

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

05 AUGUST 2020

DAY 245



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 05 AUGUST 2020

CHAIRPERSON: Good morning Ms Mokoena, good morning everybody.

ADV MOLEFE: Good morning Chair it is Molefe.

CHAIRPERSON: Yes. Molefe I am sorry.

ADV MOLEFE: Thank you Chair.

CHAIRPERSON: I think I am ageing why should I get your surname wrong after you have been with the commission for three years.

10 **ADV MOLEFE:** Yes – all is forgiven Chair.

CHAIRPERSON: Yes. We – I need to give the – my decision in the matter of Mr Lungisa Fuzile’s application for Leave to Cross-examine Mr Van Rooyen. You are for the commission’s legal team. I think there is appearance for both Mr Fuzile and Mr Van Rooyen. Is that right?

ADV MOLEFE: That is correct Chair.

CHAIRPERSON: Okay maybe they can just place themselves on record – on record from where they are.

ADV RAJAH: Chair Hester Barata appearing for Mr Fuzile.

20 **CHAIRPERSON:** Thank you.

ADV MOTHA: Chair Mr Motsai Mamotsha [?] from Lucky Thekisho Attorneys.

CHAIRPERSON: Hm.

ADV MOTHA: We are presenting the respondent Mr Des Van Rooyen.

CHAIRPERSON: Hm.

ADV MOTHA: We are here to note the judgment.

CHAIRPERSON: Hm.

ADV MOTHA: Thank you Chairperson.

CHAIRPERSON: Okay. Thank you. I have prepared brief reasons for the decision. I do not propose to read the decision but I have noticed one or two typographical errors which will need to be corrected in the course of the morning. So the decision can be sent to all parties at some stage
10 today. I will just read out the decision and the reasons are set out in the decision that would be emailed to the – not to the parties. I have reached a conclusion that it is not in the best interest of the function of the commission to grant Mr Fuzile leave to cross-examine Mr Van Rooyen that is the conclusion I have reached and the last sentence or line of the decision then reads:

“In all of the circumstances I conclude that Mr Fuzile’s application falls to be dismissed accordingly it is dismissed.”

ADV MOLEFE: Thank you Chair. Chair may I please take
20 about five minutes of an adjournment for Mr Pretorius to come and address you. I believe there are several other matters he will be dealing with unless he is ready to proceed at this current moment.

CHAIRPERSON: He is sitting that other side. If he needs five minutes, we will do that. Do you need five minutes Mr

Pretorius?

ADV PAUL JOSEPH PRETORIUS SC: [Not speaking into microphone].

CHAIRPERSON: Oh okay. Thank you. I will – otherwise those who need to be excused are excused.

ADV MOLEFE: Thank you Chair.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: Morning Chair.

CHAIRPERSON: Good morning Mr Pretorius.

10 **ADV PRETORIUS SC:** Chair as alluded to yesterday the witness set down for today is Mr Mokhetsi. He is represented by attorney and counsel who are here to make an application before you and I will respond after hearing Mr Fouche.

CHAIRPERSON: Thank you. Counsel if you can make your – move your application from there or move to the podium if they sanitise.

ADV FOUCHE: Thank you Chairperson

CHAIRPERSON: Yes thank you.

20 **ADV FOUCHE:** Chairperson I appear on behalf of Mr Mokhetsi in this matter.

CHAIRPERSON: Yes.

ADV FOUCHE: Mr Mokhetsi is present he is not running away.

CHAIRPERSON: Yes. Okay maybe start by just placing

yourself on record.

ADV FOUCHE: My surname is Fouche.

CHAIRPERSON: Yes.

ADV FOUCHE: G V R

CHAIRPERSON: Thank you.

ADV FOUCHE: Thank you Mr Chairperson.

CHAIRPERSON: Yes.

ADV FOUCHE: Chairperson Mr Mokhetsi he cooperated up until now.

10 **CHAIRPERSON:** Yes.

ADV FOUCHE: He is still cooperating.

CHAIRPERSON: Hm.

ADV FOUCHE: He filed two affidavits.

CHAIRPERSON: Hm.

ADV FOUCHE: One on the request of the commission after his first affidavit.

CHAIRPERSON: Hm.

20 **ADV FOUCHE:** However, he was represented by the state attorney of Bloemfontein which – or Free State up until – well at the end of June there were some – some signs that they might withdraw as attorneys for Mr Mokhetsi and then that was only confirmed in – on a letter of 17 July.

CHAIRPERSON: Hm.

