyangena.

ADV SONI SC: Yes.

20 **CHAIRPERSON:** Or any company that might be related to – in one way or another to Siyangena.

ADV SONI SC: Yes. So I just refer Mr Loubser to those.

CHAIRPERSON: Ja. Okay.

ADV SONI SC: And bring it to your attention.

CHAIRPERSON: Okay.

ADV SONI SC: Can I then ask you to look at page 138 which is an offer...

CHAIRPERSON: I am sorry Mr Soni.

ADV SONI SC: Oh sorry.

CHAIRPERSON: Mr Soni I wonder because he referred earlier on to TMM and maybe whether from now on it should be made clear who TMM is.

ADV SONI SC: Yes.

CHAIRPERSON: So that the viewer and listener can
10 connect as the evidence proceeds.

ADV SONI SC: Yes.

CHAIRPERSON: Ja.

ADV SONI SC: Yes. Mr Loubser do you know who TMM is?

MR LOUBSER: Yes they were a client of ours which we have – is a – is a – I think it is TMM group and which I understood Mr Mario Ferreira to have been the head of that TMM group and existed. He had – Mr Ferreira had different entities but we did work for all of them. Any – any – the contact person where he worked was always a Mr Mario
20 Ferreira. We had a relationship with Mr Van Der Walt so any work that Mr Ferreira had either personally or through one of his entities Mr Van Der Walt was the attorney that dealt with all those transactions. So I do not know all these entities. The only one I knew is TMM Rentals because we – there is some of the properties that they sold we were responsible

for the transfer of those properties and also collect rentals, arrear rentals if they had tenants which did not pay.

ADV SONI SC: Talking about transfer of properties was at that time Loubser Van Der Walt Incorporated involved in any of the transfers of these properties?

MR LOUBSER: All these properties mentioned?

ADV SONI SC: Yes by Mr Van der Walt.

MR LOUBSER: I – I am not sure but I am – I believe so.

ADV SONI SC: You do not believe so.

10 **MR LOUBSER:** No I believe so.

ADV SONI SC: You were – oh okay.

MR LOUBSER: I was not personally involved in it but from what later came to hand it appears that we were in some of them we were the conveyancers.

ADV SONI SC: You were the conveyancing.

MR LOUBSER: We were the conveyancers yes.

ADV SONI SC: Would you be able to identify those? The properties.

20 **CHAIRPERSON:** I was thinking Mr Soni whether seeing that Mr Van Der Walt in his letter that Mr Loubser read mentioned certain names at page 122 and two of the people he mentioned there are Ferreira's. I wondered whether he could say whether the Ferreira that he is talking about is one of these or not and whether also other names that are there if any...

ADV SONI SC: Yes.

CHAIRPERSON: You would know whether they have any relevance.

ADV SONI SC: Yes.

CHAIRPERSON: To..

ADV SONI SC: Yes that is as you please Chairperson.

CHAIRPERSON: I see and Mr Tom Dubek.

ADV SONI SC: Dubek yes.

CHAIRPERSON: Ja. So before we move away from this
10 letter I would like that to be clarified.

ADV SONI SC: Yes. So at page 122 Mr Loubser – are you there?

MR LOUBSER: Yes I am.

ADV SONI SC: Okay remember we asked you to read the names of those people.

MR LOUBSER: Yes.

ADV SONI SC: Now the one you have already mentioned Mr Ferreira.

MR LOUBSER: Yes.

20 **ADV SONI SC:** Now he you say was associated with the TMM Group.

MR LOUBSER: Yes.

ADV SONI SC: Which is a group of companies which included TMM Rental.

MR LOUBSER: Yes.

ADV SONI SC: Now what other companies to your knowledge was Mr Ferreira associated with?

MR LOUBSER: I – I do not know. There is TMM Rental and I do not know exactly how the TMM Group was structured who was all. I will – yes – I know – what I know is a company ESS I know Engineering Systems Solutions we did work for them as well and I know Mr Ferreira was also – I do not know if he was the head of that but I know he has an involvement in a company called ESS or I know the company

10 SAU that knew them.

ADV SONI SC: And Siyangena?

MR LOUBSER: Siyangena I did not know at that stage personally I did not know who Siyangena was or how they were involved with Mario Ferreira. I did not know that at that stage so...

ADV SONI SC: At that stage and now?

MR LOUBSER: Subsequently it appears that he was also involved somehow as a director or a shareholder of Siyangena.

20 **ADV SONI SC:** Who – when did you discover that?

MR LOUBSER: I cannot say for certain. Through the media and through time I cannot put a specific date on that. It is difficult to know. I still do not know hundred percent sure whether Mr Ferreira was involved in that company Siyangena but through reports it just came to my attention but I know

company docket or documents or anything can confirm that but I assume through what I have heard read that he was involved in – somehow involved in that company Siyangena and ...

ADV SONI SC: And Mr Tom Dubek?

MR LOUBSER: Mr Tom Dubek I also knew him as the – was the – I think he was the accountant for the – for TMM. That is how I know – I have met him, Tom Dubek and I – I was made to know that he was involved with TMM. I think he was
10 the accountant, general accountant.

ADV SONI SC: Yes we saw an affidavit yesterday and I am just checking this with you which he deposed to in which he described himself as the CFO of Siyangena. Do you – does that ring a bell?

MR LOUBSER: I did not know – I knew him as the – as the – he could have been the CFO of TMM but I did not know that he was CFO of Siyangena. I – all I knew that he was the CFO or accountant for TMM.

ADV SONI SC: TMM yes. The only two names that appear
20 to ring a bell.

CHAIRPERSON: Yes.

ADV SONI SC: In ...

CHAIRPERSON: Okay no that is fine. Just to recap what does Mr Van Der Walt say in that paragraph 7 about the people that he mentions there including the two Ferreira's

and Tom Dubek?

MR LOUBSER: He said that he consulted with them over a period of eight years due to the fact that Loubser Van Der Walt through Tanya Kruger she was a conveyancer [indistinct 00:22:16] stage and Dina Boshoff who was also a conveyancer at a stage responsible for various conveyancing matters on behalf of TMM Rental and some of the transfer documents was delivered to their offices or from their offices to our offices. And he further mentions that various litigation
10 matters were dealt with and affidavits was delivered by various employees of the TMM Group to Loubser Van Der Walt.

CHAIRPERSON: Thank you.

ADV SONI SC: So among the documents that Mr Van Der Walt handed to you and Mr Van Wyk together with his letter of the 18 October I would like you to look at page 138 please.

MR LOUBSER: Yes.

ADV SONI SC: Now what is that document if you could just
20 describe it?

MR LOUBSER: It is an offer to purchase entered into by Mr Montana and Precise Trade Invest for the purchase of a property described as Erf 359 Portion 0 Township Parkwood for a purchase price of R6.8 million.

ADV SONI SC: Yes and the street address of that property

you will see it at paragraph 1.2.

MR LOUBSER: 10 Newport Road, Parkwood, Johannesburg.

ADV SONI SC: And that set out – sorry.

CHAIRPERSON: So I am sorry Mr Soni. So this relates to this so called Parkwood property or the property in Parkwood.

ADV SONI SC: That is correct Chairperson.

CHAIRPERSON: Ja okay.

ADV SONI SC: And this is the one Chairperson you will
10 recall that Mr Montana sold to Precise Trade.

CHAIRPERSON: Yes okay. Okay. So it is the Parkwood property.

ADV SONI SC: Yes.

CHAIRPERSON: Okay. Okay thank you proceed.

ADV SONI SC: Mr Chairperson in an effort to save time because we are going to deal with these matters when we deal with each of the properties.

CHAIRPERSON: Hm.

MR LOUBSER: I am just going to refer to the documents so
20 that we can identify Mr Van Der Walt as the source of the documents, what they mean and their role in the picture we are trying to paint will be presented when those transactions are dealt with.

CHAIRPERSON: Yes but what – what needs to be done and that is why I was checking that it relates to the Parkwood

property.

ADV SONI SC: Oh sorry yes.

CHAIRPERSON: Is that we mention we associate the document with the property concerned.

ADV SONI SC: Yes.

CHAIRPERSON: This one is relevant to the Parkwood property.

ADV SONI SC: Property yes.

10 **CHAIRPERSON:** Another one will be relevant to another property.

ADV SONI SC: No sure yes.

CHAIRPERSON: Ja.

ADV SONI SC: Yes. And then can I ask you to look at the next document it appears at page 145 and what is that document?

MR LOUBSER: It is headed Addendum to Offer to Purchase entered into between Siphon Lucky Montana and Precise Trade Invest and on the second page it continues.

ADV SONI SC: So...

20 **MR LOUBSER:** It is an addendum to an offer to purchase.

ADV SONI SC: So this is an addendum we reading the two documents together to the Parkwood.

MR LOUBSER: I just want to refer back to the previous one because in the addendum it says addendum to an offer to purchase the 5 May and if I refer back to the previous

document it seems to be an amendment to the Parkwood sale – property.

ADV SONI SC: Yes.

CHAIRPERSON: So the document appearing at pages 145 to page 147 relates to the Parkwood property?

ADV SONI SC: The Parkwood property.

MR LOUBSER: Yes it is an addendum to the real one.

ADV SONI SC: Now I just – I ask you this because it is a matter that intrigues me. Mr Montana sells the – and I am
10 not asking you to – to tell me what it means but tell me what your view is about this. Mr Montana sells the property to Mr Van Der Walt for R6.8 million in May. In June they sign this amendment and the amendment at paragraph 2.1 requires Montana – Mr Montana to effect certain improvements and installations into the property. Would that – is that your reading of that?

MR LOUBSER: But that is what it says.

ADV SONI SC: Ja. Does that sound usual to you?

MR LOUBSER: I cannot comment on that I do not know why
20 they – there was a subsequent addendum. I was not a party to the agreement and I do know how – why they put it in that way.

CHAIRPERSON: What is the date of the offer to purchase?

MR LOUBSER: It was in May 2014.

CHAIRPERSON: Oh then...

MR LOUBSER: The addendum.

MR LOUBSER: June – the addendum is June.

ADV SONI SC: Was six weeks later Chairperson.

CHAIRPERSON: Ja okay.

MR LOUBSER: Ja May almost six weeks later yes.

CHAIRPERSON: The transfer had not taken place at the time of the addendum?

MR LOUBSER: No.

CHAIRPERSON: Ja okay.

10 **ADV SONI SC:** Then the – sorry.

CHAIRPERSON: I am – I am reflecting on your impression that is strange.

ADV SONI SC: Yes.

CHAIRPERSON: I thought that was because – that was because the addendum was done after the transfer had taken place. But if – if it was before the addendum had taken place why would it be strange, I just want to make sure I can follow?

ADV SONI SC: Yes.

20 **CHAIRPERSON:** Even for later witnesses.

ADV SONI SC: Yes, no, no I understand. Chairperson A sells to B something for R5million.

CHAIRPERSON: Ja.

ADV SONI SC: It is a property or whatever it is.

CHAIRPERSON: Hm.

ADV SONI SC: That is a binding contract. B must take the property and pay a R5million.

CHAIRPERSON: Hm.

MR LOUBSER: The effect of the amendment is to say that before I take the property, I am going to reduce the amount I am going to give you because this – these are the improvements you are going to make.

CHAIRPERSON: Hm.

ADV SONI SC: And A willingly agrees to that.

10 **CHAIRPERSON:** Hm. Well I – I can imagine that – you mean he agrees to that without saying let us adjust the purchase price? You know so I am thinking that if that – the buyer could considerably sell to the seller; I know we have agreed the price but for maybe I have just become aware that the condition of the kitchen is actually quite bad. I had not seen it properly. I know that I have already signed and you have no obligation but you know what I gave you a very good price.

ADV SONI SC: Yes.

20 **CHAIRPERSON:** Can you not just fix – agree to fix this.

ADV SONI SC: Yes.

CHAIRPERSON: It will mean a reduction on the price on what you will get on your profit.

ADV SONI SC: Yes.

CHAIRPERSON: But I gave you much more than a normal

profit.

ADV SONI SC: Yes.

CHAIRPERSON: So that might be the explanation.

ADV SONI SC: No, no I understand.

CHAIRPERSON: Ja.

ADV SONI SC: But what – or the point I am making
Chairperson is it calls for an explanation.

CHAIRPERSON: No, no, no that is fine but I wanted to
make sure whether...

10 **ADV SONI SC:** Yes.

CHAIRPERSON: I can follow it.

ADV SONI SC: No sure.

CHAIRPERSON: Ja because I had thought it was strange
but I think my thinking was that it happened after the transfer
which is not correct.

ADV SONI SC: No of course.

CHAIRPERSON: Ja. Okay.

ADV SONI SC: Yes. The next document is an offer to
purchase made by Precise Trade to Mr Kohler in respect 119
20 Empire place, Sandhurst, is that correct? It appears at page
148.

MR LOUBSER: At page 148. That purports to be yes.

ADV SONI SC: Chairperson.

CHAIRPERSON: I am sorry 148?

ADV SONI SC: 148.

CHAIRPERSON: Okay now all the documents that you are going to refer to as you ask Mr Loubser questions is it documents that were furnished to Mr Loubser and Mr Van Wyk by Mr Van Der Walt?

MR LOUBSER: That is correct.

CHAIRPERSON: Okay alright.

ADV SONI SC: And Chairperson can I just again for your own orientation.

CHAIRPERSON: Hm.

10 **MR LOUBSER:** This is the Sandhurst property.

CHAIRPERSON: Yes okay that is important ja. This – the offer to purchase at page 148 relates to the Sandhurst property.

ADV SONI SC: The Sandhurst property yes.

CHAIRPERSON: Okay thank you.

ADV SONI SC: The next document is an offer to purchase made again by Precise Trade to on [indistinct 00:32:19] guest house, is that correct Mr Loubser?

MR LOUBSER: That is correct.

20 **CHAIRPERSON:** What page is that?

ADV SONI SC: Oh sorry page 154 Chairperson.

CHAIRPERSON: 154.

MR LOUBSER: Yes it appears so.

CHAIRPERSON: To which property does this one reflect?

MR LOUBSER: This is the Waterkloof property Chairperson.

CHAIRPERSON: Waterkloof property. Okay that is the document – offer to purchase – purchase and sale agreement from pages – from page 154 up to...

ADV SONI SC: File 163.

CHAIRPERSON: Hm.

ADV SONI SC: 163.

CHAIRPERSON: Oh there. Well the agreement goes up to 159 but maybe there is an annexure?

ADV SONI SC: They all annexures to the same document
10 Chairperson.

CHAIRPERSON: Okay up to 163.

ADV SONI SC: 163 yes.

CHAIRPERSON: Okay alright. Thank you.

ADV SONI SC: As you please Chairperson. Then Mr Loubser can I ask you to look at page 164.

MR LOUBSER: Yes I do have it in front of me.

ADV SONI SC: Now when you were explaining what Mr Van Der Walt said because he said that he had entered into contracts with certain people who provided funds for the
20 property, is that right?

MR LOUBSER: Yes in his response he said he – Precise Trade Invest was funded by certain investors.

ADV SONI SC: Yes.

MR LOUBSER: He mentioned GMM, Pimentel and Clancy.

ADV SONI SC: Yes.

MR LOUBSER: Investors.

ADV SONI SC: So this is one of the investors?

MR LOUBSER: Yes.

ADV SONI SC: Mr Pimentel?

MR LOUBSER: Pimentel yes.

ADV SONI SC: You will see Mr Loubser and I just want to correct something that this is an agreement between Mr Pimentel and Precise Trade.

MR LOUBSER: That is correct.

10 **ADV SONI SC**: And the reason it is important is I will show you a difference in a moment with a different contract.

MR LOUBSER: Okay.

ADV SONI SC: And in terms of this contract if you look at paragraph 2.1 Mr Pimentel agrees to ...

CHAIRPERSON: That is 2.1 at page 165.

ADV SONI SC: 165 Chairperson.

CHAIRPERSON: Ja.

ADV SONI SC: Mr Pimentel undertakes to invest a maximum of R20 million in this joint venture.

20 **CHAIRPERSON**: Over a period of twelve months.

ADV SONI SC: Over a period of twelve months. Sorry. Is... is... is that?

MR LOUBSER: I see that, yes.

ADV SONI SC: Now the next document which appears at page 170... oh, sorry. Can I just make one other point? You

do not need to go to it. It is... this document is dated the 3rd of November. Is that correct?

CHAIRPERSON: In the year, when?

ADV SONI SC: Oh, sorry. 2014 Chairperson.

CHAIRPERSON: H'm.

MR LOUBSER: Can I...

ADV SONI SC: If you look at page 169, you will see the date of... of...

MR LOUBSER: The 3rd of...

10 **ADV SONI SC**: 3rd of November.

MR LOUBSER: Ja, the handwriting is...

ADV SONI SC: [laughs] So it is your partner.

MR LOUBSER: So, let... let us assume.

ADV SONI SC: [laughs]

MR LOUBSER: November ...[indistinct] fourteen.

CHAIRPERSON: [laughs]

MR LOUBSER: Okay.

CHAIRPERSON: Yes?

ADV SONI SC: May I just ask you? Who is Callitz?

20 **MR LOUBSER**: Uh, the secretary. Ja.

ADV SONI SC: At your firm?

MR LOUBSER: At our firm, yes.

ADV SONI SC: Is she still there?

MR LOUBSER: Yes.

CHAIRPERSON: Uh, just to mention. When you ask Mr

Loubser about who Calitz is...[intervenes]

ADV SONI SC: Ah, yes.

CHAIRPERSON: ...you are referring to a person who signed as a witness?

ADV SONI SC: Yes, who signed as a witness. Yes.

CHAIRPERSON: Oh, ja. On... on... on... on the agreement at page 169?

ADV SONI SC: Yes.

CHAIRPERSON: Okay.

10 **ADV SONI SC:** Then the next document is a next contract between Mark Edward Clancy(?)[00:01:27] and Precise Trade. It starts at page 170. Would I be correct uh...?

MR LOUBSER: Yes.

ADV SONI SC: And if you look at paragraph 2.1. Mr Clancy undertakes to invest a maximum amount of R 2 500,00 in the joint venture over the period of 12-months.

MR LOUBSER: Yes.

ADV SONI SC: Now if you look at page 175. What is the date of this document?

20 **MR LOUBSER:** 3 November 2014.

ADV SONI SC: Yes. And who signs as a witness.

MR LOUBSER: Uh, Carlitz. It seems to be Carlitz.

ADV SONI SC: Yes.

MR LOUBSER: I think that... that is... she is actually a receptionist, Vivienne Carlitz in our firm.

CHAIRPERSON: [Indistinct] appearing for or above the name, Precise Trade. Is that of Mr Van der Walt?

MR LOUBSER: Yes.

CHAIRPERSON: Okay. Alright.

ADV SONI SC: If I... can I ask you to look at the next document which starts at page 180. Um, what is this document uh, on the face it uh, Mr Loubser?