ADV FOUCHE: That letter was addressed to his Counsel at that stage Mr Tswyhele [?] and Mr Tswyhele also was leaded

by what I gathered from it by a Mr Hellens SC. So that 17 July that came to his attention on the 20 July that the state attorney definitely withdrawing as his attorney of record. Then on the 27 July the – a Mr Lambrechts being the investigator of the inquiry of the commission he sent an email to Mr Mokhetsi in person making him aware of today's date the 5 August. So that is today exactly one week ago on a Wednesday.

CHAIRPERSON: Hm.

10 **ADV FOUCHE:** After that Mr Mokhetsi obtained legal representation from Mr Peyper in Bloemfontein and I am on brief on behalf of Mr Peyper in this matter. So at the moment Chairman I am basically playing off the bench. I am playing as a substitute player in the last minutes of this game. So I am not in a position to give any sound legal advice at the moment to Mr Mokhetsi. I am not aware of any of the background of this whole investigation. I have consulted only this morning with Mr Mokhetsi and he – he told me that in his view he would like Mr Hellens to remain
20 on brief. In his view Mr Hellens is the person that – that assisted him throughout also in drafting the affidavits. So he is the – he is the Counsel – the Senior Counsel with the knowledge at the moment and the current legal team simply does not have the legal knowledge to assist him sufficiently. He is the HOD of the Department. It is important evidence

that will be led by him. He is not running Chairperson. He is more than willing to testify. What we gathered also in respect of yesterday's hearing and from the introduction from Mr Pretorius is that there is plenty of documents involved in that. Mr Mokhetsi is not sure whether he has seen all of these documents. We have been told this morning that those documents might have been given to the state attorney of Bloemfontein we do not know. We certainly do not have them. I do not – did not have any sight of them. My
10 attorneys did not have sight of them. So we are in a very difficult position and we not – Mr Mokhetsi is not in a position to testify today. However he will cooperate, he will testify and we are simply seeking an indulgence for two weeks if possible so that those documents can be scrutinised by him and if he has got a new legal team if Mr Hellens does not stay on board so that they have the opportunity to – and he will have the proper opportunity to – well his evidence before the commission in a better fashion I suppose.

CHAIRPERSON: Hm.

20 **ADV FOUCHE:** If he had sight of those documents. Because he might feel like he is being ambushed if new documents being introduced to him and he might not be able to assist this commission as such in that. So Chairperson in short those are my submissions, the reasons are basically – oh what I have not mentioned is that Mr Hellens tested

positive for Covid seven to ten days ago if I am not mistaken. So he cannot be here.

CHAIRPERSON: Hm.

ADV FOUCHE: Initially when the state attorney was still on – well was still the attorney for Mr Mokhetsi and he agreed to be here during this week he still had attorneys of record being the state attorneys and Mr Hellens would have been available and subsequent to that letter that came to his attention on the 20th July that changed dramatically and that
10 is why we – we are not in a position to proceed. He is not in a position to give evidence and we seek that indulgence Mr Chairperson.

CHAIRPERSON: Hm. Do you know whether the position is that had Mr Hellens not tested positive for Covid-19 they would have been able to proceed today?

ADV FOUCHE: What I gathered in the consultation this morning Chairperson is that he was available.

CHAIRPERSON: He was available?

ADV FOUCHE: That is what I gathered but at that stage
20 then the state attorney was also still his attorney.

CHAIRPERSON: Yes.

ADV FOUCHE: And he was briefed by them.

CHAIRPERSON: Yes.

ADV FOUCHE: I cannot answer whether he will remain on brief.

CHAIRPERSON: Yes.

ADV FOUICHE: Even when he returns whether he will be able to.

CHAIRPERSON: Yes. Yes.

ADV FOUICHE: But initially when – when the dates of this week was given Mr Hellens was according to my instructions.

CHAIRPERSON: Was available.

ADV FOUICHE: He was available.

CHAIRPERSON: Yes. Well if I postpone, we look at where –
10 what date we can postpone but we are pressed for time as everybody knows the [indistinct] the commission.

ADV FOUICHE: Indeed so.

CHAIRPERSON: And we have started to arrange for what we call evening sessions. That is an arrangement in terms of which during the day there would be witness who gives evidence during the day or witnesses who give evidence during the day and when we finish with them at four o'clock or thereabout we start with an evening – we start our evening session so then maybe people that we say come at
20 four o'clock you will give evidence during the evening session. Maybe from 4 to 7, maybe from 4 to 8 that kind of thing. So I am just – I just want to say if I do postpone there is that possibility that he could be fitted into an evening session.