MR LOUBSER: It appears to be a memorandum of agreement entered into between TMM Holdings. Mr Mario
10 Ferreira and Mr Jan Adriaan van der Walt.

ADV SONI SC: Yes.

MR LOUBSER: Um, term of agreement uh...[intervenes]

ADV SONI SC: Uh, just... just before that. Uh, TMM Holdings, who represents TMM Holdings...[intervenes]

MR LOUBSER: Uh...[intervenes]

ADV SONI SC: ... in respect of this contract?

MR LOUBSER: Yes. From here, it is a... it is entered by MJA Ferreira.

ADV SONI SC: And that is Mario Ferreira?

20 **MR LOUBSER:** Uh, yes. Mario Ferreira.

ADV SONI SC: All right. And this agreement, unlike the agreement uh, that Mr Clancy and Mr Pimentel signed is with Mr Van der Walt in his personal capacity. Is that correct?

MR LOUBSER: Yes, it is an agreement between three parties, TMM, Ferreira and Van der Walt personally.

ADV SONI SC: Yes. And Ferreira and TMM Holdings are together referred to as TMM. If you... if you look...[intervenes]

MR LOUBSER: It provides in page... paragraph 1.1 of the agreement.

ADV SONI SC: Yes. And under their names at page 180.

MR LOUBSER: Yes.

ADV SONI SC: And you will see there that unlike Mr Clancy and Mr Pimentel the right that is given to... or... the... the...
10 where they have to pay. What this agreement does is, it allows Mr Ferreira... oh, sorry. Mr Van der Walt to present any deals that come his way to TMM who have the right to first refusal to that deal. Is that correct?

MR LOUBSER: That is what it appears from the agreement, yes.

ADV SONI SC: And then, if you look at paragraph 5. You see that it is not only local. Will you read paragraph 5 into the record Mr Loubser?

MR LOUBSER: “The parties agreed that this agreement will
20 be applicable for all local and international investments”.

ADV SONI SC: And if you look at page 185. When was this agreement signed?

MR LOUBSER: It is signed by TMM on the 14th of March by Mr Ferreira. Also, on a form... uh, ja, the 14th of March. The handwriting is not clear. The 14th of March 2012 it appears.

ADV SONI SC: And Mr Van der Walt...[intervenes]

MR LOUBSER: Ja, all... all of them it appears.

ADV SONI SC: Do you recognise the signature of the witness?

MR LOUBSER: Uh, yes.

ADV SONI SC: Who is that?

MR LOUBSER: That is also a secretary at our firm.

ADV SONI SC: Oh.

MR LOUBSER: Oh, a previous... a previous secretary.

10 Sorry. Connie Steiger.

CHAIRPERSON: What is the name?

MR LOUBSER: Connie... I think it is... Connie Ferreira Steiger.

CHAIRPERSON: Oh, okay.

ADV SONI SC: Unrelated to Mr Ferreira.

MR LOUBSER: Unrelated.

ADV SONI SC: Ja.

MR LOUBSER: She is no longer with the firm.

ADV SONI SC: Yes. Then if you look at the next document
20 Mr Loubser. It is at page 186. And can you describe that document? Page 186.

MR LOUBSER: It appears to be an addendum to a previous agreement. It does not specify which ...[intervenes]

CHAIRPERSON: Uh, just raise your voice and repeat again.

MR LOUBSER: Oh, it appears to be an addendum to the

previous agreement. It does not really specify which agreement but it seems to be an addendum to a previous agreement.

ADV SONI SC: Alright. And what this agreement says... if I could just ask you to summarise page 187, paragraph 1 and 2?

CHAIRPERSON: Well...[intervenes]

ADV SONI SC: Oh, sorry. One, two and three. Sorry.

CHAIRPERSON: It appears to be an agreement on its own,
10 does it not? It does not seem to amend any other agreement, does it? On these terms.

ADV SONI SC: Uh, not. You... you are quite right Chairperson.

CHAIRPERSON: H'm. It seems to be a standalone agreement.

ADV SONI SC: Yes.

CHAIRPERSON: H'm. Okay. You. you accept that Mr Loubser?

MR LOUBSER: Uh...[intervenes]

20 **CHAIRPERSON:** Or you are not sure?

MR LOUBSER: No uh...[intervenes]

CHAIRPERSON: It does not seem to be an addendum to...[intervenes]

MR LOUBSER: In... either those...[intervenes]

CHAIRPERSON: It says addendum...[intervenes]

MR LOUBSER: It is... it is starting ...[intervenes]

CHAIRPERSON: At page ...[indistinct]

MECHANICAL INTERRUPTION: [00:07:54]

CHAIRPERSON: ...when one reads paragraph 1 uh, it seems to be just uh, uh, fresh... a standalone agreement.

MR LOUBSER: It appears so.

CHAIRPERSON: Ja, okay.

ADV SONI SC: Yes, because there is no reference to that agreement at all Chairperson.

10 **CHAIRPERSON:** Yes, yes. H'm.

ADV SONI SC: Now this teams with three separate issues. The Venice Village Development. Do you know anything about that?

MR LOUBSER: Uh, I know there was a development with Mr Van der Walt with involved in his personal capacity with uh, Mr Ferreira. I do not know if he was a shareholder or how he was involved but I knew about a development that... that appears with that. I knew they... they were somehow involved. How...

20 **ADV SONI SC:** Yes.

MR LOUBSER: Also, a director of this Venice Village or... I do not know. But I knew... I have heard in the passing mentioned that Venice Village.

ADV SONI SC: Okay. And his reward would be set out at paragraph 1.1. What is that?

MR LOUBSER: Uh, the parties specifically agree that Van der Walt will be entitled to receive 5% referral commission on each and every unit sold of this development to third parties.

ADV SONI SC: The...[intervenes]

MR LOUBSER: The second part. It is a heading, Ponton(?) [00:09:32] loan.

ADV SONI SC: Yes.

MR LOUBSER: The parties agree that on date of repayment
10 and fulfilment of the loan agreement of Ponton, Van der Walt will receive a referral commission of 17%. And the third one relates to... its heading, Wetlands Country Retreat.

The parties agree that Van der Walt facilitated the purchase of the shares through Triple Trade and Invest and Van der Walt will be entitled to refer.... receive a referral commission.

Uh, it sets out sale of game. He is entitled 30% of the nett profit. He is also entitled to 10% or... that is after the business plan is been approved, the parties will agree to
20 either convert the referral commission received by Van der Walt into 10% shares into Triple Trade and Invest.

ADV SONI SC: And then it records certain payments that were received uh...[intervenes]

MR LOUBSER: Yes.

ADV SONI SC: Do you have any idea what that is about?

MR LOUBSER: Uh, it reports payment that is being received by Van der Walt in terms of the... I assume the agreement which he lists dates and amounts which totals R 4 50 402,69.

ADV SONI SC: Now, do you know whether Mr Van der Walt accounted to the firm for these amounts that he lists here?

MR LOUBSER: No, he did not.

ADV SONI SC: He did not?

MR LOUBSER: No.

ADV SONI SC: Now, when you get these documents, I take
10 it... you are not going to say were outraged but you were concerned that Mr Van der Walt is receiving this money that is not going into the business or did that not concern you?

MR LOUBSER: He... uh, Mr Van der Walt um, has always been an investor in different companies.

CHAIRPERSON: I am sorry. He has always been...?

MR LOUBSER: He was always uh... always uh... it was not strange because he entered into agreements with various parties, friends and to develop properties.

But when he showed me this um, he explained it, this is
20 work which he had done early in the mornings, after hours, over weekends, something... an agreement he entered on its own with uh, with ...[indistinct]

MECHANICAL INTERRUPTION

CHAIRPERSON: So...[intervenes]

MR LOUBSER: Indeed he did.

CHAIRPERSON: ...or was... was this work that
...[intervenes]

MR LOUBSER: He did on his own...[intervenes]

CHAIRPERSON: ...he was allowed to earn income if he did
it outside of normal working hours?

MR LOUBSER: Yes.

CHAIRPERSON: He was allowed to do that?

MR LOUBSER: He was not... he never specifically disclosed
it to me but I did not take issue with it, the fact that he
10 earned money which I knew. He was working late at night
...[intervenes]

CHAIRPERSON: Yes.

MR LOUBSER: ...with other people involved.

CHAIRPERSON: Yes. But what I am saying is um, as far as
you know ...[intervenes]

MR SONI SC: So can I then come back to page 197 and
the last three questions you asked there and your question
at paragraph 9 seems to suggest that you are right that the
handwritten inscription would have been entered into
20 before it was given to you because you then ask what does
TMM loan and TMM agreement mean, is that correct?

MR LOUBSER: Yes. So, Mr Chairperson, my assumptions
were mine, I accept that.

MR SONI SC: And then you ask him about other payments
and then you ask him a question about Mr Montana. I

would like to deal with each of those matters please. So your question at paragraph 9 on page 197 is what?

MR LOUBSER: “You made certain notes on the bank statement, TMM loan and TMM agreement. Kindly distinguish between the two.”

MR SONI SC: And what is his answer?

MR LOUBSER: He says ...[intervenes]

MR SONI SC: It appears at page 201, paragraph 18, Chairperson.

10 **MR LOUBSER**: What I understood from his explanation is TMM loan, so loan that he received from TMM, personal loan or a loan between Precise Trade and TMM. It is loan that he received from – money from and the TMM agreement, I assumed was the agreement where TMM had to pay certain commissions or work he had done personally.

MR SONI SC: Right and then paragraph 10 you ask him if he was aware of the investigation.

MR LOUBSER: Yes, I asked if he is aware of any
20 investigation by SAPD or any other instance which – ja.

MR SONI SC: And what was his answer?

MR LOUBSER: He said - I translate:

“Ek is nie bewus...”

Or it is in Afrikaans, I am not aware of any ...[intervenes]

CHAIRPERSON: I am sorry, I think I have lost you or you

have lost me. Paragraph 10 at which page?

MR SONI SC: Page 201, Chairperson, the answer.

CHAIRPERSON: 201.

MR LOUBSER: At paragraph 19, page 201.

CHAIRPERSON: Ja. Oh. Ja, I think you said at paragraph 10 and I was looking at – on the side which is paragraph 19.

MR SONI SC: Yes.

CHAIRPERSON: So that is at paragraph 10?

10 **MR SONI SC:** At paragraph 10, yes.

CHAIRPERSON: Ja, but that appears at paragraph 19, okay.

MR SONI SC: And what was his answer?

MR LOUBSER: In response to my question if he is aware any investigation by SAPD or any other instances, he responded, he said he is not aware of any investigation of whatever nature by any instance against him personally or against Precise Trade and Invest.

20 **MR SONI SC:** And then paragraph 10 at page 197, what was the question?

MR LOUBSER: It is the second 10.

MR SONI SC: Sorry, the second 10, yes.

MR LOUBSER: The second 10.

MR SONI SC: Yes.

MR LOUBSER: Then I asked whether Mr Montana is in

any – *enigsins*, any – involved to the entity.

CHAIRPERSON: I am sorry, what did you – you asked him whether he knew Mr Montana?

MR LOUBSER: Ja, maybe to rephrase, I asked whether Mr Montana is in any way involved to the entity Precise Trade and Invest and if so, the nature of his involvement. And also asked him were there were at any stage payments made to him out of that Precise Trade and Invest account except for the purchase of the property and he responded
10 to that.

MR SONI SC: That is at page 202, paragraph 20, out paragraph 10.2, is that correct?

MR LOUBSER: Yes, I am the sole – I am hundred percent shareholder in Precise Trade and Invest and the sole director. No final agreement could be finalized between Precise Trade and Invest and Mr Montana due to various reasons but specifically the way how to deal with property transactions and investments as well as Montana's shortage of funds. There was negotiations with –
20 regarding a possible joint venture in various properties but the parties decided not to proceed with the joint venture. I confirm that all five the properties belong to Precise Trade and Invest.

And then, as the second part of my question, whether any payments was made by Precise Trade and

Invest to Montana other than the purchase price, he says a loan of R1.3 million was granted to Mr Montana which are clearly set out in a loan agreement.

MR SONI SC: So I just want to go back to that last issue, Mr Loubser, did you understand that to mean that the loan had been made through the Precise Trade account?

MR LOUBSER: Yes.

MR SONI SC: Can I then ask you to look at the account – the bank account of Precise Trade which, as we have
10 already indicated, starts at page 90 and goes up to page 193.

MR LOUBSER: Yes.

MR SONI SC: So perhaps I should just deal with the last point because it is fresh in everybody's mind. He says that a loan was made to Mr Montana of R1,3 million on the 20 February 2015.

MR LOUBSER: Yes.

MR SONI SC: Okay. May I just ask, if one looks at the bank account itself, I have looked for it but I have not seen
20 such an amount being debited to the account. So if you look at page 194.

MR LOUBSER: Yes.

MR SONI SC: That is the February transactions.

MR LOUBSER: Yes.

MR SONI SC: Can you see – and I am asking because I

have looked for it, to tally.

MR LOUBSER: Sorry, you are looking at page?

MR SONI SC: Page 194. Sorry, 191.

MR LOUBSER: 191 deals with November – sorry, 191, my apologies. There he says ...[intervenes]

MR SONI SC: If you look from the bottom you will see the last entry is made on the 28 February.

MR LOUBSER: Yes, I see that.

MR SONI SC: And if you went up you will see there is an
10 entry on the 20 February but that is for R2 million.

MR LOUBSER: Yes.

MR SONI SC: But there is no indication that on 20 February R1,3 million was given to Mr Montana.

MR LOUBSER: Yes.

MR SONI SC: And you will see it is in relation to – if you look at page 191, the account reflects that that was in respect of the Parkwood property.

MR LOUBSER: Yes. Erf 359, Parkwood.

MR SONI SC: Yes. Mr Loubser, it is not my intention to
20 suggest that there is something wrong here, I am just saying there is a bit of a disjuncture between what Mr van der Walt said in his response and that the bank account reflects. I am just trying to point that out through you.

MR LOUBSER: I can – I do not – I am not here at all to try and explain what Mr van der Walt did [inaudible –

speaking simultaneously]

MR SONI SC: No, no, I am not asking, I am just pointing it out.

MR LOUBSER: But all I can point out is, in his answer at page 202 he said a loan was granted to Montana on the 20 February 2015 which is clearly set out in a loan agreement. Unfortunately, loan agreement was not annexed to it but a reading of that does not necessarily mean the R1.3 million was paid on the 20 February, it could have been the
10 agreement was made – done on the 20 February 2015 but to be paid in March of April. I am not saying that.

CHAIRPERSON: Well, I am not sure whether there is any issue between the two of you because the lighting here is quite bad, I think a few days ago I asked if somebody could arrange to get some lights that could help me here. So when you were referring Mr Loubser to payment at page 191, I think of 20 February, I was trying to have a look here and I was expecting to see in the entries reference to Mr Montana but I was not able to see so I am not sure, so –
20 but I got the impression that there is some issue about some question or there is no issue?

MR SONI SC: Chairperson, all I have a duty to do is, the witness is presented documents to say in respect of the documents that he is presenting – and I know [inaudible – speaking simultaneously]

CHAIRPERSON: Yes.

MR LOUBSER: Is there is – there appears to be ...[intervenes]

CHAIRPERSON: No, no, I understand that, I see – I got the impression that Mr Loubser was not prepared to give an answer to a question, is that correct or is that not correct?

MR LOUBSER: No, not at all.

CHAIRPERSON: Oh, okay.

10 **MR LOUBSER:** Not at all, I more than willing to answer any questions, if I understand the question ...[intervenes].

CHAIRPERSON: Oh, okay, alright. I did not hear everything but I understood Mr Soni to simply want to check with you whether his understanding of this document would be the same as yours.

MR LOUBSER: No, fine.

CHAIRPERSON: In relation to – with reference to what Mr van der Walt had said. On the fact of it that did not appear to me to be a problem, ja.

20 **MR LOUBSER:** No, no, definitely no ...[intervenes]

CHAIRPERSON: There is no problem.

MR LOUBSER: I mean, if for clarity sake Mr Soni can put the question to me again, I might...

MR SONI SC: So, Mr Loubser, this is my difficulty, we are trying to work out where the monies reflected in the bank

account went to and tally it with the explanation given to Mr van der Walt – I mean, by Mr van der Walt to you. Now he says, when you ask him specifically about Mr Montana, he says we gave – I gave must Montana a loan of R1,3 million.

MR LOUBSER: Yes.

MR SONI SC: Now I am – and I would have expected that there would be an entry that reflects a debit of R1,3 million around that period. Now I was I just pointing out it does
10 not appear to be so.

MR GREEN: It does not appear.

MR SONI SC: So that is...

MR LOUBSER: I agree, it does not appear, thanks.

MR SONI SC: And there is no reflection of a payment to Montana during that period – can I just point this out again and again so that we have it on record, he makes, for example, on the 18 July at page 190 – you will see he talks about the Montana payment. On the 18 July again, he talks about another Montana payment and then on 24 July
20 he talks about TLM and that I understand is Tshepo Lucky Montana. That is Mr Montana.

So those three I could relate to Mr Montana and that was the only purpose of my question.

MR LOUBSER: That is correct.

CHAIRPERSON: I am sorry, you say TMM as reflected in

handwritten form at page 190 you understand to be a reference to Mr Montana?

MR SONI SC: No, not TMM, Chairperson.

CHAIRPERSON: Ja?

MR SONI SC: On the 24 – at page 190, on the 24 July 2014 there is an amount – a payment of R400 000 and you will see in the bank statement it is said the reference is TLM.

CHAIRPERSON: Oh, now I can see, TLM.

10 **MR SONI SC:** That is right.

CHAIRPERSON: You say there is a handwritten TMM, so I thought you were saying TMM, you say TLM.

MR SONI SC: TLM.

CHAIRPERSON: Okay.

MR SONI SC: So I am merely pointing out that where there appears to be a reference to Mr Montana it coincides with what Mr van der Walt gives in his breakdown.

Now can I just ask you, Mr Loubser, because if you are not aware of this, all we can ask you to do is to confirm
20 that all these documents were given to you with these handwritten inscriptions there and knowing Mr van der Walt's handwriting you say that that handwriting is his handwriting.

MR LOUBSER: Yes.

CHAIRPERSON: You do not know about the fact of the

transactions, the payments made into the accounts and the payment made from the account.

MR LOUBSER: No, I do not.

CHAIRPERSON: And all you can do is rely on what Mr van der Walt said.

MR LOUBSER: What he answered.

MR SONI SC: I just – if I could ask one final question because it is quite relevant to this. If you look at the very first entry in the bank account or the transaction history we
10 were given, it is on the 18 June 2014, am I correct?

MR LOUBSER: Yes.

MR SONI SC: And that is a deposit of R1,85 million, is that correct?

MR LOUBSER: Yes.

MR SONI SC: The second entry is on the same date, the 18 June 2014 and there is a deposit of R400 million – sorry, R4 million.

MR LOUBSER: Yes.

MR SONI SC: Right. And to that Mr van der Walt says is
20 the TMM loan, as he describes it.

MR LOUBSER: Yes.

MR SONI SC: Then immediately after that there is a payment on the very same day of R2,25 million.

MR LOUBSER: Yes.

MR SONI SC: And that is said to be in regard to Precise.

CHAIRPERSON: Regard to?

MR SONI SC: To Precise as reflected in ...[intervenes]

CHAIRPERSON: Is that where he has written guarantee or something?

MR SONI SC: No, no, no. Next to – under the date 18/06/2014 it says withdrawal and in the line immediately under that the bank write Precise Riaan(?) loan.

CHAIRPERSON: Yes. Is that not with reference to that R2 250 000?

10 **MR SONI SC:** Yes, yes.

CHAIRPERSON: It is in relation to that?

MR SONI SC: Yes, yes.

CHAIRPERSON: On my page immediately after that there is something written there by hand that looks to me like guarantee but it might be something else. Do you have the same thing.

MR SONI SC: Oh, yes. No, no, you are quite right, Chairperson. I was not looking – because that is next to the figure 2,25 million.

20 **CHAIRPERSON:** Yes.

MR SONI SC: Yes.

CHAIRPERSON: Yes, okay. Is there any significance to that handwritten...?

MR SONI SC: It has significance, Chairperson, because this is the first payment made in respect of Parkwood

property.

CHAIRPERSON: Just raise your voice, that is the first payment?

MR SONI SC: Sorry, it is the first payment made in respect of Parkwood property.

CHAIRPERSON: Oh, made by Mr van der Walt?

MR SONI SC: Van der Walt.

CHAIRPERSON: Okay.

MR SONI SC: And that obviously is a payment
10 ...[intervenes]

CHAIRPERSON: And the reference to guarantee, is there any – or you do not know?

MR SONI SC: What I understand, when one looks at the whole picture, the Parkwood agreement between Mr Montana and Precise Trade is to this effect that there will be a payment, a down payment of R2,5 million and they also say that that can be paid in respect of the bond outstanding on Mr Montana's property that he is occupying in Waterkloof at that time.

20 So just – the inference is that that was the payment made to finalize that bond.

CHAIRPERSON: Ja, ja. Mr Loubser, is that Mr van der Walt's handwriting or not, that says guarantee, or not?

MR LOUBSER: Yes.

CHAIRPERSON: Do you have any understanding of what

that guarantee means apart from what...?

MR LOUBSER: Not at all, no.

CHAIRPERSON: You have no idea what it means?

MR LOUBSER: No.

CHAIRPERSON: Okay, alright.

MR SONI SC: Chairperson, may I – I just want to complete the picture because this was not only conjecture. If I can ask you to look at page 198, with respect, Chairperson?

10 **CHAIRPERSON:** While I am looking at that, this document, Mr Loubser, starting at page 190, the one we are looking at.

MR LOUBSER: Yes.

CHAIRPERSON: It is part of what Mr van der Walt furnished to you and Mr van Wyk, is it not?

MR LOUBSER: Yes.

CHAIRPERSON: Did you not have occasion to ask about what this guarantee refers to?

20 **MR LOUBSER:** No. In his response he just said that that was part of the purchase price.

CHAIRPERSON: Ja.

MR LOUBSER: He says that R2.250 000, it is part of the purchase price.

CHAIRPERSON: Ja. Okay, alright. Page 1...?

MR SONI SC: Page 198.

CHAIRPERSON: 198, yes.

MR SONI SC: Chairperson, you will see at the middle of the page is the start of paragraph 2.2 talking about the purchase price of R6,8 million.

CHAIRPERSON: Yes.

MR SONI SC: This is his dealing with the answer to this Parkwood Property and you will see on the 18 June that is the payment.

CHAIRPERSON: Yes.

10 **MR SONI SC:** That is made in respect of ...[intervenes]

CHAIRPERSON: Yes.

MR SONI SC: And I put – because I have read the terms of the agreement, the purchase of the Parkwood property by Mr van der Walt, the clause reads in terms of a deposit of R2,5 million will be paid and he says but this can be paid in respect of the bond on Mr Montana's property in Waterkloof.

CHAIRPERSON: Ja, I may have read somewhere, and I thought it might be in connection with the agreements
20 relating to these properties or in relation to documents relating to this Swifambo or Siyaya or Siyangenda. I seem to think I have read somewhere an agreement that refers to certain payments as guarantees or guarantee.

MR SONI SC: Yes.

CHAIRPERSON: So when I see this guarantee I am

wondering whether it has a connection with what I may have read somewhere, so – but maybe not.

MR SONI SC: You will recall, Chairperson, yesterday when Ms Ngoye was giving evidence she talked about the R900 million guarantee.

CHAIRPERSON: Yes.

MR SONI SC: That they were required to pay.

CHAIRPERSON: Yes.

MR SONI SC: And that which they saw for the first time.

10 **CHAIRPERSON:** Yes.

MR SONI SC: When the interdict applications were done.

CHAIRPERSON: Yes, yes in relation to Swifambo.

MR SONI SC: No, Siyangena.

CHAIRPERSON: Ja, ja, Siyangena. So maybe that is where I am taking it from.

MR SONI SC: Yes.

CHAIRPERSON: Okay, no, that is alright.

20 **MR SONI SC:** Mr Chairperson, in view of the fact that Mr Loubser does not know any more about these, it would be unfair to ask him to speculate and one is just going to get the correct answers, well, I cannot tell, this is what was said to me. And it may just be better to confirm that all of this is what was said to him and then for us to draw our own inferences when one puts the whole picture together.

CHAIRPERSON: Yes, well in any event you – if you have

not already done so, if you have information relating to Mr van der Walt, you could send notice to him to say these are – this is what we are looking at, you are at liberty to furnish us with an affidavit, obviously he at liberty even to come to South Africa.

MR SONI SC: Yes.

CHAIRPERSON: And apply to adduce evidence.

MR SONI SC: Yes.

CHAIRPERSON: So he might elect to put up an affidavit.

10 **MR SONI SC:** Yes.

CHAIRPERSON: He might elect to come.

MR SONI SC: Yes.

CHAIRPERSON: He might elect not to want have anything to do with us and, of course, since he is out of South Africa, we cannot compel him.

MR SONI SC: No, sure.

CHAIRPERSON: So that is fine but there is one question I want to ask. Mr Loubser, there is a letter that – I do not know where exactly it is here in the bundle but there is a
20 letter that Mr van der Walt wrote on the letterheads of the law firm if I am not mistaken or it might have been an email but he wrote to an estate agent, I believe, in regard to one of these property transactions and said to the estate agent that the law firm had, I think, R5 million in its trust account which was for financing that property. I got the impression

in the documents that there was no such amount in the trust account of the law firm when Mr van der Walt said there was. Do you remember what – did you come across that in the documents or not?

MR LOUBSER: There was – ja because that was in the media report, there was still also mention of a R5 million but there was never money in our trust account, Loubser Van der Walt, the firm's trust account of R5 million.

CHAIRPERSON: Yes.

10 **MR LOUBSER:** We never held it in our trust account.

CHAIRPERSON: Yes. So to the extent that that is what he said in a letter, that is not true, as far as you know.

MR LOUBSER: We did the whole ...[intervenes]

CHAIRPERSON: To the extent that he may have said there was at a particular time when he wrote that letter there was an amount of R5 million in the law firm's trust account for that property, that would not be true.

MR LOUBSER: I do not know the exact dates but I do not – we...

20 **CHAIRPERSON:** Yes.

MR LOUBSER: There was never an amount of R5 million deposited into the firm's trust account.

CHAIRPERSON: Yes, yes.

MR LOUBSER: By ...[intervenes]

CHAIRPERSON: 5 million, is it not? Not 500 000, 5

million?

MR SONI SC: Yes, 5 million, yes.

CHAIRPERSON: So that much you can say, that there was never such an amount.

MR LOUBSER: Not in the firm's trust account.

CHAIRPERSON: In the trust account.

MR LOUBSER: No.

CHAIRPERSON: Ja. Do you remember that letter?

MR SONI SC: Yes, I ...[intervenes]

10 **CHAIRPERSON:** Are you able to refer him to it and the page so that for the sake of completeness we...?

MR SONI SC: Yes. I know we made a point of it in ...[intervenes]

CHAIRPERSON: I wonder whether your junior is able to be of assistance.

MR SONI SC: Yes. Chairperson, this is a document that appears somewhere in another file.

CHAIRPERSON: In another file.

MR SONI SC: Can I show it to Mr Loubser?

20 **CHAIRPERSON:** Ja.

MR SONI SC: And then I will address you on where we will find it.

CHAIRPERSON: Ja, that is fine, ja.

MR SONI SC: And when it will come for you.

CHAIRPERSON: That is fine. Mr Loubser, if you can

have a look at that letter? You can say, in the meantime, Mr Soni, that is it is a letter date what.

MR SONI SC: Yes.

CHAIRPERSON: Or if it is an email dated what, from whom and addressed to whom and about what.

MR SONI SC: Yes.

CHAIRPERSON: Or you will not be able to say that until you get the letter back.

MR SONI SC: No, I ...[intervenes]

10 **CHAIRPERSON:** Maybe Mr Loubser you can tell us.

MR LOUBSER: Let me ...[intervenes]

CHAIRPERSON: Who is it from?

MR LOUBSER: It is a letter from Loubser Van der Walt Incorporated to Pam Golding Property.

CHAIRPERSON: Yes.

MR LOUBSER: With a heading T L Montana transaction.

“Referring to our conversation...”

It is dated the 8 November 2014, wherein the signatory, Mr van der Walt, confirmed that:

20 “We hold in our trust investment account and amount of R5 million which amount is available to be allocated towards the purchase price of the property.

CHAIRPERSON: Yes. Would that statement be correct that at that time – you know whether that statement is

correct that at that time there was R5 million deposited in the law firm's trust account in regard to that property?

MR LOUBSER: I am not aware of R5 million that was paid into our firm's trust account, but it refers here to investment – Investec account.

CHAIRPERSON: Oh, it is not a trust - the letter does not say trust account, it says investment account. The letter, what does it say?

MR LOUBSER: It says:

10 "...held in our trust investment account, Investec Bank, R5 million."

But I am not aware of such a R5 million.

CHAIRPERSON: Is that something that can be checked, that you can check and maybe do a supplementary affidavit whether when you investigate you are able to confirm for sure whether it is so or it is not so or are you sure that there would not have been? I just want us to be sure.

MR LOUBSER: There would not have been a – no, I cannot say for sure, but I can check whether we received
20 an amount from whoever into our trust account.

CHAIRPERSON: Ja, because we just want to – we want to see whether what he said there was factually correct.

MR LOUBSER: So this letter is dated the 6th or the 8 November.

CHAIRPERSON: Mr Soni and them can email you so that

you have a copy or – so then you can do a supplementary affidavit. He can keep it.

MR SONI SC: Yes, yes, we will make another copy, Chairperson.

CHAIRPERSON: Okay, keep it and then by when would you be able to file a supplementary affidavit just to deal with that part?

MR LOUBSER: Next week.

CHAIRPERSON: Next week Wednesday, next week
10 Friday?

MR LOUBSER: By next week Friday at the latest.

CHAIRPERSON: Friday next week.

MR LOUBSER: Yes, Mr Soni just exactly what the ...[intervenes]

MR SONI SC: Yes.

CHAIRPERSON: Okay, alright, no thank you.

MR SONI SC: Can I, Chairperson, because it may well be an important issue, if one looks at page 193 – is it 191? Sorry.

20 **CHAIRPERSON:** Ja?

MR SONI SC: Of the papers and that is the – sorry, page 190 of the papers, the date of that is the 6 November, the date of the letter where Mr van der Walt confirms that that is the amount. If one looks at page 190 and looks at the entry in the bank statement on the 6 November 2014 you

will see a deposit of R5 million from Mr Pimentel.

CHAIRPERSON: Hang on one second, you are saying you are page 190?

MR SONI SC: 190.

CHAIRPERSON: And then what date?

MR SONI SC: 6 November 2014.

CHAIRPERSON: 6 November 2014. Yes?

MR SONI SC: And you will see that that is a deposit of R5 million.

10 **CHAIRPERSON:** Oh yes, there is a deposit of R5 million and is this the investment – Investec account that he was talking about in the letter?

MR SONI SC: Mr Loubser?

MR LOUBSER: That could be, that is why I looked at the dates. But as Mr van der Walt previously indicated all these amounts was paid into Precise Trade and Invest directly, not through Loubser Van der Walt's trust account.

CHAIRPERSON: Yes.

20 **MR LOUBSER:** Been deposited directly. So it could be that he meant – no, I do not want to speculate what he meant.

CHAIRPERSON: Yes.

MR LOUBSER: He received R5 million in Precise Trade and Invest.

CHAIRPERSON: Yes,

MR LOUBSER: But that money was – R5 million was never paid into our normal trust account.

CHAIRPERSON: Yes. But the letter does represent, as you read it, that the money was being held in the trust account of – or in the account of the law firm, is that right?

MR LOUBSER: It says that it is held in our trust investment account. But that trust investment account is the one of Precise Trade and Invest.

CHAIRPERSON: Would you have had such an account as
10 a law firm? Trust investment?

MR LOUBSER: Yes.

CHAIRPERSON: Or is it Investec or investment account that he refers.

MR LOUBSER: Yes, the ...[intervenes]

CHAIRPERSON: The way you invest your clients' money that you have not used, would that be where it...?

MR LOUBSER: Yes.

CHAIRPERSON: There would be a trust investment account.

20 **MR LOUBSER:** Yes.

CHAIRPERSON: That is where you would invest clients' monies that you are not supposed to...

MR LOUBSER: No, those accounts were – actually were property transactions where the purchaser bought the property and he did not require a guarantee ...[intervenes]

CHAIRPERSON: Oh, so that it gets interest in the meantime.

MR LOUBSER: Yes.

CHAIRPERSON: Ja. Okay, but the reference therein that in that letter is it a reference to that type of account that a law firm would have or is it a reference to a different account?

MR LOUBSER: I do not know.

CHAIRPERSON: You are not sure?

10 **MR LOUBSER:** No.

CHAIRPERSON: Okay, alright. But as you read it, it could refer to – you say it may have – it may have meant Precise Trade’s Investec account.

MR LOUBSER: Yes.

CHAIRPERSON: Ja. And the letter is dated what?

MR LOUBSER: 8 November.

MR SONI SC: The 6th. It is dated the 6th, Chairperson.

CHAIRPERSON: The letter is dated the 6th?

MR SONI SC: The 6 November.

20 **CHAIRPERSON:** Which is the same date as the entry.

MR SONI SC: Yes.

CHAIRPERSON: Do you see it as 6 or as 8, what is written there?

MR LOUBSER: It is very...

CHAIRPERSON: Very difficult and the lighting is not

good.

MR LOUBSER: Illegible, it could be either a 6 or 8, it is a zero ...[intervenes]

CHAIRPERSON: Okay, but whether it is 8 or 6, if this deposit happened on the 6 it might not make a difference.

MR SONI SC: No.

CHAIRPERSON: Ja. Okay.

MR SONI SC: May I, while you are there, Chairperson, refer you to the very next entry on the bank account. The
10 6 November is a deposit from Mr. Pimentel of R5 million and then on the 7 November in the bank account the very next entry is a payment of R5 million to Pam Golding 199 Empire Place, which is the Sandhurst Property, which is what that letter refers to.

CHAIRPERSON: Oh, yes, which is the Parkwood.

MR SONI SC: No, no, Sandhurst.

CHAIRPERSON: Oh, Sandhurst.

MR SONI SC: Yes.

CHAIRPERSON: Oh, okay. Okay.

20 **MR SONI SC:** Because that is the letter addressed to Pam Golding who sold the Sandhurst property.

CHAIRPERSON: Oh, that letter is in regard to the Sandhurst property.

MR SONI SC: That is right.

CHAIRPERSON: Okay. No, that is fine.

MR SONI SC: The bank account doesn't but Mr van der Walt's inscription says it was by Mr Plimenthal, you will see the name Plimenthal next to that five million.

CHAIRPERSON: Okay, okay. Are you done? Are you done with ...[intervenes]

MR SONI SC: I am.

CHAIRPERSON: Yes, thank you very much Mr Loubser for coming to give evidence. I guess that for the sake of completeness even though at this stage it might look
10 obvious, it might help if you are able to confirm that roundabout that date of 6 November 2014 there was no such deposit amount held within the trust account in relation to any such property.

MR LOUBSER: Yes.

CHAIRPERSON: Ja, just so that it is clear and that line is Friday next week.

MR LOUBSER: You can just phrase it like that and I will do a supplementary affidavit.

ADV SONI SC: Yes.

20 **CHAIRPERSON:** In fact, okay no thank you very much, you are excused.

ADV SONI SC: Thank you so much Mr Loubser.

CHAIRPERSON: Mr Soni we are at nearly twenty five to five, I indicated that I would be prepared to sit till later than that, but I was thinking we would go up to six, but I

did say we would find out from the witness who would be coming in whether it is convenient because they might not have planned to be here for that long. What is the position? Who is the next witness?

ADV SONI SC: The next witness is Mr Green Chair.

CHAIRPERSON: Check what his situation is about us continuing or whether he is happy to come back tomorrow. Well you can just ask him, he will speak from where he is, you don't have to go there.

10 **ADV SONI SC:** He is happy to continue Chairperson.

CHAIRPERSON: He is happy to continue. Okay, and we won't be long with him.

ADV SONI SC: No, no.

CHAIRPERSON: Ja, let's take a ten minutes break now and if there was going to be another witness ...[intervenes]

ADV SONI SC: There is another witness, and that is Ms Karen de Beer. She came all the way from Cape Town so ...[intervenes]

20 **CHAIRPERSON:** Oh, what is her situation? She can just speak from where – what is your situation? You are happy to stay? Yes, you are spending the night in Jo'burg? Oh you live in Pretoria? Oh you came from Cape Town, but tomorrow would be inconvenient for you? It would be inconvenient tomorrow, okay alright, we will try and finish because your evidence won't be long either, but let us take

a ten minutes break, and then we will continue, it is twenty five to now, we will resume at quarter to.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay Mr Soni let's proceed.

ADV SONI SC: Chairperson the next two witnesses are, if I can call them, and I say this because of the support the
10 Commission needs from ordinary people and these are two ordinary people going about their business and are here to assist the Commission in explaining the roles of different players.

CHAIRPERSON: Yes.