ADV FOUICHE: I also...

CHAIRPERSON: I take it that – that should not be a problem.

ADV FOUCHE: I have already canvassed that with Mr Mokhetsi and he is more than willing to even sit in the evenings.

CHAIRPERSON: Yes. Yes. Okay no that is fine. Let me hear what Mr Pretorius has to say.

ADV FOUCHE: Thank you Chairperson.

CHAIRPERSON: Thank you.

10 **ADV PRETORIUS SC:** Chair we did in preparation for this morning's application obtain a full history of the engagements between the parties. It is not necessary to go through it in any detail because it is common cause that the date today was a matter of agreement between the parties including legal representatives. May I just say in relation to the application Mr Mokhetsi is an important witness. He is an implicated person and he is the accounting officer in respect of this project and I think in those circumstances Chair it is important that we make every effort to act fairly
20 towards him so that he may fairly account for the questions that need to be put to him in relation to his role as accounting officer in this matter. Chair there has been some discussion about the availability of records. In that respect I have just taken instructions from the investigator who interviewed Mr Mokhetsi on the 30 October 2019 and the

transcript shows that there was a full discussion between the investigators and the legal representatives of Mr Mokhetsi in relation to the availability of documents – the documents that were shown to him and of course many of the relevant documents were in the possession of Mr Mokhetsi or at least under his control and I think that is an important feature. It may be that the – the ball has – or the boot is on the other foot because we – we may require documents that have not been given to us. Thank you Chair.

10 **CHAIRPERSON:** Thank you. The hearing of Mr Mokhetsi's evidence which was scheduled for today is postponed to a date to be determined and he has indicated his commitment to appear before the commission and to give evidence and to cooperate with the commission. An attempt will be made to try and communicate the date in the next few days so that it might not be two weeks as you asked for but every attempt will be made to not delay the hearing of his evidence unduly. But you have indicated that the Counsel that he would prefer to assist him tested positive and about 7 or so days ago so
20 one might bare that in mind in fixing the date. So the application for a postponement is granted and the date will be communicated to all concerned in the next few days. We are going to adjourn because Mr Mokhetsi was going to be the only witness for the day it means we are not sitting for the next few hours but this afternoon at five o'clock the

commission will sit to hear the evidence of Judge Makhubele as arranged a few days ago. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good evening everybody. I do not know if it is late afternoon or it is evening already but – this late afternoon/evening we have our first evening session as the commission. We announced last week that there will be
10 evening sessions to try and make sure that we use as much time as we can have to expedite our work and the hearing of evidence so that we finish the commission’s work within the time that has been given to us.

This evening we are going to do what we were supposed to do on Monday but could not do in the afternoon because of certain reasons.

I am going to hear the evidence of Judge Makhubele. For now, I have not made a decision Judge Makhubele’s application for “the recusal of Advocate Soni SC” and – but
20 we will use this time to give Judge Makhubele an opportunity to present her side of the story but also for me to put certain questions to her. The contemplation is that there would still be another day when an evidence leader can put questions to Judge Makhubele once I have either decided on the so called recusal application or if I have decided or found

somebody who can then lead the evidence for practical purposes. So that is why Mr Soni is not at the podium today but he is here and I will call upon him to assist me with regard to finding certain document that I might need at a certain stage because he and his junior are maybe quite familiar with the location of various documents in the bundle. So there will be two parts.

1. I will allow Judge Makhubele the opportunity to tell her side of the story to a very large extent I will not be asking her questions during that time. I am going to limit that to thirty minutes and she has indicated that she is happy with that allocation of time. And thereafter I will put questions to her and then she will deal with the questions that I will put to her.

I think for the purposes of refreshing the memories of the public and whoever may be listening it is important to say that Judge Makhubele's evidence falls under the investigation that the commission is doing in regard to various allegations of corruption and acts of state capture at PRASA. And Ms Martha Ngoye who is Head of the Legal Department at PRASA as well as Mr Dingiswayo who is also in the same department at PRASA gave evidence on a number of matters but their evidence also included what they said was the role played by Judge Makhubele when she was chairperson of the board of PRASA from – towards the end