ADV SONI SC: What you will see when all the evidence is led Chairperson that Mr Montana was the person who goes and spots the properties, makes offers for the properties and then enters into contracts and eventually the property is transferred to the Versace Trade, because you have
20 heard now that all the – except the holding property, so we have an estate agent, Mr Green and an owner, Ms De Beer, who will give evidence to that effect. The evidence will be short but with respect Chairperson it is quite dramatic because they remember Mr Montana's role in the transactions.

CHAIRPERSON: Well you need also to say what makes their evidence relevant, namely that the transactions relating to these properties insofar as they involve Mr Montana happened in the context of certain contracts involving PRASA, of which Mr Montana was Group CEO and Siyangena, is that right?

ADV SONI SC: Yes.

CHAIRPERSON: And Siyangena and the relationship between TMM and Siyangena.

10 **ADV SONI SC:** That is so.

CHAIRPERSON: Ja, do you want to just wrap that up?

ADV SONI SC: Yes.

CHAIRPERSON: Just touch on that properly so that whoever is listening can follow, because you and I have read a lot of these documents, we know, but somebody else might say I am not following this evidence by this witness or by the Commission now.

ADV SONI SC: Yes, Chairperson the evidence of Mr Loubser confirms what we already know, and the
20 importance of Mr Loubser's evidence is he says the information that he communicated today was given to him by Mr van der Walt. That information is to this effect, that Mr van der Walt acted as an attorney for TMM, acted as an attorney for Siyangena, acted as an attorney of ESS, all major companies in which Mr Mariel Ferreira has a major

interest.

What we also know is that some of these properties, not necessarily all, but some were funded by money and Mr Loubser's evidence on – having regard to what Mr van der Walt told him on money supplied by TMM and Chairperson it is important when one looks at TMM is not TMM the company but TMM in the joint venture agreement that he – Mr van der Walt submitted to Mr Loubser and that Mr Loubser brought to court today.

10 So when we talk about TMM we are not only talking about the company, we are talking about TMM and Mr Ferreira.

CHAIRPERSON: Yes.

ADV SONI SC: And these are not small sums of money Chairperson, you will recall the first amount is R5 000 000 and R1 800 000 paid on the same day, the very same day to commit to R5 000 000 is paid to settle Mr Montana's debt – Mr Montana's bond in a property he owns in Waterkloof.

20 **CHAIRPERSON:** Okay thank you. Thank you, Mr Green, for your patience and for coming to give evidence, we appreciate your cooperation, you can administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR GREEN: Louis Green.

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

MR GREEN: No I don't.

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

MR GREEN: Yes, I do.

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

10 God.

MR GREEN: So help me God.

MR LOUIS GREEN: [d.s.s.]

CHAIRPERSON: Thank you very much, you may be seated. You may proceed Mr Soni.

ADV SONI SC: As you please Chairman. Mr Green ...[intervenes]

CHAIRPERSON: Although he will ask the questions look at me most of the time.

20 **ADV SONI SC:** Mr Green what is your profession at the moment?

MR GREEN: At the moment I am a practicing Estate Agent.

ADV SONI SC: And in 2014?

MR GREEN: In 2014 I was an Estate Agent as well.

ADV SONI SC: And at that stage would Hootch Agency, a

group where you attached to?

MR GREEN: I was with Pam Golding in the Hyde Park office.

ADV SONI SC: Does the name Mr Montana – Lucky Montana ring a bell with you?

MR GREEN: Yes it does.

ADV SONI SC: And in what connection?

MR GREEN: I sold two properties to Mr Montana.

ADV SONI SC: Yes, can I just ask you, you've made an
10 affidavit...[intervenes].

CHAIRPERSON: I'm sorry, do raise your voice a little bit because there's some noise with the aircon here, thank you.

ADV SONI SC: So, you say you sold?

MR GREEN: I sold two properties to Mr Montana.

ADV SONI SC: Just for putting them in context, one is in Sandhurst and the other is in Hurlingham?

MR GREEN: That's correct.

ADV SONI SC: So those are the two deluxe properties.
20 Now...[intervenes].

CHAIRPERSON: Maybe for the sake of completeness, 2015, 2014?

MR GREEN: I'm going to have to refer...[intervenes].

CHAIRPERSON: That's fine.

MR GREEN: It was during 2014/2015 ...[intervenes].

CHAIRPERSON: That's fine the exact date you can look up later I just wanted us to have that ballpark in terms of time frame.

ADV SONI SC: You've made a statement in regard to these transactions is that correct?

MR GREEN: That's correct.

ADV SONI SC: And that statement was made on the 1st of October 2015, is that correct?

MR GREEN: That's correct.

10 **ADV SONI SC:** Chairperson, Mr Green's statement appears at Bundle G, page 80 and 81.

CHAIRPERSON: We are dealing with Bundle G hey, is that right?

ADV SONI SC: Yes, that is so.

CHAIRPERSON: Okay, and...[intervenes].

ADV SONI SC: Page 80 and 81.

CHAIRPERSON: Did you admit Mr Loubser's statement as EXHIBIT SS16, I don't think so, I don't remember you asking me...[intervenes].

20 **ADV SONI SC:** No SSO, I think I forgot Chairperson.

CHAIRPERSON: Yes, okay we'll – it is so admitted as EXHIBIT SS16, that is now the statement or affidavit of Mr Nicholas Johannes Loubser.

ADV SONI SC: Yes.

CHAIRPERSON: And the Annexures thereto and now we

are dealing with the affidavit of Mr Louis Green and that is in Bundle G and you would like me to admit it as EXHIBIT SS15.

ADV SONI SC: As you please Chairperson.

CHAIRPERSON: The affidavit of Mr Louis Green is admitted as EXHIBIT SS15, ja.

ADV SONI SC: Now, Mr Green I understand this took place some time ago and I understand that you were not well for a period thereafter. You may look at your affidavit,
10 you may want to recast your affidavit. I just want to deal with the first property that you are talking about, that you sold to Mr Montana. Can you recall the details of how that happened?

MR GREEN: Yes I was on show and Mr Montana came to the show day, this was – I'm recalling the first time I met Mr Montana, he came to the show day, it was just before the closing of the show day and he asked if he could just run through the house quickly ...[intervenes].

CHAIRPERSON: That is which house now?

20 **MR GREEN:** This was the...[intervenes].

CHAIRPERSON: This was the last one?

MR GREEN: No, this was the Hurlingham house.

CHAIRPERSON: Hurlingham house?

ADV SONI SC: Yes.

CHAIRPERSON: That's where you met him for the first

time?

MR GREEN: That's where I first met him.

CHAIRPERSON: Okay.

MR GREEN: He ran through the house and said that he was interested in the property, he was looking to develop and it would be of interest to him. I had another property in Sandhurst which was in Empire Place, which is the first property that he purchased, that property I invited him to come and view the property at one of my show days which
10 he came to visit.

ADV SONI SC: And did – what was his reaction after the show day at Sandhurst?

MR GREEN: He certainly showed interest in the property and said that he would like to proceed with the purchase of the property, it was a very good deal as well and he recognised that.

ADV SONI SC: Did he make an offer?

MR GREEN: Yes, he did make an offer.

CHAIRPERSON: What was the property sold for, before he
20 made an offer what was it up for. In terms of the amount, you can refresh your memory by looking at the documents.

MR GREEN: That property, prior to me getting the mandate, I think was at around R18million with the previous agency. I sold the property, I think it was R13.9million.

CHAIRPERSON: To Mr Montana?

MR GREEN: To Mr Montana.

CHAIRPERSON: Yes okay, but you say that, at some stage before you got involved with the property it was about R18million?

MR GREEN: That's correct.

CHAIRPERSON: But do you have any recollection of what the amount was at which you were selling it before Mr Montana made the offer of ...[intervenes].

10 **MR GREEN:** I think it was around about the R15million.

CHAIRPERSON: Oh okay.

MR GREEN: And the circumstances around the sale were that the owner had already purchased and renovated a new house for his family.

CHAIRPERSON: Ja.

MR GREEN: So, you know, there was definite opportunity.

CHAIRPERSON: Yes he needed a sale as soon as possible

20 **MR GREEN:** Ja he needed – you know we managed to put a deal together.

CHAIRPERSON: Ja okay.

ADV SONI SC: So, Mr Montana made an offer and did the old man accept the offer?

MR GREEN: Yes, I don't recall if it was that Mr Montana offered R13million and the owner came back with

R15million, you know whether it was – the bottom line is, it was settled at R13.9million. So I don't recall the exact circumstance as to how we arrived at the R13.9million.

CHAIRPERSON: Ja that's fine.

ADV SONI SC: Alright, now in regard to that sale, if I can call it that, was any deposit paid?

MR GREEN: Yes, there was a deposit paid.

ADV SONI SC: What was the amount of the deposit?

MR GREEN: The deposit was R5million.

10 **ADV SONI SC:** If I could just ask you, Mr Green, in that Bundle in front of you, would you look at page 85?

MR GREEN: Yes.

CHAIRPERSON: Well before that, can I just clarify this. When Mr Montana made the first offer as you recall, did he make that offer on the basis that he personally was the purchaser?

MR GREEN: Yes, the offer was made by him.

CHAIRPERSON: Okay, not for an entity or...[intervenes].

MR GREEN: No, it was by him.

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

ADV SONI SC: Chairperson I thought I'd just get rid of this document, this is the very document that Mr Loubser was shown.

CHAIRPERSON: Yes, okay let's deal with that.

ADV SONI SC: I just thought I'd...[intervenes].

CHAIRPERSON: Ja.

ADV SONI SC: Now, when Mr Montana – sorry can you remember who the seller was, the name of the seller?

MR GREEN: Yes, it was Kholer.

ADV SONI SC: Mr Kholer?

MR GREEN: Yes.

ADV SONI SC: And the deposit was paid, was then the property sold to Mr Montana?

MR GREEN: Yes, the deposit would only have been paid
10 once the sale agreement was agreed. So the offer to purchase, once it's signed by all parties, becomes the sale agreement. Once the sale agreement is ready, the deposit will be paid.

ADV SONI SC: Yes, now I just want to get to the point where, eventually, the property was transferred, not to Mr Montana but to a company called Precise Trade, is that correct.

MR GREEN: That's correct.

ADV SONI SC: How did that happen?

20 **CHAIRPERSON:** I'm sorry, just before that, in terms of the agreement, what was the deposit that Mr Montana was supposed to pay?

MR GREEN: R5million.

CHAIRPERSON: R5million and that's the deposit that was paid?

MR GREEN: That's the deposit that was paid.

CHAIRPERSON: Okay, thank you.

ADV SONI SC: Now, it was eventually sold to Precise Trade, am I correct?

MR GREEN: That's correct yes.

ADV SONI SC: If I can ask you to look at page 92...[intervenes].

CHAIRPERSON: I know that, because of time you may be skipping certain things deliberately but I think it is
10 important to capture some of those circumstances under which the identity of the purchaser changed in terms of, if from changing it from it being Montana in his personal capacity to a legal entity. So the circumstances under which – that should be captured.

ADV SONI SC: You appreciate, Mr Green, that Mr Montana signs an agreement to buy the property and then the property is then going to be sold to somebody else. The question is, how did that change come about, having regard to the fact that a R5million deposit had already
20 been paid?

MR GREEN: Ja I don't recall the exact events, other than, I was asked to please speak to the seller to see if they could change – so in effect, cancel the first agreement and substitute that agreement with a new agreement with Precise.

CHAIRPERSON: Okay.

MR GREEN: So, it wasn't an issue where the property was transferred or that any of the process had already started, the only thing that had happened was the deposit had been paid and in this substitute agreement – so I would never allow an agreement to be cancelled, the agreement would need to be substituted. So, there would need to be a new agreement and once that agreement is received then the other agreement is cancelled and I make
10 reference in the – on page 94 that the deposit in 2.1 was received on the 7th of November 2014. So, the deposit had already been received on the first sale agreement.

ADV SONI SC: Yes, so when we say at page 94, this is the agreement between Mr Kholer and Precise Trade?

MR GREEN: That is correct, this is the final sale agreement.

ADV SONI SC: Yes, so if I can just ask you when you're saying, in – about how the change took place, can I ask you to please look at paragraph 5 of your affidavit. I know
20 it's a long time and that's why I thought you may want to refresh your memory, page 80 paragraph 5. Do you want to read that into the record and...[intervenes]?

CHAIRPERSON: I think he may well actually – you know it's a very short affidavit this, he could just read it.

ADV SONI SC: Yes, that may be...[intervenes].

MR GREEN: Should I read that?

CHAIRPERSON: Yes.

ADV SONI SC: Could you read the whole affidavit.

CHAIRPERSON: Read the whole affidavit ja.

ADV SONI SC: Read that and we can ask specific questions.

MR GREEN: I must read the whole affidavit?

CHAIRPERSON: Ja you can read the whole affidavit.

MR GREEN: “I the undersigned, Louis Green, ID number
10 5905125119086...[intervenes].

CHAIRPERSON: Or maybe you can start on the – on paragraph 2.

MR GREEN: Okay,

“On or about mid 2014, I was instructed by Mr
Kholer to market and sell a property known as
portion 18 of Erf 1 Sandhurst Gauteng, situated at
119 Empire Place, Sandhurst, Johannesburg. As a
result, thereof I placed the property on show a
number of times and on or about the 26th of October
20 a gentleman, now known to me as Mr Lucky
Montana, visited the show day and expressed
interest in buying the property. Either that day or
the next day, I cannot now remember, Montana
signed an offer to purchase for the property in the
amount of R13.9million. I cannot now recall where

the offer was signed as I do many offers, it may have been signed on the show day. The offer was accepted by the seller on the 28th of October 2014. I was subsequently contacted by a certain Mr Adriaan Riaan van der Walt by email on 24/11/05, the email contained a letter...[intervenes]?

CHAIRPERSON: That's 2014 hey?

MR GREEN: Yes 2014,

10 "From Loubser van der Walt Incorporated Attorneys confirming that they had R5million in a Trust account with Investec Bank. A true copy of the email, the attorney's letter and the offer to purchase signed by Montana is attached hereto, marked as Annexure LG1...[intervenes].

ADV SONI SC: Sorry Mr Green and sorry Chairperson, I just want to place this on record, you – after you left Pam Golding were you able to receive any documents from them?

20 **MR GREEN:** No all of the – I was completely locked out of everything, so all my email was deleted, all my diary was deleted and I have no access to any documentation.

ADV SONI SC: And I just place on record, Chairperson, that many of the documents that I refer to in the affidavit, are not in our possession and we couldn't find the primary source because, as Mr Green says, these are all deleted

thereafter. So, I just place that on record, when you see the affidavit and Annexures there will be some Annexures that are missing.

MR GREEN: But these documents were a part of the affidavit at the time of signing the affidavit which was done at the Werksmans offices in Sandton.

10 “On the 7th of October 2014 I received an email from an der Walt with proof of payment in the amount of R5million into Pam Golding’s Trust account for and on behalf of Lucky Montana, I attach a true copy of that email as Annexure LGG. On the 25th of November I received a further facsimile from van der Walt with a letter attached, marked as urgent, the effect of the letter, as will be seen, was to change the buyer from Lucky Montana to a company called Precise Trade and Invest 02 Pty Ltd. I then sent a fresh offer to purchase to van der Walt in the name of Precise Trade and Invest Pty Ltd which was immediately signed by van der
20 Walt and returned to me. Note that at clause 1.5 I wrote the expression, the deposit 2.1 was received on 7th November 2014. The effect of this is that the deposit paid for Lucky Montana was not being held – was now being – sorry was not being held, I think that should be now, for Precise Trade and Invest

Ltd. A true copy of the relevant emails and new offer to purchase is attached hereto, marked Annexure LG3. The conveyancing was carried out by Snyman's Incorporated; the Fourways office and the property was transferred on the 6th of August 2015. Within a few days of transfer, I went to the property and met with Riaan van der Walt, he was on his own and to the best of my memory this was the first time that I had seen him I walked him through the property and handed him the keys. There is one more document I want to attach from my file, I do not know when I got it but it is a copy of the bank guarantee for the payment of the remaining R8.9million from Invested. I attach a true copy of this as Annexure LG4".

ADV SONI SC: Mr Green, can I just stop you there, that is now everything you say in this affidavit about the Sandhurst property.

MR GREEN: This is all relating to Sandhurst yes. Coincidentally I was also the selling agent on another property that was purchased by Lucky Montana, this is the property located in Hurlingham on 12 Montrose Road, and known as the remaining extent of Erf 70 Hurlingham. The Seller was Mrs Gavisser and Montana bought it from her with myself as the agent. The conveyancing was done by

Janine Bredekamp in Parkview. I distinctly recall Janine Bredekamp calling me one day and saying that Mr Montana had contacted her and requested her to change the buyer from himself to another entity. I do not now recall what that entity was but she refused to go along with it as she wanted to finalise the transaction. That transfer went through on the 28th of July 2015. I attach a copy of the Title Deeds hereto as Annexure LG5 and as far as the seller of that property is still in occupation and paying
10 occupational rent. Prior to me signing this statement, I have carefully read through it and am satisfied that the facts are correctly and accurately recorded, the following questions were put to me, in person by the Commissioner of Oath and I entered the answers in my own handwriting.

ADV SONI SC: Yes.

MR GREEN: Do you know and understand the contents?
Yes. Do you have any other documents?

CHAIRPERSON: No you do not have to read that.

ADV SONI SC: Yes.

20 **MR GREEN:** Thank you.

ADV SONI SC: Now Mr Green as I understand from my conversation with you earlier today you do not have an independent recollection of this but this – of these transactions but what you have set out here is what you – or you knew on the 1 October 2015, is that correct?

MR GREEN: Yes and it was on documents that were presented to me.

CHAIRPERSON: Hm.

MR GREEN: The initial investigation was done by I think Paul O'Sullivan.

CHAIRPERSON: Werksmans. Was it done by Werksmans?

MR GREEN: Sorry?

CHAIRPERSON: The initial investigation was it done by Werksmans?

10 **MR GREEN:** By Paul O'Sullivan the investigator.

CHAIRPERSON: Oh okay. No fine.

MR GREEN: Ja and – so that was we initially made contact with and provided me with documentation and you know the documentation never came from me but it was provided to me by O'Sullivan.

ADV SONI SC: Now in respect of – you have – how long have you been an estate agent?

MR GREEN: I have been an estate agent I think for 15/16/17 years.

20 **ADV SONI SC:** In respect of these two properties I mean I know one was the transfer was effected in the name of Precise Trade.

MR GREEN: Yes.

ADV SONI SC: But as far as you were concerned to whom was that property sold, that is the Sandhurst property?

MR GREEN: Well the first sale as the documents reflect was to Lucky Montana and the property eventually transferred to the company not to Lucky.

ADV SONI SC: Yes. After the transfer of the property did you have – according to your knowledge did you have communications with the purchaser?

MR GREEN: Yes I did.

ADV SONI SC: And did you have communications with Mr Montana?

10 **MR GREEN:** I think I did yes.

ADV SONI SC: And – but you do not have an independent recollection of it?

MR GREEN: Well I – I did see a document where after the transfer I had spoken – I had sent out an email where I have copied – it was in respect to the pool cover.

ADV SONI SC: Yes.

MR GREEN: Where I have copied Montana in on the email that I sent to Van Der Walt, to Precise and he was quite irate and upset at the fact that I have copied Montana in on
20 the email. So yes I had.

ADV SONI SC: But subsequent to that did you then continue communicating with Mr Montana in respect of the part or can you not recall it?

MR GREEN: I do not think I – I – there would have been no reason to continue. I mean my communication going

forward and this was up until 2017 was all with Van Der Walt.

CHAIRPERSON: Let me ask this question. Initially the person who was interested in buying the property was Mr Montana.

MR GREEN: That is correct.

CHAIRPERSON: And he made an offer to purchase. And he made an offer to purchase that was accepted by the seller?

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

CHAIRPERSON: And that was a deal then – there was a deal between the two of them.

MR GREEN: Ja there was a deal. The deposit was paid.

CHAIRPERSON: A deposit was paid. Until you received a letter or email from Mr Van Der Walt asking that the buyer be changed to be Precise Trade what you knew – what you knew as the estate agent was that there was an agreement of sale between Mr Montana and the seller.

MR GREEN: Correct.

20 **CHAIRPERSON:** Is that right ja. Now when you got the email or letter from Mr Van Der Walt asking that the purchaser be changed before you and or the seller – before you took that request to Ms – to the seller did you have any discussion or communication with Mr Montana himself to say, I am receiving a letter from a third party who says we

must change – change this you are no longer going to be the purchaser or is that ...

MR GREEN: No I do not – I do not recall I do not believe so.

CHAIRPERSON: Yes. Yes.

MR GREEN: Because Mr Van Der Walt was in my mind the attorney. So if you look you will see that it was the attorney's letter that I received.

CHAIRPERSON: Hm.

10 **MR GREEN:** Saying that the deposit – he is holding the deposit in trust.

CHAIRPERSON: Hm.

MR GREEN: And you know the fact that the attorney was also – I did not even know who the directors of Precise Trading were.

CHAIRPERSON: Hm.

MR GREEN: At that point in time it was you know.

CHAIRPERSON: Hm. Did – did Mr – did Mr Van Der Walt in – either in that letter or in a telephone conversation with
20 you around that time ever say anything to the effect that he was acting on behalf of Mr Montana in communicating with you that the purchaser should be changed? Did he make any representation that Mr Montana was okay with that? He was representing him or – or how did this come about because I would have thought that if as far as you knew at

the time that you received the email or letter from Mr Van Der Walt this house was the subject of an agreement that had been concluded.

ADV SONI SC: Concluded.

CHAIRPERSON: The first thing that would come to your mind but who are you?

MR GREEN: Ja.

CHAIRPERSON: This property has a buyer, there is a deal. So I do not expect that you would ask that question so is
10 there anything that allayed your concerns in that regard?

MR GREEN: I might very well have.

CHAIRPERSON: Yes.

MR GREEN: But I cannot...

CHAIRPERSON: You cannot remember.

MR GREEN: With conviction and any recollection.

CHAIRPERSON: Yes.

MR GREEN: Or accuracy.

CHAIRPERSON: Yes.

MR GREEN: Make a statement that ...

20 **CHAIRPERSON:** That you did.

MR GREEN: You know I do not recall.

CHAIRPERSON: Yes. So there I would imagine you know given my experience and how pedantic I am in my deals that I would have confirmed that with Mr Montana that this is in fact you know albeit it was not in writing I might very well

have been in a phone call or I might have received a phone call from him saying listen this is what happening we cannot – I am not going to take transfer we are putting into a company.

CHAIRPERSON: Hm.

MR GREEN: But I honestly cannot without any recollection make a statement like that.

ADV SONI SC: Because my own thinking is that you would done have something to make sure that it was in order.

10 **ADV SONI SC:** Absolutely.

CHAIRPERSON: This was in order with Mr Montana because otherwise you would be causing your client – the seller to be in breach of the agreement, you would be in breach of the agreement.

MR GREEN: Well it is not something I can do unilaterally.

CHAIRPERSON: It is not something you do because particularly when there was R5 million that had been paid already.

MR GREEN: Yes.

20 **CHAIRPERSON:** And if you were to go along with that request without having [intervened] yourself.

MR GREEN: Secured himself.

CHAIRPERSON: From Mr Montana that this should be in order that would be very strange that.

MR GREEN: I would agree with you 100%.

CHAIRPERSON: Yes.

MR GREEN: Perhaps I can say that it – I definitely would have confirmed that.

CHAIRPERSON: Yes.

MR GREEN: But I do not know if it was me confirming or before it happening me receiving a phone call.

CHAIRPERSON: Yes.

MR GREEN: To say this is what is going to happen.

CHAIRPERSON: Yes.

10 **MR GREEN:** But 100% it would have been done.

CHAIRPERSON: Yes.

MR GREEN: There would have been something.

CHAIRPERSON: Yes.

MR GREEN: I would never do it.

CHAIRPERSON: Yes. Would it have been enough for Mr Van Der Walt to just say even in a letter, I am acting for Mr Montana in that situation where he says, change the identity of the – or you – would you still have said, look I want to hear from Mr Montana. I want something in writing from Mr
20 Montana.

MR GREEN: Well I think my obligation knowing that I am holding in our trust account R5 million which at this point in time belongs to Mr Montana. I would need the confirmation from him. There might very well have been a written confirmation as well. I just do not have access to the

documentation.

CHAIRPERSON: Yes. But you certainly would not have just gone ahead with that?

MR GREEN: Never, no.

CHAIRPERSON: Ja.

MR GREEN: I – it would be against practice.

CHAIRPERSON: Hm.

MR GREEN: You know it is not something – I cannot just sign Mr Montana's deposit to someone else.

10 **CHAIRPERSON:** Yes, yes.

MR GREEN: Without...

CHAIRPERSON: Yes. Yes Mr Soni.

ADV SONI SC: Mr Green you might recall you mentioned a little earlier that there was an email from Mr Van Der Walt saying but you contracted.

MR GREEN: Yes.

ADV SONI SC: Can I show you three emails we will just go through them and place them on record. Chairperson these are going to be part of a different bundle.

20 **CHAIRPERSON:** Is that the one that you – was shown to Mr Loubser?

ADV SONI SC: No, no this is a different one.

CHAIRPERSON: Ja. Do I have it here? The one you are showing him or not?

ADV SONI SC: Not, not in your set of documents at the

moment.

CHAIRPERSON: Hm.

ADV SONI SC: They will be presented in a different set of bundles tomorrow Chairperson.

CHAIRPERSON: It is not a bundle that is here?

ADV SONI SC: It is Bundle H Chairperson.

CHAIRPERSON: I thought there was Bundle H during the day, during the morning. What page of Bundle H?

ADV SONI SC: Page 185, 186 and 181 respectively. I am
10 going to refer Mr Green to each of them. Chairperson you will see it is marked SP12, SP13 and SP11 respectively. The first one Chairperson is at 18 – 185.

CHAIRPERSON: Yes I have got it.

ADV SONI SC: As you please Chairperson. Mr Green have a look at the document of the 10 June. This is an email from you to Mr Van Der Walt and Mr Montana. Do you see that?

MR GREEN: I think it is the 10 May.

ADV SONI SC: Oh sorry 10 May.

MR GREEN: Yes I do see it.

20 **ADV SONI SC:** Now this is....

CHAIRPERSON: You must always just say the year Mr Soni so...

ADV SONI SC: Oh as you please Chairperson.

CHAIRPERSON: Because when one reads the transcript one will not know which year you talking about. It said it is

an email dated 10 May 2016 sent at three minutes past twelve from Mr Louis Green and it is addressed to Jan Adrian Van Der Walt and Mr Lucky Montana is copied. The subject matter is electric pool cover keys.

ADV SONI SC: Yes. Now this is an email you address to Mr Van Der Walt Mr Green.

MR GREEN: That is correct.

ADV SONI SC: And it deals with the pool cover and you are having found two further keys for the electric pool cover.

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

ADV SONI SC: Right. Is the response to you ...

CHAIRPERSON: Let us hear what he says what Mr Green says to him first.

ADV SONI SC: Oh as you please Chairperson.

CHAIRPERSON: Ja just read what you say in that email to Mr Van Der Walt.

MR GREEN:

20 “Hi Riaan hope you are well. I received a call from the Kohlers that they have found an extra two sets of keys for the electric pool cover. The keys are in my possession. When would you be able to meet or should I keep them until you are around the area?”

CHAIRPERSON: Yes. And you copied Mr Lucky Montana in that email, is that right?

MR GREEN: Yes I did.

CHAIRPERSON: This – would this have been after the sale of the property or before?

MR GREEN: I think this is after.

CHAIRPERSON: After the transfers.

MR GREEN: It is after the transfer of the property.

CHAIRPERSON: Yes.

MR GREEN: You know they have – he has already got occupation.

CHAIRPERSON: Yes. You remember earlier on there was
10 a question whether you dealt with Mr Montana after – after the transfer.

MR GREEN: Yes.

CHAIRPERSON: I think if I recall.

MR GREEN: If I have mentioned this.

CHAIRPERSON: You could not remember or you would not sure that you did. I am not sure. But here you do copy Mr Lucky Montana. Are you able to say why you would have copied him here since he was not the purchaser ultimately?

MR GREEN: No I have – I have no idea why I copied him
20 but he has certainly been copied and I spoke of the follow up email that I received asking me why I had copied Montana.

CHAIRPERSON: Yes I think that is the ...

ADV SONI SC: Yes.

CHAIRPERSON: That Mr Soni was checking into.

ADV SONI SC: That is the next one. That is about half an hour later, am I correct? The email on the 10 May 2016 at 12:26 from Mr Van Der Walt to yourself.

CHAIRPERSON: And it appears at page 186 and it is marked SP13.

ADV SONI SC: SP13 yes.

CHAIRPERSON: Ja SP13 just read it Mr Green.

ADV SONI SC: Sorry can I just make one other point?

CHAIRPERSON: Ja.

10 **ADV SONI SC:** That Mr Van Der Walt cc's Mr Montana on this as well.

CHAIRPERSON: Yes.

ADV SONI SC: So sorry could you read into the record?

MR GREEN: Hi Louis, so this is an email from Riaan Van Der Walt sent to myself copying Lucky Montana on the 10 May 2016 at 12:26pm. Subject: Electric pool cover keys.

20 "Hi Louis please explain why you have cc Mr L Montana in this mail. You are well aware of the fact and as already explained to you last year before the property was even bought by my company that Meneer L Montana has nothing to do with Precise or this property. Please refrain from this action in the future. The pool cover keys can be handed to Jan from MC Maintenance. I will arrange with him regarding the keys. Kind Regards."

ADV SONI SC: Can I ask you to look another document

now and that Chairperson that is SP14 which is on page 187.

CHAIRPERSON: Are you coming back to this email or not? That the one he has just read are you done with it?

ADV SONI SC: Yes.

CHAIRPERSON: Okay. Before you move to another one. On this email Mr Green Mr Van Der Walt asks you to explain why you copied Mr Montana in your email to him alright. Do say yes because when you nod the record does not capture
10 nodding.

MR GREEN: Okay yes yes.

CHAIRPERSON: You agree?

MR GREEN: That is what ...

CHAIRPERSON: Ja. Now I am sure we will get to an email where maybe you give an explanation or where you will deal with that but he says here in this email of 10 May 2016 to you in the second line.

“Before the property was even bought by my company”

By my company I think he refers to Precise Trade, is that
20 right?

MR GREEN: Precise.

CHAIRPERSON: Before the property was even bought by my company. He says you know that before the property was even bought by my company you know that Mr Montana has nothing to do with Precise or this property. Is my

reading correct? Is it the same as yours that what he is conveying is that on the face of it is that even before his company Precise Trade bought this property Mr Montana had nothing to do with it?

MR GREEN: Well how could I possibly know that even before he bought it that Mr Montana had nothing to do with it. Mr Montana was my purchaser.

CHAIRPERSON: Yes that is why I am asking whether you understand this email the same way I – as I understand it
10 because that is strange to me.

MR GREEN: Ja I think I would not read too much into it being that Afrikaans in his home tongue and you know he is speaking English here just very badly.

CHAIRPERSON: No, no.

MR GREEN: But – but.

CHAIRPERSON: No just leave that alone. If you just read the letter.

MR GREEN: If I read the contents.

CHAIRPERSON: You understand it the same as I do.

20 **MR GREEN:** I absolutely agree with you

CHAIRPERSON: And that would be factually not correct namely that Montana had nothing to do with the property before Precise Trade became the purchaser.

MR GREEN: Absolutely.

CHAIRPERSON: Yes okay alright.

ADV SONI SC: Now...

CHAIRPERSON: Mr Soni.

ADV SONI SC: About five minutes later Mr Green you send – and Chairperson this is at page 187 SP14 you send an email to Mr Van Der Walt but you do not cc Mr Montana and what do you say in that email?

MR GREEN:

“Apologies.”

ADV SONI SC: So that email now is the 10 May 2016, am I
10 correct?

MR GREEN: That is correct and it is at 12:38pm.

ADV SONI SC: Yes. Can I ask you to turn to the other document by...

CHAIRPERSON: I am sorry again Mr Soni I am sorry.

ADV SONI SC: Yes.

CHAIRPERSON: In your response to Mr – email to Mr Van Der Walt why do you not give him an explanation. He asked you – he asked for an explanation why you were copying Mr Montana who according to Van der Walt had nothing to do
20 with the property or with the company. But when you respond you say “apologies” but you do not provide an explanation as to why – how it came about.

MR GREEN: Well.

CHAIRPERSON: Why not?

MR GREEN: I can say that I was wrong in copying Montana

because it was Precise's properties that I was dealing with not Montana. So I – I should – I should not have copied Montana in on the email.

CHAIRPERSON: Yes.

MR GREEN: And I just apologised for doing it.

CHAIRPERSON: Ms Langata please move back to your seat otherwise we – I am being disturbed. Yes but are you saying that copying Mr Montana on your part in that email was not something you had done consciously? Are you
10 saying it was oversight or are you saying you had a reason to copy him but if Mr Van Der Walt did not want you to copy him in then you would not? I am trying to understand that. How did it come about that knowing that Mr Montana was no longer the purchaser you still long after the transfer of the property copied him and Mr Van Der Walt asked for an explanation and you just say "apologies" and it is left. Because I am trying to understand that.

MR GREEN: Ja it was not a conscious – it was – there was no – it was not a conscious to copy him or eliminate him
20 you know it – I cannot give a reason why I copied him.

CHAIRPERSON: Hm.

MR GREEN: I can tell you that I did copy him

CHAIRPERSON: Yes.

MR GREEN: But I cannot tell you why.

CHAIRPERSON: Do – are you able to say an maybe Mr

Soni might know this from the documents here but do you know – would you remember whether after there had been a change of the identity of the purchaser whether you still dealt – you still included Mr Montana in matters relating to this sale or not?

MR GREEN: I doubt it because if I had – I do not know how much correspondence there actually was after the – the purchase agreement was changed. I do not recall and I do not have the – the information to provide you.

10 **CHAIRPERSON:** Hm.

MR GREEN: How much correspondence there was thereafter but had I corresponded and copied Montana in I am sure I would have received the same response from Van Der Walt saying you – why you copying Montana in on our – on my business.

CHAIRPERSON: Hm.

MR GREEN: So I can maybe say no there was no other correspondence up until this.

20 **CHAIRPERSON:** Hm. Did you at the time or when there was a change of identity of the purchaser did you establish who the directors of Precise Trade were? Maybe if the shareholders – did you establish whether Montana was involved in Precise Trade at all or not? Or were you told or not?

MR GREEN: No I am – I definite – if I am dealing with a

legal entity, I am obligated to ensure that I am dealing with the right person.

CHAIRPERSON: Yes.

MR GREEN: And that there is that person.

CHAIRPERSON: Has proof.

MR GREEN: Is enabled.

CHAIRPERSON: Is authorised ja.

MR GREEN: Is authorised to deal on behalf of the entity as well.

10 **CHAIRPERSON**: Yes. Yes.

MR GREEN: So I would have done all of that stuff.

CHAIRPERSON: Yes.

MR GREEN: And to the best of recollection he was the sole director.

CHAIRPERSON: Is that Van Der Walt or...

MR GREEN: Not Precise.

CHAIRPERSON: Van Der Walt or.

MR GREEN: Van Der Walt.

CHAIRPERSON: Van Der Walt.

20 **MR GREEN**: Yes.

CHAIRPERSON: So, so as far as you would have known at the time Montana had nothing to do with Precise Trade?

MR GREEN: Yes.

CHAIRPERSON: From your recollection.

MR GREEN: From – yes.

CHAIRPERSON: Ja. Okay Mr Soni.

ADV SONI SC: I have given you another document it is called SP11. Chairperson it appears at page 181. Have you got it? That is an email dated the 23 June Mr – June – 23 June 2016 Mr Green have you got that in front of you?

MR GREEN: Yes I do.

ADV SONI SC: Now could you – could you say that – do you accept that this email was sent by you?

MR GREEN: Yes I do.

10 **ADV SONI SC:** And it was sent to Mr Montana and a Ms Kossakane at PRASA.

MR GREEN: That is correct.

ADV SONI SC: And it was sent on the 23 June 2016.

MR GREEN: Correct.

ADV SONI SC: And what does the text of the email read?

CHAIRPERSON: Before the text the subject matter?

ADV SONI SC: Oh sorry.

MR GREEN: The subject matter is 119 Empire Place which is the Sandhurst property.

20 **CHAIRPERSON:** Which is the Sandhurst property.

MR GREEN: Yes.

CHAIRPERSON: Yes. Okay.

MR GREEN:

“Hi Tumi please see below the email sent on 21 April 2015. Braam called as he did not receive any response and really

needs to sort the cover at 119 Empire Place, Sandhurst. Please make contact with Braam to make the necessary arrangements. Best Regards.”

ADV SONI SC: Now this is a month and a half after you apologise to Mr Van Der Walt for cc-ing Mr Montana.

CHAIRPERSON: Before that Mr Soni. I am sorry before that who is Tumi?

MR GREEN: I think Tumi is or was Montana’s PA.

CHAIRPERSON: Oh okay.

10 **MR GREEN:** I think.

CHAIRPERSON: Yes. Okay alright. Then continue with the question Mr Soni.

ADV SONI SC: So Mr Green none of this makes sense now because you are told not to communicate but you now exclude Mr Van Der Walt.

MR GREEN: And communicate.

ADV SONI SC: But you not only talk to Mr Montana but to his PA as well.

20 **MR GREEN:** Ja I cannot – I cannot recall the circumstances here. And I do not have the other email – because I refer to another email here.

ADV SONI SC: Of the 21 April.