of 2017 to about – it was end of March of mid-March 2018 when she resigned. The part of the allegations they made was that Judge Makhubele came to PRASA and had a special interest in the settling of certain cases which had been brought by certain companies falling under a group called – a group of companies called Siyaya Group. That company had allegedly entered into certain contracts with PRASA and according to it – or according to those companies they had performed certain services for PRASA and PRASA had failed
10 to pay them when it was obliged to do so. And those matters had been lodged in court and PRASA had filed its defences, its pleas but ultimately there was an agreement that the matters should go to arbitration and they were going to arbitrated. So Ms Ngoye testified that after Judge Makhubele had been – started being Chairperson of the Board of PRASA she insisted that the claims by those specific entities of – falling under Siyaya should be settled and that her department was excluded. And Mr Dingiswayo testified that on the 15 December 2017 she phoned – he
20 phoned the attorneys who represented PRASA in those arbitration proceedings Mogashwa Attorneys in order to discuss the matter but was told by Mr Mogashwa that the Chairperson of the Board that is Judge Makhubele had instructed that the attorneys should not speak to the legal department of PRASA about those matters.

The long and short of it is that the matters were settled and the allegations that the attorneys for Siyaya Group got information that came from the Chairperson of PRASA, Judge Makhubele that would not be expected to have been sent to the other side and there was a question of how it had come about that PRASA's opponents in the litigation on the arbitration got information that they should not have got. In particular it was information about how PRASA's attorneys had been instructed to settle the matters.

10 After the matters had been settled Siyaya's lawyers and PRASA's lawyers made arrangements in terms of which they appeared before the arbitrator who is a retired Judge and the settlement agreement was made an order of court so awards were made which required PRASA to make payments to the Siyaya Group and the amounts altogether appeared to have been in the region of about R59 million that PRASA had to pay.

 There was also interest that was supposed to be paid and when PRASA did not pay those amounts the Siyaya
20 Group of Companies approached the court to make the arbitration awards an order of court.

 By that time the legal department of PRASA had been in touch with the newly appointed Minister of Transport Doctor Nzimande who had – and had told him what they believed was happening and the role that they believed

Judge Makhubele had played and he had instructed that the legal department should take steps to try and in effect reverse that process.

So the arbitration awards had been made orders of court but subsequently a rescission application was made and those were rescinded but the legal department had also to bring an interdict application – urgent interdict application to prevent the sheriff from paying over millions of PRASA's money to the Siyaya Group because in the meantime Siyaya
10 Group – the Siyaya Group had attached money in PRASA's bank account.

So Ms Ngoye and her department instructed another law firm Bowmans in order to assist with regard to that. Also there their evidence was to the effect that there was some drama in court because when comes and briefed by Bowmans sought to oppose it was found that Counsel for Siyaya Group was able to show the Judge a message that had been received according to them from Judge Makhubele which said that the – lawyers representing PRASA which
20 sought to oppose the Siyaya Group's application had no authority to do so and the Judge had ultimately accepted that and granted the order.

But ultimately the rescission application that was brought by PRASA was successful and those amounts were not paid over.

So I thought I would summarise the gist of the evidence given by them. There are other details but it is just refreshing the memory of the public so that also they can understand this evening's evidence in its proper context.

As I said what I will do after Judge Makhubele has taken the oath I will give her about thirty minutes to tell her side of the story and after thirty minutes I will then ask her questions. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

10 **JUDGE MAKHUBELE:** Tintswalo Annah Makhubele.

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

JUDGE MAKHUBELE: No.

ADV PRETORIUS SC: Do you consider the oath to be binding on your conscience?

JUDGE MAKHUBELE: Yes.

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
20 God.

JUDGE MAKHUBELE: So help me God.

CHAIRPERSON: Thank you very much Judge Makhubele. You now have thirty minutes to tell your side of the story.

JUDGE MAKHUBELE: Thank you Chairperson. Before – before that I think I need to place on record the issues about

the documents that I was provided on Monday. They are behind me so even for two minutes if I can deal with that?

CHAIRPERSON: Yes. I think – I think somebody can help you to bring them to you. Somebody will bring them to your – in front of you.

JUDGE MAKHUBELE: I do not know what is the best way to deal with them.

CHAIRPERSON: Or they might put them...

JUDGE MAKHUBELE: What I wanted to say maybe because
10 they were handed over to me in a hurry there is one bundle which...

CHAIRPERSON: Well I can tell you that what the way to distinguish them you should look at the spine of each one. Each one is supposed to be written Bundle 1 or Bundle 2 or Bundle 3 each one of them.

JUDGE MAKHUBELE: No I – I have. What I want to say is that one bundle which contains the documents of one Lucky Montana nothing to do with me at all.

CHAIRPERSON: Oh, okay.

20 **JUDGE MAKHUBELE:** So I just want to say ...[intervenes]

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: ...it is a whole file and...

CHAIRPERSON: Ja, they can take that away.

JUDGE MAKHUBELE: So when it means documents, you must not say I came and stole it.

CHAIRPERSON: [laughs]

JUDGE MAKHUBELE: [laughs] Lucky Montana's documents.

CHAIRPERSON: Ja-no, I think they must ...[intervenes]

JUDGE MAKHUBELE: If it can be removed from ...[intervenes]

CHAIRPERSON: It can be removed from...

JUDGE MAKHUBELE: From my side.

CHAIRPERSON: Yes, yes. Ms Renate, look for that one and
10 take it away.

JUDGE MAKHUBELE: It says, "additional documents". These are all Montana's documents. My story Chair is in the bundle where I responded to Advocate Botes' affidavit.

CHAIRPERSON: I am sorry. I was given my registrar a message here. Just start afresh please.

JUDGE MAKHUBELE: I am told it is Bundle J.

CHAIRPERSON: And that is the one that has got Mr Botes' affidavit and your affidavit as well?

JUDGE MAKHUBELE: Yes. In... there is an attachment in
20 my response to Advocate Botes' affidavit.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: It is a statement of referral of a complaint in the Pretoria Bar.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: I am not sure if it has been paginated

by...

CHAIRPERSON: Well, I have seen it. I have read it. So I am sure it is here. It is ...[intervenes]

JUDGE MAKHUBELE: It is... the pagination is the red stamp.

CHAIRPERSON: Actually, normally we use the red but I think where you see the red and the black, follow the black one at the... it is rather top left of each page. Mr Soni, that is correct, hey?

10 **JUDGE MAKHUBELE:** I think it is the ...[indistinct] [dip in recording] The flag is... there are so many flags, same numbers but I see ...[intervenes]

CHAIRPERSON: Well, I see ...[intervenes]

JUDGE MAKHUBELE: SS19-TAM.-46.

CHAIRPERSON: Yes, when you refer to the page, then you can leave out SS19 and TAM and the zero. You can just say 43, if it is ...[intervenes]

JUDGE MAKHUBELE: 45.

CHAIRPERSON: Ja, is it 45?

20 **JUDGE MAKHUBELE:** So that is 45.

CHAIRPERSON: Oh, but that is red. Let us try and... what is the black number?

JUDGE MAKHUBELE: The black... I do not know whether it is me who must be BB?

CHAIRPERSON: No, I think I am going to find 45 now.

JUDGE MAKHUBELE: Oh, the black is 147.

CHAIRPERSON: Just put... switch on your mic from the...
Mr Soni.

ADV SONI SC: Page 146.

CHAIRPERSON: One-forty... the black 146?

ADV SONI SC: Yes.

CHAIRPERSON: Okay page 146. Okay. I have got that.
But that is the last page, hey? Where does it... at what page
does it start? Can you find that Judge Makhubele?

10 **JUDGE MAKHUBELE:** It is 147.

CHAIRPERSON: It starts at...[intervenes]

JUDGE MAKHUBELE: It starts at 147.

CHAIRPERSON: 147? Oh, okay.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: Oh, your “statement of referral”. Ja.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: Ja, okay page 147. That is the black 147.

20 **JUDGE MAKHUBELE:** Yes, Chair. Remember I have said, I
have not provided a sworn statement. I am still going to do
that.

CHAIRPERSON: Ja, okay.

JUDGE MAKHUBELE: But ...[intervenes]

CHAIRPERSON: Okay.

JUDGE MAKHUBELE: ...the essence of the statement is
what is in here.

CHAIRPERSON: Okay.

JUDGE MAKHUBELE: And as I have indicated, I will have to make certain additions ...[intervenes]

CHAIRPERSON: Ja.

JUDGE MAKHUBELE: ...based on the oral testimony of Ms Ngoye and Mr Dingiswayo which I have not considered. I have been given transcripts yesterday at night. I think around seven or eight. So I... from what I could quickly glean out, I need to file a proper sworn statement.

10 **CHAIRPERSON:** Okay, okay.

JUDGE MAKHUBELE: So today Chair the 30-minutes may not even be enough to deal the... the main evidence or allegations against me are by Ms Ngoye.

CHAIRPERSON: Ja.

JUDGE MAKHUBELE: So I will still deal with Mr Mogashoa and Mr Botes.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: Mr Achmat.