MR GREEN: April ja which....

ADV SONI SC: But that was before the 10 May. I am only trying to point out.

MR GREEN: No, no I – I cannot answer I do not know why or – for what reason I would be sending this to her and to Mr Montana.

ADV SONI SC: But... but more intruding is the fact that it concerns the very same issue that you addressed to Mr Van der Walt and did not get a response from.

MR DE BEER: Ja, this... this is uh, for the servicing... it is the servicing of the pool cover. The... the other one... the other email was about spare keys.

10 **ADV SONI SC:** Okay. But... but it is still about the pool cover for his house...[intervenes]

MR DE BEER: Yes, yes. Sandton.

ADV SONI SC: I am just trying to...[intervenes]

MR DE BEER: Yes. No, it is ...[intervenes]

ADV SONI SC: It does not make sense at all.

MR DE BEER: No uh, it does not. I cannot... I cannot um... I cannot... I cannot say why. I do not know.

ADV SONI SC: But. but clearly... we are... all we are trying to establish is. We have a series of communications. We
20 are just trying to say, you would not have communicated with... with Mr Montana without a good reason. Would... would that be fair to say?

MR DE BEER: Yes, I would... I would say so.

ADV SONI SC: Yes. So what you cannot recall now is why you communicated with Montana instead of... but there must

have been a reason why you did.

MR DE BEER: Absolutely. And especially, you know, having been enlightened to the fact that I must not communicate with Montana on 119 Empire but here, clearly uh, I have communicated with him.

ADV SONI SC: And left Mr Van der Walt out.

MR DE BEER: Ja.

ADV SONI SC: I mean, that seems strange. You go to the old owner that knew about the new one.

10 **CHAIRPERSON:** But if you... maybe because... uh, but clearly because Mr Green, you do say... you have said...[intervenes]

MR DE BEER: Oh, hold on. Uh, sorry. I can... I can tell you why. Because this is 2015 and this is 2016. That is why. This MP11 is 2015. The 23rd of June 2015 and this is 2016.

ADV SONI SC: You know, I also looked at... at that and I thought it is 2016.

MR DE BEER: No, you can see it.

CHAIRPERSON: Well, some of this ...[intervenes]

20 **MR DE BEER:** It is like I have explained...[intervenes]

CHAIRPERSON: ...these members uh... but why would you talk about the same subject...[intervenes]

MR DE BEER: And you can see, it says I refer to the email of April 2015.

CHAIRPERSON: But... but... but if you are talking about the

same subject, namely, the cover...[intervenues]

MR DE BEER: No, this... this.. this was the servicing of the pool cover.

CHAIRPERSON: Yes. And what you have spoken to...[intervenues]

MR DE BEER: In 2016, they have found an extra set of keys.

CHAIRPERSON: Yes.

MR DE BEER: For the cover.

10 **CHAIRPERSON:** Yes.

MR DE BEER: And that is when I... in 2016, I spoke to Van der Walt.

CHAIRPERSON: Yes.

MR DE BEER: And he says, “why are you talking to me?” But it is clear here that this email is 2015. You can see in the body of the email I say, “please see below the email sent on 21 April 2015”. So this email is 2015.

CHAIRPERSON: But by that date... by that date, 23 June 2015... let us ...[intervenues]

20 **MR DE BEER:** Yes.

CHAIRPERSON: ...let us assume it is 2015, was Mr Montana still the purchaser of the property?

MR DE BEER: Uh, no. I think that... that had already happened. That.

CHAIRPERSON: So why would you be talking to him about

this property if he was no longer the purchaser?

MR DE BEER: Well, can I... can I see the... the... the date of the agreement? What date...?

CHAIRPERSON: Yes, you can have a look. We are... we are simply trying to understand Mr Green...[intervenes]

MR DE BEER: No, no. I... I am in the same ...[intervenes]

CHAIRPERSON: And we... we... we are sorting the dots in that there is anything funny that you did. We are just trying to understand.

10 **MR DE BEER:** No, I...[intervenes]

CHAIRPERSON: Ja.

MR DE BEER: ...I appreciate it and...[intervenes]

CHAIRPERSON: Ja.

MR DE BEER: ...I am trying to the best of my ability...[intervenes]

CHAIRPERSON: Ja, to assist.

MR DE BEER: ...to assist you.

CHAIRPERSON: Yes.

MR DE BEER: Um...

20 **CHAIRPERSON:** Mr Soni, can you help him with the agreement, please?

ADV SONI SC: Yes, I am just...[intervenes]

CHAIRPERSON: He is looking for the page for the agreement ...[intervenes]

MR DE BEER: I am just looking at what date the

agreement...

CHAIRPERSON: But I do not know if that will help you in terms of... oh, you want the agreement be changed over? The change of the identity of the purchaser?

MR DE BEER: Ja, what... what date...

CHAIRPERSON: H'm.

MR DE BEER: So there was an email about the um...

CHAIRPERSON: Uh, Mr Soni, are you able to help him?

ADV SONI SC: Yes. The agreement with Precise Trade is
10 the 26th of November 2014 Chairperson.

MR DE BEER: Ja.

ADV SONI SC: So this is ...[intervenes]

CHAIRPERSON: So it is long after?

ADV SONI SC: ...a month later.

CHAIRPERSON: Oh, no not... not necessarily long after but it is after.

MR DE BEER: Yes, it is after.

CHAIRPERSON: Yes. Ja.

ADV SONI SC: It is between the two.

20 **CHAIRPERSON:** Yes, yes. So.... so and therefore it means that when you wrote to Mr Van der Walt and he...he said to you why you are copying Mr Montana, you were not including Montana in regard to this property after the change of the purchaser for the first time? You had done so before?

MR DE BEER: Yes, but if you... if you look at this one which

was in between the two emails, I never even referred to um, uh, Van der Walt here.

CHAIRPERSON: Yes. No, no. I... I... I accept that. The point that I am trying to see whether you and I can agree on is that there are at least now two occasions when you are in involving... you were involving Mr Montana in regard to this property...[intervenes]

MR DE BEER: Where...[intervenes]

CHAIRPERSON: ...during a time when he was no longer a
10 purchaser.

MR DE BEER: Yes.

CHAIRPERSON: You agree with me on that?

MR DE BEER: [No audible reply]

CHAIRPERSON: Ja, ja. Okay.

MR DE BEER: Correct.

CHAIRPERSON: So... so but then... but to go back to... to the point was, when we are looking at the dates of the two emails and you discovered that the one is 2015 and not 2016.

20 **MR DE BEER:** Correct.

CHAIRPERSON: The... the question that uh, Mr Soni had asked you was, why would you have been communicating with Mr Montana at a time when he had nothing to do, to your knowledge... if to your knowledge...[intervenes]

MR DE BEER: Yes.

CHAIRPERSON: ...he had nothing with this property? And you had earlier said that you cannot explain uh, who... is that still your answer that...? You can see that it is awkward ...[indistinct]

MR DE BEER: No, I understand.

CHAIRPERSON: Yes, yes, yes.

MR DE BEER: And... you know, I...[intervenes]

CHAIRPERSON: Yes.

MR DE BEER: ...at this point in my life, I was very ill.

10 **CHAIRPERSON:** Yes, yes.

MR DE BEER: Um, I was on... I was heavily medicated.

CHAIRPERSON: Yes.

MR DE BEER: And I cannot tell you...[intervenes]

CHAIRPERSON: Yes.

MR DE BEER: ...why... why I did this.

CHAIRPERSON: Yes.

MR DE BEER: There is no, you know...

CHAIRPERSON: Ja.

MR DE BEER: It... it is what it is.

20 **CHAIRPERSON:** Yes, yes.

MR DE BEER: The facts are here.

CHAIRPERSON: Yes.

MR DE BEER: It is in writing. It is in black-and-white.

CHAIRPERSON: Yes.

MR DE BEER: And I cannot tell you why.

CHAIRPERSON: Yes.

MR DE BEER: Because it should not have been.

CHAIRPERSON: Yes. Well, Mr Soni maybe you... you... maybe you need to put to Mr Van der Walt(sic) what you... what you... you think the position is. Uh, if it is not too early to do that.

ADV SONI SC: Yes.

CHAIRPERSON: Because maybe that might help him even to remember.

10 **ADV SONI SC:** Yes.

CHAIRPERSON: But if you intended to do that a little later, that is fine. I am just saying.

ADV SONI SC: No, I... I would like to.

CHAIRPERSON: I am just saying...[intervenes]

ADV SONI SC: Yes.

CHAIRPERSON: ...maybe it.. it is the time to put to him so he can comment.

ADV SONI SC: Uh, Mr Green, this is a property that is purchases for nearly R 14 million, correct?

20 **MR DE BEER:** [No audible reply]

ADV SONI SC: Mr Montana comes to the show house. He buys the property. He finds a deposit is paid by somebody who is saying he is paying money on behalf of Mr Montana

MECHANICAL INTERRUPTION

ADV SONI SC: Then there is a change in... and you are told

“please change the name of the purchaser”. Then after, you communicate. Even after the change, you communicated with Mr Montana.

MR DE BEER: Correct.

ADV SONI SC: Until you are told “why are you dealing with Mr Montana?” Now, it... it appears strange that a person who was... had interest in this and who was not... uh, the uh, Mr Van der Walt was not at an arm’s length with Mr Montana. He is the one who paid the deposit. That R 5 million deposit.

10 It is paid by Mr Van der Walt. It is paid by Precise Trade.

MR DE BEER: I do not know who paid it. The money came from that account, yes.

ADV SONI SC: Yes.

MR DE BEER: The trust account.

ADV SONI SC: Yes. Yes, but Mr Van der Walt’s trust account.

MR DE BEER: Yes.

ADV SONI SC: Ja. And so, all we just want to...[intervenes]

MR DE BEER: It was not unusual.

20 **ADV SONI SC**: Ja.

CHAIRPERSON: No, I... I... I think Mr Green, I think you are maybe saying and I do not know... I just want to clarify because maybe that is the area of confusion in uh, in regard to your answer and Mr Soni’s question. You may be meaning, you were not aware when the deposit was made,

who made the deposit? Or is that not the case?

MR DE BEER: No, no. I do not... I have no idea who paid the deposit...[intervenenes]

CHAIRPERSON: Yes.

MR DE BEER: ...other than that the deposit came on Mr Van der Walt's trust account to our trust account.

CHAIRPERSON: Oh, you... you knew that when you had that payment of the deposit happened? You knew that... where it came from?

10 **MR DE BEER**: Yes.

CHAIRPERSON: Oh, okay.

MR DE BEER: Because I received the...[intervenenes]

CHAIRPERSON: All right. Then we are on the same page.

MR DE BEER: ...the uh, the email.

CHAIRPERSON: Oh, then you are on the same page. Ja.

MR DE BEER: Yes.

ADV SONI SC: Yes.

CHAIRPERSON: H'm.

20 **ADV SONI SC**: And the deposit is made, if you look at uh, page 89 of those documents. The beneficiary reference number is said to be Montana. Although the deposit is paid by Mr Van der Walt's firm, it... it is in regards to uh, Mr Montana's purchase.

MR DE BEER: Yes, because Mr Montana was the purchaser.

ADV SONI SC: And then, suddenly... and you are

communicating with Mr Montana throughout this period together with Mr Van der Walt even after the change in ownership.

MR DE BEER: Yes.

ADV SONI SC: And then suddenly you are told but why are you talking to Mr Montana? Does that not sound strange? And I told you last year.

MR DE BEER: Ja. Well, I never... I mean, I never uh... I did not understand the mechanics of the entities and, you know,
10 the arrangements between the parties. It is... it is not um, uncommon for someone to say:

“You know what? I am not going to put this into my personal name. I am going to put it into an entity. Uh, I am going to put it into a trust. It is going to become a development property”.

So it is something that happened.

ADV SONI SC: Right.

MR DE BEER: Um, so...

ADV SONI SC: So on our version, this is not something
20 that...[intervenes]

MR DE BEER: It is not unusual.

ADV SONI SC: It may not be unusual. I am asking in all the circumstances, did it not strike you as strange?

MR DE BEER: Well, when it struck me as strange was when I got the... the mail from um, Van der Walt, saying, “why

are... why did you copy Montana in, in this communication?"

For me that was strange.

ADV SONI SC: Yes.

MR DE BEER: You know, I did not even... it did not even enter my mind to divorce the two. There was no... I never had formal notification that this is how it is. So, I did not know.

ADV SONI SC: Let me go back to something else about that email. Mr Van der Walt says to you: "But look, I told you
10 last year that he had nothing to do with this property". Is that true? Did he tell you that

MR DE BEER: I do not recall. I cannot... I cannot say I recall him telling me...[intervenes]

CHAIRPERSON: Does the email say...[intervenes]

MR DE BEER: The email says...[intervenes]

CHAIRPERSON: ...the previous year.

MR DE BEER: ..."I explained to you last year".

CHAIRPERSON: Ja, okay.

MR DE BEER: You know, maybe that was uh, his telling me:
20 "Listen, I am buying the property now". Um, that is... he... what he is considering his explanation last year that it is not Montana anymore. I... I cannot... I cannot answer...

CHAIRPERSON: Mr Soni...[intervenes]

MR DE BEER: I do not recall uh... I never received an official notification saying that this is what the structure is

and... you know, I... I had always thought that they were uh, partners in development.

ADV SONI SC: Why did you think that?

MR DE BEER: That is just what... just from their interaction and...

ADV SONI SC: The interaction with...[intervenes]

CHAIRPERSON: Who did you think were partners?

MR DE BEER: Uh, Montana and um, Van der Walt.

CHAIRPERSON: Van der Walt.

10 **MR DE BEER:** Ja, that they had entered into a partnership in this particular development.

CHAIRPERSON: What development?

MR DE BEER: Um, which is not unusual.

CHAIRPERSON: What development?

MR DE BEER: Well...[intervenes]

CHAIRPERSON: Was unlisted development. That... that property Sandhurst or is not uh...[intervenes]

MR DE BEER: It has not been... it was a house.

CHAIRPERSON: A house. Yes.

20 **MR DE BEER:** But it had not been developed. I mean, they... uh, it has not been developed where the Hurlingham's number 1 has been... the development work has started on that property but uh, um Sandhurst...[intervenes]

CHAIRPERSON: What are you talking about when you say it was... it had not been developed but it was a house?

MR DE BEER: Well, I... I thought the... the intention was to develop the Sandhurst property, to do something else. You know, and that is why I thought um, they were partners.

CHAIRPERSON: Who gave you that impression?

MR DE BEER: I beg your pardon?

CHAIRPERSON: Who gave you that impression?

MR DE BEER: No, no one. It... it is just their interaction that gave me the impression. It was not uh... there was no formal “this is what we do and here is our uh, development
10 plan or document”.

CHAIRPERSON: H’m.

MR DE BEER: It is just from what... what was said that I derived um, my thoughts. You know, in my mind how I thought it was structured.

CHAIRPERSON: Mr Soni, continue.

ADV SONI SC: Yes. You say the interactions were... were you in their presence when the two of them were together?

MR DE BEER: I have never been with the two of them together ever.

20 **ADV SONI SC**: When you say interactions, what are you talking about?

MR DE BEER: Ja, just the... the... when you know, when I met with Van der Walt and when I met with Montana, I thought that um, they had moved it from Montana into a development company to a property company to do

something with the property.

ADV SONI SC: But you thought Montana was still involved?

MR DE BEER: Yes. Uh, I did not know that this has been separate or, you know, I had no idea of any of this stuff that uh, I am sitting here being questioned.

ADV SONI SC: Ja. Now Mr Green, when I talked to you earlier, raised all these matters with you. You might remember. I showed you all these emails.

MR DE BEER: Yes.

10 **ADV SONI SC:** It is not a question of questioning you. It is trying to make sense.

MR DE BEER: No, no. I...[intervenes]

ADV SONI SC: Of what does not appear to...[intervenes]

MR DE BEER: Absolutely.

ADV SONI SC: ...to... So I would like you to...[intervenes]

MR DE BEER: And there are unfortunately big gaps. I mean, I would have had piles of papers of uh, every transaction. There was paperwork. There is... and correspondence.

20 There is never... I never uh, delve into uh, um, a situation like this without paperwork where I can tell you exactly automatically what happened. I do not have that. Uh...

ADV SONI SC: But anyway. Can I get back to your affidavit? What you said in your affidavit...[intervenes]

CHAIRPERSON: Wait, before... before... before you do that Mr Soni.

ADV SONI SC: Oh, sorry.

CHAIRPERSON: When you copied Mr Montana um, when you sent an email to Mr Van der Walt...[intervenes]

MR DE BEER: Yes.

CHAIRPERSON: ...and Mr Van der Walt said: “Explain to me why you are copying uh, Mr Montana?”

MR DE BEER: Mr Montana.

10 **CHAIRPERSON:** “You know that he has got nothing to do with this uh, company... my company or the property”. Why did you not say to him: “Oh, I thought you... you guys were partners in some development?” Because that is the only thing I can think of now...[intervenes]

MR DE BEER: Ja.

CHAIRPERSON: ...uh, that might have influenced you. Is that what might have influenced you?

MR DE BEER: No, I... I mean, my natural is to just... okay, sorry. I had it all wrong. Uh...[intervenes]

20 **CHAIRPERSON:** But that is not...[intervenes]

MR DE BEER: Uh...[intervenes]

CHAIRPERSON: But that is not natural. That is not a natural reaction Mr Green.

MR DE BEER: Is that not?

CHAIRPERSON: If you genuinely believed that the two were

in a partnership that relates to this property and you copy Mr Montana. And Mr Van der Walt objects and calls upon you to give an explanation, it seems to be the natural or uh, reaction would be: “Oh, but I thought you guys were partners. That is why I copied him”.

Or, you might say, “I am sorry. I thought that...” You... you would say, “This is how it comes about. This is my understanding.”

He might say, “Where did you get that from”. Or
10 whatever. But you would offer this explanation because that is the genuine explanation.

MR DE BEER: Ja, I mean, my... my reaction was: “I am sorry. You know, like, I really did not know and apologies. I uh, I had no idea.” Is that not what apologies suggests?

CHAIRPERSON: H’m. No, no, no. I am just thinking if... if... if... if somebody seems to criticise you on something that you genuinely believe was fine...[intervenes]

MR DE BEER: H’m.

CHAIRPERSON: ...uh, then you would say, “Please help me
20 because this is how I have always understood your relationship to be but if it is not uh, I will not but this is why I did it. Otherwise, I had no other reason”. That is what I would have expected.

MR DE BEER: Oh, you know, my response is what is here.

CHAIRPERSON: Yes.

MR DE BEER: I cannot [laughs]... I cannot change my response. That was my response.

CHAIRPERSON: Yes.

MR DE BEER: Though, you know, be it right or wrong. That was the response. And I... I cannot say to you uh, I did not have type up an email or...[intervenes]

CHAIRPERSON: H'm.