CHAIRPERSON: Okay.

20 **JUDGE MAKHUBELE:** And Mr Madimpe.

CHAIRPERSON: Well, let us see how much you have been able to cover by 30-minutes and take it from there.

JUDGE MAKHUBELE: Well, the other thing... remember Chair, now I am attorney and client.

CHAIRPERSON: Ja.

JUDGE MAKHUBELE: And [laughs] I ...[intervenes]

CHAIRPERSON: [laughs] And counsel.

JUDGE MAKHUBELE: And counsel and everything. And yesterday, I wrote a letter which I am not... I do not even think it has reached you.

Where... because I wanted to understand exactly what are the allegations here that you are investigating because remember, everything comes from the affidavit that Ms Ngoye filed at Pretoria High Court and which I have here.

10 So the complainants here have filed a complaint at the JCC but they have added other things which I want to be certain that here ...[intervenes]

CHAIRPERSON: Well, here you are expected to deal with the witnesses' affidavit as filed here.

JUDGE MAKHUBELE: As filed here?

CHAIRPERSON: As filed here, yes.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: Ja.

JUDGE MAKHUBELE: Because there is a ...[intervenes]

20 **CHAIRPERSON:** Which you have got.

JUDGE MAKHUBELE: There is confusion, even in the public domain that... there are so many allegations. Nothing to do, the settlement of their claims which I believe that is what I must respond to.

CHAIRPERSON: H'm-h'm-h'm.

JUDGE MAKHUBELE: Here before you Chair.

CHAIRPERSON: Ja-no, for our purposes, you look at the affidavits that they have filed here ...[intervenes]

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: ...which have been given to you.

JUDGE MAKHUBELE: Thank you. In this statement 148... 147, I have summarised... I was... I wrote this statement with reference to the affidavit that Ms Ngoye filed in... dated 3 April 2018 in the application where PRASA was seeking to
10 interdict the Sheriff from executing the Writ.

So this statement is an answer, basically, to this affidavit. I see there are complaints here. They tried to abridge it a bit but here I dealt with the circumstances under which those claims were settled.

And basically, I denied that... or let me start here. I had an opportunity yesterday to look at Ms Ngoye's complete affidavit in... that she had filed here, dealing with everyone and every issue.

And I made notes because I was asking myself what
20 exactly is her role and what is she saying.

And I see she says in paragraph twenty... paragraph 7 of the affidavit before you Chair that the leaders in PRASA have been found wanting in various reports.

She referred to the reports of the Auditor General, Public Protector, National Treasury. And in paragraph 25

talking about Siyaya matters.

She said that it is not her intention to persuade this Commission about the merits of PRASA's ...[indistinct] but she just wants to show the length, often improper, to which people at PRASA went out to ensure that PRASA, it pays money that is not due.

And one of those people that she describes, I believe, it is me. And that is where it starts. So firstly, I deny that I am one of the people who have been found wanting in any report
10 of the ...[indistinct], the AG, National Treasury, Public Protector or any court of law.

So I am not one of those people. There is no one who has ever found me guilty or made any findings against me in relation to wrongdoings at PRASA. That is the first statement I am making Chairperson.

And secondly, I deny because she might have deleted her initial evidence but the initial evidence in the affidavit before court was that the settlements were done in secrecy. The legal section which she was heading was not consulted
20 and actually no one was consulted. That was the basis for her complaint.

And most importantly, that the settlement was done in furtherance of what she refers to as a questionable relationship between me and the lawyers who were representing Siyaya in the liquidation application.

So in this Chairperson, I highlight the circumstances. I will not deal with how I was appointed through the PRASA Board but I will deal with... well, the circumstances under which the claim was settled and it starts at paragraph 9 of this statement. That will be your page 151.

CHAIRPERSON: Yes. Okay that is still... that is page 151 of Bundle J. Yes.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: Yes, you may continue.

10 **JUDGE MAKHUBELE:** Paragraph 9 with its sub-paragraphs and there are annexures Chairperson which, unfortunately... I did send the annexures to the legal team.

CHAIRPERSON: H'm?

JUDGE MAKHUBELE: But I see they are not been paginated.

CHAIRPERSON: Yes. No, but because you... I mean, there is the overall pagination which is the black numbers ...[intervenes]

JUDGE MAKHUBELE: Yes.

20 **CHAIRPERSON:** ...at the top. You can use that. But with reference to your own statement, there are... we have numbered the paragraphs.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: So you can refer to the number... the paragraph numbers as well.