MR DE BEER: ...to phone him or... My response was apologies. Like, sorry. Uh, carry on.

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

MR DE BEER: You know it was...

CHAIRPERSON: H'm.

MR DE BEER: It... it... my job was done. I was finished.

CHAIRPERSON: H'm.

MR DE BEER: There was no... I did not have to do any of this uh, remote keys and uh, pool fence, maintenance.

CHAIRPERSON: H'm.

MR DE BEER: That was... my job was done. The minute the property transferred, I am finished.

20 **CHAIRPERSON:** H'm.

MR DE BEER: So I had no obligation to Van Der Walt to um, look after anything.

CHAIRPERSON: H'm. H'm.

MR DE BEER: Ja, I... I did receive um, a mandate from him in 2017...

CHAIRPERSON: H'm.

MR DE BEER: ...to sell the property for him.

CHAIRPERSON: H'm. H'm.

MR DE BEER: And then my obligations were to him.

CHAIRPERSON: H'm.

MR DE BEER: And I was now in a situation where I was answerable to him.

CHAIRPERSON: H'm. Mr Soni, continue.

ADV SONI SC: Uh, Mr Green, I just want to ask. In respect
10 of your recollection of this, what you set out in your... in your affidavit...[intervenes]

MR DE BEER: Yes.

ADV SONI SC: ...is your recollection at the time and soon after all these things happened?

MR DE BEER: Yes.

ADV SONI SC: Chair, I have no further questions.

CHAIRPERSON: H'm. Ai. Well, I thought you would uh, put to Mr Van der Walt(sic) what may have happened at least.

ADV SONI SC: Yes.

20 **CHAIRPERSON:** Um, having regard to a lot of evidence that has been led here and some of the evidence that will still be led, anyone knowing the evidence that has been led and some of the evidence that is still to be led, is likely to wonder whether, besides trade, did not become the purchaser... was not the purchaser simply by name in form

but the real of owner of the house was going to be Mr Montana.

Or that whatever name was written in the deed's office as the owner of the property, the person who was going to enjoy the occupation, whether it was not Mr Montana.

Now if that is the position, it may make sense why Mr Montana would continue to be involved in regard to this property after there had been a change of the identity of the purchaser.

10 It would explain why uh, you would have written... you would have copied him when you wrote to Mr Van der Walt about the keys. Was it the keys or the cover?

MR DE BEER: The keys of the property.

CHAIRPERSON: Ja. It would explain why. Because if Mr Montana was going to be the person who was going to occupy the property or if he was the... the real owner of the property, he would be the person who would need to know where to find the keys and so and so on. Did you... what do you think about that possibility?

20 **MR DE BEER:** Ja, uh... you know um, unfortunately, Van der Walt says, as I explained to you last year. So I cannot say, well, he did not explain to me last year, that he is... you know, it is quite possible that he did.

CHAIRPERSON: H'm.

MR DE BEER: So I... and he put in his letter here that he

explained to me last year.

CHAIRPERSON: H'm.

MR DE BEER: So at the time of um, my... my responding to this...[intervenes]

CHAIRPERSON: H'm.

MR DE BEER: ...and just saying apologies...[intervenes]

CHAIRPERSON: H'm.

MR DE BEER: ...uh, it is possible that he had explained to me the year or uh, a couple of months prior to this.

10 **CHAIRPERSON:** H'm.

MR DE BEER: Um...[intervenes]

CHAIRPERSON: But the questions I am...[intervenes]

MR DE BEER: Uh...[intervenes]

CHAIRPERSON: ...the question I am putting to you is, whether you agree that if the person was going to occupy the property was Mr Montana, even though the purchaser was Precise Trade or, if in... if the real owner of the property was going to be Montana even though on paper.

MR DE BEER: Uh ...[intervenes]

20 **CHAIRPERSON:** ...of Precise Trade, would you agree that it would make sense why you would keep on um, involving him?

MR DE BEER: Uh, if... if I can say that when I ...[intervenes]

CHAIRPERSON: If that was your understanding.

MR DE BEER: Well, when I first showed Montana the house...[intervenes]

CHAIRPERSON: H'm.

MR DE BEER: ...I... it was my understanding then that he would occupy the house.

CHAIRPERSON: H'm.

MR DE BEER: That he would move in and live in this house.

CHAIRPERSON: H'm.

MR DE BEER: That was my understanding.

10 **CHAIRPERSON:** H'm.

MR DE BEER: Um, the circumstances changed.

CHAIRPERSON: H'm.

MR DE BEER: Because Precise Trading became the legal entity that owned that property.

CHAIRPERSON: H'm.

MR DE BEER: Um, or let me ask why did Montana not occupy the house once Precise got occupation fo the property? Why did not Precise do a... a rental deal to Montana? Because they were trying to rent the property out.

20 I think they did rent the property out.

CHAIRPERSON: H'm?

MR DE BEER: So why did not Montana rent the property from Precise.

CHAIRPERSON: Yes, but you are not answering my question. My question is. Do you accept that it would make

sense or you... it would have made sense for you to involve Mr Montana even though he was not the purchaser of the property, if your understanding at the time was that he was going to occupy the property or he was the real owner of the property?

MR DE BEER: All right. So...[intervenes]

CHAIRPERSON: That was your understanding.

MR DE BEER: If you are asking me, did I believe he was the real owner of the property? The answer is no.

10 **CHAIRPERSON:** Yes, but... but if you... if that was your understanding, would it... would you agree that, then it would make sense to involve him?

MR DE BEER: If I thought that he was the ...[intervenes]

CHAIRPERSON: The real owner.

MR DE BEER: ...that uh, Van der Walt was a proxy or...?

CHAIRPERSON: Ja, that kind of thing.

MR DE BEER: Uh...

CHAIRPERSON: Yes.

MR DE BEER: Then yes, I would...

20 **CHAIRPERSON:** Yes.

MR DE BEER: I would agree with you.

CHAIRPERSON: Yes, yes. Otherwise, you cannot think of any other reason why you would involve somebody who is not the owner of the property.

MR DE BEER: Ja.

CHAIRPERSON: Who is not the purchaser, who is not the tenant in discussing about the keys and so on.

MR DE BEER: Correct.

CHAIRPERSON: Ja. Okay. Alright. Um, it... it... it... it maybe that we... I do not know if we will put everything that should be put to Mr Van der... Mr Green?

ADV SONI SC: Yes, Chair.

CHAIRPERSON: Um...

ADV SONI SC: Chairperson, the difficulty is that Mr Green's
10 recollection of this does not go beyond the... what he said in his...

CHAIRPERSON: Yes, but the question of what he knew and is it not because if he knew the position to be that Montana was the real owner then it makes sense that he was involving him.

MR SONI SC: Yes, yes.

CHAIRPERSON: Or that he was going to occupy or that he had some rights in the property under ...[intervenes]

MR SONI SC: Ja.

20 **CHAIRPERSON:** Ja, then it makes sense.

MR SONI SC: Yes.

CHAIRPERSON: But it does not know, he did not know, it does not make sense.

MR SONI SC: Yes.

CHAIRPERSON: And he concedes that.

MR SONI SC: Yes.

CHAIRPERSON: It does not make sense. Maybe we should leave at this, you can reflect on it. Mr van der Walt, we may or may not ask you to come ...[intervenes]

MR SONI SC: Mr Green.

CHAIRPERSON: I am sorry. I am terribly – it is late in the day. Mr Green, we might call you back later on.

MR GREEN: No problem.

CHAIRPERSON: And in the meantime, you might or might
10 not be able to refresh your memory in one way or another but I think let us leave it at that for this evening.

MR SONI SC: Yes.

CHAIRPERSON: Thank you very much, Mr Green, we appreciate that you came and for all the patience. I am sorry that we are finished so late.

MS DE BEER: No...

CHAIRPERSON: But thank you very much, you are excused.

MR SONI SC: Thank you very much.

20 **MR GREEN:** Thank you.

MR SONI SC: I will just leave this here.

CHAIRPERSON: Yes, yes.

MR SONI SC: Chairperson, our next witness is going to be Ms Karin de Beer.

CHAIRPERSON: Yes, let her come through. Those files,

does Ms de Beer need them or else they could be taken away, those files that Mr Green was using.

MR SONI SC: No. No.

CHAIRPERSON: She does not need any documents?

MR SONI SC: No, she just needs ...[intervenes]

CHAIRPERSON: Then they must be taken away if she does not need them. Does she need that file?

MS DE BEER: Just G, Chair.

CHAIRPERSON: Oh, okay. Ms de Beer, I am terribly
10 sorry, we have kept you like the whole day. We really apologise but we are very grateful that you have been patient. Thank you very much. Please administer the oath or affirmation?

MS KAREN DE BEER: (d.s.s.)

CHAIRPERSON: Thank you very much, you may be seated. You may proceed, Mr Soni.

MR SONI SC: As you please, Chairperson. Ms de Beer, firstly, let me thank you for coming all the way from Cape Town. I know you do live in Pretoria but you shortened
20 your trip in Cape Town and we are very, very grateful to you. Ms de Beer, you have a statement in front of you that starts at page 49 of bundle G and ends at page 50, is that correct?

MS DE BEER: Yes.

MR SONI SC: Now you have read this statement.

MS DE BEER: Yes.

MR SONI SC: Recently as well.

MS DE BEER: Ja, I did.

MR SONI SC: Do you confirm that what is contained in this statement is true and correct?

MS DE BEER: Absolutely.

CHAIRPERSON: Hang on one second, we are talking about a statement, a sworn statement, appearing at page 49, handwritten 49 of bundle G and the statement is
10 admitted as EXHIBIT SS15.

HANDWRITTEN SWORN STATEMENT BY KAREN DE BEER HANDED IN AS EXHIBIT SS15

MR SONI SC: As you please, Chairperson.

CHAIRPERSON: Ja. It is a statement by Karen de Beer, is that right?

MS DE BEER: That is correct.

CHAIRPERSON: Yes, thank you.

MR SONI SC: Now to the extent that you want to refer to your statement please feel free to do so but in my short
20 conversation with you, as I understand it, you have quite a good recollection of what happened during this period.

MS DE BEER: Yes, yes, very well.

MR SONI SC: Yes.

MS DE BEER: You know, I did not meet – you know, I had my property on the market, it was a guesthouse and

...[intervenes]

CHAIRPERSON: Just for record just indicate what property we are talking about?

MS DE BEER: 225 Rose Street, Waterkloof.

CHAIRPERSON: Waterkloof?

MS DE BEER: Waterkloof.

CHAIRPERSON: Yes, okay, that is the Waterkloof property.

10 **MR SONI SC:** On our version it would be the Waterkloof property.

CHAIRPERSON: Ja, Waterkloof property, yes.

MS DE BEER: Yes.

CHAIRPERSON: Yes, okay, you owned the property?

MS DE BEER: Yes, I owned.

CHAIRPERSON: Yes.

MS DE BEER: It was a guesthouse. I am a property developer and I did two developments, you know, guesthouses just before the World Cup and ...[intervenes]

CHAIRPERSON: 2010.

20 **MS DE BEER:** Yes, 2010. So I purchased the property 2005, 2006 and then I did two projects and – so after the World Cup I basically decided to sell the property, so in 2013 I put it on the market. And Mr Lucky Montana lived five houses away from me in the same street.

So when the boards went up I – on the first time

that the house was sold in 2013, the 10 March, two of my agents Daniel de Lange and Antoinette Geldenhuys at that time was the people selling the property and the boards went up and the first weekend that they showed the house, the one agent, Daniel, is very into cars. You know, he likes nice cars.

So he came and he brought me a contract and for exactly the price – and, you know, I am used to, because I am in property development, you know, people when it is a
10 house at that price they are always trying to bargain with you. So I said but ...[intervenes]

CHAIRPERSON: What was is being sold for, what was the price that you were selling it for?

MS DE BEER: I eventually sold it for 10.5 million.

CHAIRPERSON: For?

MS DE BEER: 10.5 million.

CHAIRPERSON: But what was the price that you had put up if you are able to remember?

MS DE BEER: 11 million.

20 **CHAIRPERSON:** Okay, alright.

MS DE BEER: At the first contract, was sold for 11 million.

CHAIRPERSON: Yes.

MS DE BEER: The first transaction we did.

CHAIRPERSON: Yes, yes.

MS DE BEER: And there was no offering for a lower price, etcetera, so I said to my agent, I said listen, when people buying this kind of properties, he did not make an offer? And he says no. I said then I do not trust this transaction, you know? And he says no, no, no, this is ...[intervenes]

CHAIRPERSON: And who was the purchaser for the 11 million price?

MS DE BEER: Lucky Montana.

10 **CHAIRPERSON:** Lucky Montana.

MS DE BEER: So they came to me and they said to me ja, but Lucky Montana, he is the CEO of PRASA and his cars – because he came there two or three times and every time with a different very, very smart expensive car. So he said to me no, no, no, no, there will not be a problem, he will be able to afford because he said to us the loan is a formality because one of his friends worked at ABSA. But what he did not know, I was also an ABSA client.

And so three weeks later, I got an email to say that
20 they only got value for 7.5 million. So I was so angry because I knew, because I was an ABSA client, my bond was more than that at that stage and they knew that. So, I mean, I knew it was not correct. So ...[intervenes]

CHAIRPERSON: I am sorry, hang on one second?

MS DE BEER: I am sorry.

CHAIRPERSON: Before this offer to purchase of Mr Montana for 11 million, did you know Mr Montana?

MS DE BEER: Not at all.

CHAIRPERSON: Even though he was five blocks away?

MS DE BEER: Yes not at all.

CHAIRPERSON: Okay, okay.

MS DE BEER: I only found that out after we met on the second transaction.

CHAIRPERSON: Oh, okay.

10 **MS DE BEER:** That he was living there.

CHAIRPERSON: But you are now saying that you learnt that ABSA had valued your property for 7 million or was it somebody else who had valued the property?

MS DE BEER: No, it was – I got a letter from Mr Lucky Montana.

CHAIRPERSON: Ja.

20 **MS DE BEER:** That he received a valuation from ABSA and they only found 7.5 million value which I knew was not true because, I mean, I had a bond, you know, on the property because I bought for a lot less but I did, as I say, a development there.

CHAIRPERSON: Development.

MS DE BEER: And I did a guesthouse. So I really spent a lot of money there. And ...[intervenens]

CHAIRPERSON: When you say you knew it was not true.

MS DE BEER: Ja?

CHAIRPERSON: What was not true, was it the valuation
...[intervenenes]

MS DE BEER: The valuation was not true.

CHAIRPERSON: Or that he had got the valuation?

MS DE BEER: Ja, no, no, no, I – you see, he said to my
agent the bond will be a formality.

CHAIRPERSON: Yes.

MS DE BEER: That we will get the bond within no time
10 because he has got a friend in ABSA that is going to assist
him. So three weeks later I got a letter from him stating
that they only found value for R7.5 million. Okay?

So I said to my agent, okay, do you want – oh he
said ja, but Lucky would like to meet with me to discuss
this. So I said no, I am not in – I am not going to start with
an auction, I am withdrawing the property from the market.
Which I did and ...[intervenenes]

MR SONI SC: Sorry, can I just stop you and just,
Chairperson, because there are documents that are
20 available. Can I ask you to look at page 52 to page 59?

CHAIRPERSON: Of course another way of doing it, Mr
Soni, and I do not know if it might be a faster way, to let
her finish her story and then later on identify the
documents.

MR SONI SC: As you please.

CHAIRPERSON: Yes, okay.

MS DE BEER: Okay. So 18 months later I decided to put the house back on the market and when the first board went up, Lucky stopped there and he went to – at that stage it was Liesl Theunissen and Daniel, the agent that was also involved on the first transaction, they were showing the house and that is how I found out that Lucky lived five houses from me because as they put the boards up, he stopped there and he said to the agent, okay, I want
10 to make an offer, I have to have this house.

And so the agent said to him, listen, my boss will not sell to you because of the previous experience, there is no way that I can take an offer to her. So he said okay, go and speak to her and come back to me and tell her this time I am buying cash. So the agent came to me and I said to him ...[intervenes]

CHAIRPERSON: This time what was the price, this time. Was it 11 million?

MS DE BEER: I had it in the – it was 11 million and he
20 made an offer for 10.5 million.

CHAIRPERSON: Okay.

MS DE BEER: Okay. So I said to the agent, okay, cash. You know, last time it was a formality, now it is cash. No, if he does not put down at least 3.5 million non-refundable deposit I am not going to enter into an agreement with him.

So this must – discuss it with him first, let us not waste one another's time and then from there I will enter into an agreement, so – which we did and he did pay the R3.5 million non-refundable deposit into his lawyer's trust account which I think paid it over – I cannot recall, but to my lawyer's trust account and the balance they paid later.

They were supposed to pay it 30 days after the deposit and they went over longer but I gave them leeway to sort of like get all their ducks in a row because at that
10 time they came back to my lawyer and said but they want to buy the property through a Mr Johan Smith from Cape Town.

And I was very angry about it. I said no, no, no, no, you know, this is now just dragging this whole transaction, I am not going to allow this.

And so my lawyer my actually said, okay, I will discuss it with them, etcetera, it will not take longer than normal, it is just changing the contract. Okay.

And then after that - how I know it was Mr Lucky
20 Montana, I did not meet him on the first contract, on the second contract he insisted meeting me.

But my staff, everybody, they were in awe with him and the one lady that has been working for me for many years said to me she cannot believe that a man that works in an overall can afford a house like this because he

sometimes visited the house to come and do measurements, etcetera, in his PRASA overall. Okay. So that is one of the reasons why we knew it was Mr Lucky Montana.

But I met with him twice, the last time to hand over the keys of my house and discuss, you know, technicalities about, you know, when he would like to move in, etcetera.

But I sent a letter and that is the other thing, to prove that it was Mr Lucky Montana, I sent a letter to all
10 my neighbours, because I had a very good relationship with them, and I introduced my new buyer to the whole community and I said please, I would like you guys to make Mr Lucky Montana feel welcome, etcetera, he is the CEO of PRASA and I have sent that out and I do not know whether that was the reason why the next moment Mr Paul O'Sullivan contacted me and it was the Rapport and the Sunday Times and everybody was like a ton of bricks, you know, sort of to get information, which I did not want to give in the beginning because I did not know what was
20 going on and I did not want Mr Lucky Montana – he was a very, very sweet man and a very nice guy, so I did not want trouble for him and I did not know about all the dealings, etcetera, so I refused in the beginning until this Paul O'Sullivan told me if you do not give me the contracts and stuff, I will subpoena you to come to court. So that is

basically how I got involved in this whole investigation.

CHAIRPERSON: Yes, Mr Soni, I think you can...

MR SONI SC: Yes, Chair, but we have the full picture.

CHAIRPERSON: Yes, yes.

MR SONI SC: And I just want to fill in the documents.