JUDGE MAKHUBELE: Well, when... sorry, when I use the word paginated, I mean the annexures are not part of the record.

CHAIRPERSON: Oh, okay

JUDGE MAKHUBELE: So Chairperson will not be able today to see the documents I am referring to. For instance, when I say:

“The liquidators approached me, first through Advocate Botes and then they wrote a letter to me...”

10 Chairperson will not be able to see that letter because I do not know if it is part of... yes, this letter ...[intervenes]

CHAIRPERSON: Well, I have got some ...[intervenes]

JUDGE MAKHUBELE: The letter ...[intervenes]

CHAIRPERSON: ...annexures.

JUDGE MAKHUBELE: The letter is part.

CHAIRPERSON: Ja.

JUDGE MAKHUBELE: But there are a lot which are not part but there are a few that are part but when I come back Chairperson, I think we will have all the annexures but the
20 letter of the liquidators is in this ...[indistinct] ...[intervenes]

CHAIRPERSON: But if you do have those annexures which are not here, in your possession at the moment, there may be an opportunity for copies to be paid. But if you do not have them, then next time we can look at them. Do you have them by any chance with you?

JUDGE MAKHUBELE: Well, I... I did send them to Ms Renata but I do not know if she compiled a bundle of those annexures.

CHAIRPERSON: Well, let me ask. Mr Soni, you know about any other annexures to statement referring the complaint to the bar council? It may be that they were not included because they might not have been seen as relevant for our purposes. Yes?

10 **ADV SONI SC:** That given the limited nature of the allegation.

CHAIRPERSON: Yes.

ADV SONI SC: And this was an allegation against Mr Baltac.

CHAIRPERSON: Yes.

ADV SONI SC: We tried to respect the ...[indistinct] ...[intervenes]

CHAIRPERSON: What you consider to be important.

ADV SONI SC: Yes.

20 **CHAIRPERSON:** But would they be available within the legal team? So I guess they would be available even if we are not here?

ADV SONI SC: I am sure they would be available.

CHAIRPERSON: Yes. Okay, okay. Alright. I think arrangements will be made if you think they are relevant. As Mr Soni says, they try to say, "Look, what is really important for purposes of the Commission's own investigation

...[intervenes]

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: As opposed to the bar council's investigation. If they are relevant, they can be obtained. So for next time, you can refer to them.

JUDGE MAKHUBELE: Well, for my purpose they are relevant because those are internal PRASA document.

CHAIRPERSON: Ja.

JUDGE MAKHUBELE: I see Ms Ngoye and Mr Dingiswayo
10 only attached my memorandum.

CHAIRPERSON: Ja.

JUDGE MAKHUBELE: But then there are documents that were generated within the board and from the secretary.

CHAIRPERSON: Ja.

JUDGE MAKHUBELE: Relating to what I am talking about here. For instance, I will need to refer to the delegation of authority which Chairperson, obviously, need to see. And the relevance of it is that I see... I saw Ms Ngoye attached a delegation of authority.

20 But my submission is that is not what was given to the board and I have proof of what was given to the board. So everything that I have sent is relevant but I will ensure that I
...[intervenes]

CHAIRPERSON: You, you...

JUDGE MAKHUBELE: I compile the bundle myself.

CHAIRPERSON: Okay that is fine.

JUDGE MAKHUBELE: And when I give a sworn statement.

CHAIRPERSON: For next time. Okay. Alright.

JUDGE MAKHUBELE: But in the first few paragraphs I deal with their approaches. And you remember Chair, that there was an issue between me... Mr Botes came here and testified that I called him and then our phones were subjected to investigations.

There is a report from the investigation... that it is part
10 of the bundles here. So Chair, that matter must be settled.
The report of the investigator shows that... well, obviously,
he cannot say with certainty but he says it is probable based
on what he has analysed.

It is probable that Advocate Botes is the one who contacted me first.

CHAIRPERSON: First?

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: Okay.

JUDGE MAKHUBELE: Remember, he came here and made
20 a lot of noise that I called him. So that issue Chair, you will
be referred to the relevant report that it is settled, he is the
one who called me.

CHAIRPERSON: Yes. No, he did testify that you called her first.

JUDGE MAKHUBELE: He called him, yes.

CHAIRPERSON: Ja.

JUDGE MAKHUBELE: Yes. There is a report from the investigator here that that should settle the issue.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: Unless Advocate Botes would like to take it further.