CHAIRPERSON: Yes.

MR SONI SC: Ms de Beer, can I ask you, if you turn to page 52, up to page 59.

MS DE BEER: Yes.

10 **MR SONI SC:** This is an offer – a deed of members – a sale of members' interest. Is this the first agreement that you entered into with Mr Montana?

MS DE BEER: Yes.

MR SONI SC: And if you look at page 59 you will see that it is dated the 10 February 2013.

MS DE BEER: That is correct.

MR SONI SC: That is when you signed.

MS DE BEER: That is correct.

20 **MR SONI SC:** And then if you look at the purchase price, purchase price was R10,5 million.

MS DE BEER: Yes because the reason for the 10,5, I went because I wanted at that stage to sell the house very quickly.

MR SONI SC: Yes.

MS DE BEER: So I said to my agents even though he

never sort of like agreed on, you know, sort of making an offer, I said to him let us tell him – because he said it was a formality, tell him I ...[intervenes]

CHAIRPERSON: Look at me more than you look at him. I am the one you are telling the story to.

MS DE BEER: I am terribly sorry about that. Okay, so I said to my agent, when he came to me and he said to me ja, it is going to be a quick deal, it is a formality, I said to him to make it more sweet, I said let us – go to your guy
10 and say to him that I will sell the property to him if it is so quick at R10.5 million. Okay?

So that is the reason why it was sold for 10.5. He never made an offer for 10.5, I offered. Okay?

MR SONI SC: Then if you turn to page 65.

MS DE BEER: Yes.

MR SONI SC: You will see that that is the agreement you concluded with Mr Johan Smith as a trustee of the Minor(?) Property Trust, page 65.

MS DE BEER: Ja.

20 **MR SONI SC:** Do you see that is the Memorandum of Agreement yourself ...[intervenes]

MS DE BEER: This one was replaced with the one that was signed by Lucky Montana. This contract – the original one was signed by Lucky Montana in this contract and then they say okay, they are going to exchange ...[intervenes]

CHAIRPERSON: Then it was Smith?

MS DE BEER: Yes.

CHAIRPERSON: And then – but it later changed to Precise Trade or not?

MR SONI SC: Yes.

MS DE BEER: Ja.

CHAIRPERSON: Ultimately it was changed to Precise Trade.

MS DE BEER: Ja.

10 **CHAIRPERSON:** Yes, okay.

MR SONI SC: Just to put it in perspective, at page 70 will see that the agreement with Mr Smith was signed on the 25 August 2014, if you look at page 70.

MS DE BEER: Page 70?

MR SONI SC: 70, yes, the handwritten 70.

MS DE BEER: Ja, ja, that is correct.

MR SONI SC: But what eventually happened and that is what the Chairperson was pointing out, that if you look at page 71, this is the Deed of Transfer, the property was in
20 fact transferred to – from Amani Guesthouse CC to Precise Trade and Invest CC.

MS DE BEER: Yes.

MR SONI SC: So that is what the Chairperson has been saying.

MS DE BEER: Ja.

MR SONI SC: So we had three sets of owners, if I can put that way.

MS DE BEER: That is correct, there was a big controversy all of them about which entity to use and that is, like I say, that is the reason why I was very angry because I was thinking, you know, this whole thing – and I was threatening that if they do not come to a point now of making a decision, they are going to forfeit their deposit, you know, I need this to be registered.

10 And so that is why – and I must be honest with you, that I did not really – I am not a very good administrator, I left that for my lawyers, but eventually, you know, I just said to my lawyer just deal with it, whatever – whatever they want to use.

I mean, my buyer was Lucky Montana, whichever entity he decides to use, I do not really care, I just want to get this registered and move on. So for that reason, as I say, it was different entities that was used.

MR SONI SC: Ms de Beer, you said something as you
20 started this part of your evidence, you said there was a controversy among them.

MS DE BEER: Ja.

MR SONI SC: Who is the them?

MS DE BEER: I did not really speak to any of the people but I mean I was told – I was phoned by my lawyer to say

Johan Smith in Cape Town and they are not sure.

Now who they were, I do not really – I cannot really tell you who all was involved. Like I say, I did not get into the nitty gritty.

All I know is that Lucky was my buyer and him and Johan Smith and all of them were sort of like arguing of which CC or company or whatever to use and I just referred them back to Mr P J Viviers who was my lawyer at the time and Mr van der Walt did the negotiations with my
10 lawyer.

CHAIRPERSON: Alright.

MS DE BEER: So my – I do not – I cannot recall but I do not think my lawyer had any dealings with Johan Smith or I think they had done that dealings through the lawyer of Mr Lucky Montana which was Van der Walt.

MR SONI SC: Eventually the property was transferred to Precise Trade as you had agreed.

MS DE BEER: That is correct.

MR SONI SC: And the price was 11 million – at the price
20 of R11 million.

MS DE BEER: I think was 10.5.

MR SONI SC: Well, if you look at page 73 at the bottom.

MS DE BEER: Ja?

MR SONI SC: You will see and the purchase price to be the sum of R11 million. The very last two lines of

...[intervenes]

MS DE BEER: Oh, oh, yes, I see. Okay. Yes, as I say, that is why I know and maybe – I do not know, maybe I was – I cannot remember - like if I cannot recall, maybe I was angry and they offered 11 million after the 10.5 originally 18 months ago.

MR SONI SC: And you were not going to give [inaudible – speaking simultaneously]

MS DE BEER: Definitely not.

10 **MR SONI SC:** Yes. Now we have the – and I am just trying to understand because you said something quite significant at the end of your affidavit, that Montana coming and saying on several occasions I want to buy this property.

MS DE BEER: Yes.

MR SONI SC: But then he says, as you say, there is a controversy in whose name should the property be registered.

MS DE BEER: He never discussed that with me, never.

20 **MR SONI SC:** No, no, I understand.

MS DE BEER: Ja, okay.

MR SONI SC: But there ...[intervenes]

CHAIRPERSON: What you did understand is that the controversy was about in whose name the property would be ...[intervenes]

MS DE BEER: Yes, yes.

CHAIRPERSON: He did not discuss it with you but from your lawyer you understood that there was a controversy.

MS DE BEER: Yes, that is correct.

CHAIRPERSON: Ja, okay.

MS DE BEER: The whole issue around whose – which entity is to be used was done through his lawyer, Van der Walt, and I was just notified by my lawyer that this what is busy happening and I was fighting with my lawyer and I
10 said they had better now get to a point of what they want to do because otherwise they are out of time, I am going to get them to forfeit their deposit.

CHAIRPERSON: And I guess what you wanted was the millions.

MS DE BEER: Yes. [Laughter]

CHAIRPERSON: In what name the entity – the property was, you did not care, you wanted the millions.

MS DE BEER: Absolutely, absolutely.

MR SONI SC: But just in regard to the point because this
20 obviously was a matter of some significance to you.

In your affidavit, which you made in September 2015, on the 21 September 2015, if you look at page 50, you make a point about who the purchaser really was and can I ask you to please read what you say at paragraph 8 of that affidavit into the record?

CHAIRPERSON: What page?

MR SONI SC: Page 50, Chairperson.

CHAIRPERSON: Five zero?

MR SONI SC: Yes.

MS DE BEER: Okay.

CHAIRPERSON: Okay.

MS DE BEER: You are talking about...

MR SONI SC: Paragraph that starts despite ...[intervenes]

CHAIRPERSON: The top paragraph at page
10 ...[intervenes]

MS DE BEER: Okay.

“Despite the fact that there are corporate entities involved there is no doubt in my mind whatsoever that the house in question was sold by me through my CC to Lucky Montana. First to him directly, then to a trust run by Johan Smith and eventually through his attorneys, corporate Precise Trade and Invest. The various contracting entities, such as John Smith, Minor Property Trust and Fredees(?)
20 Trade and Invest Unlimited are merely this alter ego of Montana.”

Which is correct.

MR SONI SC: Now when you handed the keys over, to whom did you hand the keys over?

MS DE BEER: I handed the keys over to Mr Lucky

Montana myself.

MR SONI SC: This is the day after or a day or two after you left the property?

MS DE BEER: Yes. Oh, another very important thing is that I believe that if you leave a property for somebody else, make sure that it looks better than what he saw it. So I actually phoned his secretary and I asked her at a time to meet with Mr Montana ...[intervenes]

CHAIRPERSON: That is Mr Montana's secretary?

10 **MS DE BEER:** Yes.

CHAIRPERSON: Yes.

MS DE BEER: And I phoned and I said I would like to meet with him because I am going to repaint the house. That was not part of the deal but when I moved my stuff out, out of the house, all the marks where your furniture was, was – you know, there was ugly marks, etcetera, and I looked at it and I thought, you know, with all my furniture and everything, this is not the picture that he saw and I would not like to leave it like this.

20 So I phoned her and said to her please could you ask Lucky I would like to meet with him and then he can tell me what colour he would like to have the house from the inside. He did not offer the outside but I mean the inside of the house.

And then she said to me okay, she will come back

to me and I think a day or two later she said to me Mr Montana said thank you for the offer, but, I mean, do not worry about it, he is going to redo and rebuild the inside so you are going to just waste money.

So there was also part of the fact that me and Lucky discussed that and that happened because, I mean, after I moved out, he almost rebuilt the whole house. I was very upset because I thought it was very beautiful.
[Laughter]

10 **CHAIRPERSON:** So, in other words, what Mr Montana's secretary told you, Mr Montana said he would do to the house actually happened subsequently?

MS DE BEER: Yes, yes.

CHAIRPERSON: Okay.

MS DE BEER: He said to me it is no need to do that, I mean, he going to break down the place anyway.

MR SONI SC: And you are a developer, was it a major – I mean, was it a major renovation that he effected?

MS DE BEER: I never, I must be honest with you I never
20 had contact with him afterwards, but I drove past that house, I had a lot of sentimental values there, you understand so I drove a lot past it to see what is happening, but you know when I drove past there I mean I was so upset because there was just scaffolding, all the windows were broken out, there was new windows put in, in

the whole house, and as I say it went on for months you know and up till today the scaffolding is still standing there.

Nobody ever moved in, and it has been six years.

ADV SONI SC: Oh.

MS DE BEER: I think, I think, I think the State sort of didn't allow because when Paula Sullivan got involved, I think they blocked any movement on the house, or something like that, because nobody has moved in, in six
10 years.

ADV SONI SC: Now there was a stage just before you moved out that Montana walked through the house with you, is that correct?

MS DE BEER: That's correct.

ADV SONI SC: And you deal with that at paragraph 6 of your affidavit Ms de Beer?

MS DE BEER: Ja.

ADV SONI SC: And you can start, it is at paragraph 6, and you can start with the sentence that reads, the second
20 sentence, the first meeting.

MS DE BEER: The first meeting I had with Montana was in or about mid-November 2014. Montana walked through the house at that stage as he wanted to check some things I moved out and the morning of the 26th 2013 I again met with Montana and handed him the keys for the property.

ADV SONI SC: This is after he declined your offer to repaint the house.

MS DE BEER: That is correct.

ADV SONI SC: The inside, sorry.

MS DE BEER: Yes.

ADV SONI SC: And then can I ask you to please turn to pages 7 ...[intervenes]

CHAIRPERSON: Just before that, so all of this happened, the transfer happened, the transfer was – of the property
10 was from your close corporation as the owner to Precise Trade as the new owner but you are saying as far as you are concerned the real owner was Mr Montana?

MS DE BEER: For sure.

CHAIRPERSON: And you say you had these interactions with him even with his secretary saying that Mr Montana said he would – telling you his plans about the house, which ultimately you saw happening?

MS DE BEER: Absolutely, because I – when I walked through the house with Lucky when I handed him the keys I
20 suggested to him, because being in property development and I had business rights because it was a guesthouse and you know the average rates and taxes at that time in Waterkloof was about R2 400 roundabout there, and I think at that time if I can remember well mine was about R11 000 to R12 000, and I asked him who is going to stay in this

house and he said he was going to stay there, and I said to him I suggest that if you – I said are you going to run it as a guesthouse and he said to me no, he was going to live there. And I said to him you know I would suggest that you deregister the business rights because otherwise you are going to pay R10 000 a month more for rates and taxes if you are not going to run it as a business, and so he said no, no it is not necessary he will keep it like that, maybe in future he would like to do something with it.

10 So I mean I had those kind of discussions with him.

CHAIRPERSON: Yes okay.

MS DE BEER: Okay.

CHAIRPERSON: Thank you, I interrupted you Mr Soni.

ADV SONI SC: Yes.

CHAIRPERSON: I interrupted you, you can continue.

ADV SONI SC: No Chair, can I ask you please Ms de Beer to look at page 76 and page 77 and these are letters you wrote after you left.

MS DE BEER: That's correct.

20 **ADV SONI SC:** Is that correct? What are these letters, just in general before you read them?

MS DE BEER: These letters, as you will see is the 27th of November, that was after I handed over my keys to Mr Montana and I just actually felt the community, my neighbours, because I had good relationships with my

neighbours, and I just basically introduced Mr Lucky Montana to them, and you know sort of like telling them, you know make him welcome, make him feel – because he is a very smart man, and he is a very gentle man and I would like you people to sort of make him part of the community. So this is the reason for the letter that I have written.

CHAIRPERSON: If that email hasn't been read into the record I think ...[intervenes]

10 **ADV SONI SC:** I want it read in ja.

CHAIRPERSON: Ja, go ahead yes.

ADV SONI SC: So the email is dated the 27th of November and it is addressed to a particular email address and the subject matter is Rose Avenue Security, is that your ...[intervenes]

MS DE BEER: Yes, what actually happened I mean I was about a year or two years prior to that my husband was gun-pointed at our house coming from the gym and it was very, very traumatic and after that we had 24 hour security
20 at our, you know with a gatehouse outside our gate. So that is basically just ...[intervenes]

CHAIRPERSON: Whose email address is that one where you sent it to, and – is it Vision or something, do you want to, that letter at page 76, that email address. Was that a common email address for the community or what?

MS DE BEER: Yes, I think, I can't remember well, you know at some stage some of the community also got involved with security and I can't remember whether that was you know part of – you know because some of the community would get say ten houses would have a security patrolling and I can't remember at this stage what really happening, all I know we had our own security, but we also sort of participated you know in the community as well you understand, so I think maybe that could be that, I can't
10 remember.

CHAIRPERSON: Okay, okay.

ADV SONI SC: Will you read then – well to whom is that email addressed?

MS DE BEER: To who?

ADV SONI SC: Yes.

MS DE BEER: I would like, to all my neighbours, which one? Ja, my neighbours it was the people across the road from me, the people – I had a corner stand, it was a corner house, now the people right opposite me, the people next
20 to me on the left hand side and the people at the top of me. It was only to basic three neighbours, ja. The people that I was close to.

CHAIRPERSON: Okay, just read the whole email.

MS DE BEER: Okay.

“To all my neighbours,

I would like to inform you that I have sold my home to Mr Lucky Montana, the current CEO of PRASA. He is a very nice gentleman and would take full responsibility of the property on the 1st December 2014. I would like to find out whether you would be interested to continue with our arrangement concerning the security, if not I would remove the guardhouse and continue with their service at my new residence.

10 Thank you very much for your kind and faithful friendship over the past seven years and I hope you have a prosperous Christmas and a New Year.”

ADV SONI SC: And you sign off as ...[intervenes]

MS DE BEER: Karen de Beer ...[intervenes]

ADV SONI SC: Ms Karen de Beer and ...[intervenes]

MS DE BEER: Karen de Beer and Family yes. I remember now, sorry, I remember now, it was the ...[intervenes]

CHAIRPERSON: The email address?

20 **MS DE BEER:** The email address, Vision Property, was the few neighbours just on either side, we were just about four or five, because of the gun pointing you know we basically decided to get somebody you know sort of to patrol.

CHAIRPERSON: Okay.

MR SONI SC: Then if you look at the next page, page 77, you will see that is a further email from yourself, but this is addressed to Karen Mitchell.

CHAIRPERSON: At what page?

MR SONI SC: Oh sorry, page 77 Chair I think, it is the very next page.

CHAIRPERSON: Well it also say to all my neighbours, but it says addressed to, okay, yes continue.

MS DE BEER: I think maybe ...[intervenes]

10 **CHAIRPERSON:** Is it identical?

MR SONI SC: It is identical.

MS DE BEER: It is identical.

CHAIRPERSON: Ja, okay.

MS DE BEER: I think what could have happened here, maybe one of my staff maybe had an oversight on one of the people and that we then basically forwarded to them.

CHAIRPERSON: Ja, okay.

MS DE BEER: Okay.

20 **MR SONI SC:** But what you say in your affidavit, and I am just asking if that is now your recollection as well, you want to make it public that you want them to embrace Mr Montana?

MS DE BEER: Yes, yes. You know we had a very, very nice community and you know everybody was quite sensitive about what is going on around them after this gun

point etcetera, and I wanted to let these people know that there is somebody moving in here, this is who it is and it is a very nice person and I would like him, because I also told him about the nice neighbours that I had, so I want to just make – actually them to get to know one another.

CHAIRPERSON: Yes, yes.

MS DE BEER: I told him about what nice neighbours I have and I told them about what a nice man has bought my house.

10 **CHAIRPERSON:** Did you ever meet Mr van der Walt?

MR SONI SC: Never, never.

MS DE BEER: But Mr Montana you met?

MR SONI SC: Yes Mr Montana I met several times.

MS DE BEER: Yes.

MR SONI SC: On the last contract, on the first contract never.

MS DE BEER: Yes, okay, alright.

MR SONI SC: And to your knowledge did Mr van der Walt ever visit the house, in the way that Mr Montana said don't
20 worry about painting and ...[intervenes]

MS DE BEER: No, because I don't know what Mr van der Walt looks like, I have never met him, I don't even know where his offices is.

MR SONI SC: And Mr Johan Smit?

MS DE BEER: Never, never. I never spoke to any of

them, I never spoke to them, I worked through my lawyer.

MR SONI SC: So Mr Montana is the only one that you spoke to amongst the different ...[intervenes]

MS DE BEER: Yes, and his secretary?

CHAIRPERSON: H'm?

MS DE BEER: And his secretary.

CHAIRPERSON: And his secretary, yes okay, okay.

MR SONI SC: Chairperson I have no further questions.

CHAIRPERSON: Yes thank you very much Ms de Beer, we
10 will release you, we once again want to say we are grateful
that you were patient, thank you very much for coming to
give your evidence.

MS DE BEER: It is a pleasure.

CHAIRPERSON: You are now excused.

MS DE BEER: Thank you.

MR SONI SC: Thank you again from us Ms de Beer.

CHAIRPERSON: We will adjourn now and tomorrow it is
two witnesses, depending on whether an application is
going to be brought in terms of ...[intervenes]

20 **CHAIRPERSON:** Ja, okay, so we will, but we will start at
ten. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 2 JULY 2020