CHAIRPERSON: Yes, I think what we will... what the Commission's legal team or investigators will do is, if they have not already done, is to make that report available to
10 him for his comments.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: And you will be informed or send a copy of his comments as well.

JUDGE MAKHUBELE: So for now, I stand by my paragraph 9.1 that he called me first in the week... I said in the second week of November 2017 forward... followed by a letter. The letter is from his attorneys.

And then Advocate Botes came in person to PRASA because I said to him, I cannot discuss with him anywhere
20 else other than at PRASA. At the time I was still a member of the bar. So my chambers were still open.

But I said, "Let us meet." Rather, "Meet at PRASA than anywhere because as far as I am concerned, what you are telling me requires a transparent engagement involving everyone including my colleagues at the board. And the then

acting Group Secretary who is Mr Zide.

He then came. The date was, I think in my statement I say 13th but looking at my notes, the date there should be ...[intervenes]

CHAIRPERSON: Was it not the 14th?

JUDGE MAKHUBELE: It is 14th.

CHAIRPERSON: Ja.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: 14th of November 2017.

10 **JUDGE MAKHUBELE:** The date was 2017, November. He found with Mr Zide because on that day, I was in several meetings. That is why I was at PRASA. I said to him when he comes, I will take time off and took to him.

But by the time he came, he had already told me what he... what it was all about which was basically what is in email exchange between him and Mr Madimpe Mogashoa, that the parties involved in litigation.

20 There were those claims. Several case number but which were then consolidated because there is an arbitration clause.

My understanding is, it was not simple that there is a... we agreed to go on arbitration. There is an arbitration clause. PRASA took a point that you cannot proceed by way of action because there is an arbitration clause.

And then there was an agreement to withdraw and go to

arbitration. And in the meantime, as Chair... I do not know... I cannot remember if Chair has summarised this.

But then in the meantime, the part or of the claimants went on voluntarily liquidation. And then there was a call... an application to go... to appoint a commissioner to conduct an inquiry.

The inquiry, when I went to PRASA, had already been concluded. There was an interim report of the commissioner. His name is Mr Kruger. He had issued an interim report.

10 So when Mr Botes came to PRASA, he came with that interim report and correspondence between him and Mr Madimpe Mogashoa.

I do not have a lawyer next to me Chairperson. I wanted to refer to the ...[intervenes]

CHAIRPERSON: To the report?

JUDGE MAKHUBELE: To the report. You...

CHAIRPERSON: Yes. Well, Mr Soni is able to assist with the work.

JUDGE MAKHUBELE: So the part of the liquid... of the
20 ...[intervenes]

CHAIRPERSON: Of the liquidator?

JUDGE MAKHUBELE: Of the... not the liquidator. Of the commissioner.

CHAIRPERSON: Of the commissioner. Ja.

JUDGE MAKHUBELE: It is ...[intervenes]

CHAIRPERSON: What is the page? Where do you find ...[intervenes]

JUDGE MAKHUBELE: It is in the statement of Mr Botes.

CHAIRPERSON: Just hang on. Mr Soni might be able to just tell us what page to find it.

ADV SONI SC: It is page 28 as an annexure to ...[indistinct] ...[intervenes]

CHAIRPERSON: What volume first? What bundle?

ADV SONI SC: Oh, sorry. The Bundle is J Chairperson.

10 **CHAIRPERSON:** Bundle J. And what black number?

ADV SONI SC: Page 28. It is only that number Chair.

CHAIRPERSON: Oh, okay. What is it... where do we find it?

ADV SONI SC: It is page 28.

JUDGE MAKHUBELE: Yes, I found it. In my bundle, it is J. The black number J/-065. The red number is 28.

CHAIRPERSON: Okay. Mr Soni, you said it is page twenty...?

ADV SONI SC: It is page 28 on the right-hand side, the red.

CHAIRPERSON: The red one?

20 **ADV SONI SC:** Yes.

CHAIRPERSON: Oh. We need to be consisted if we use the black ones. [laughs]

ADV SONI SC: Yes.

CHAIRPERSON: Oh, you said there was no black number on the page?

ADV SONI SC: No, on mine... but apparently yours has it and ...[indistinct] ...[intervenes]

CHAIRPERSON: Oh, ja mine does have.

ADV SONI SC: And if I can just explain what happened here?

CHAIRPERSON: Ja.

ADV SONI SC: The bundles were prepared with the... with Judge Makhubele's complaint put at the top.

CHAIRPERSON: Oh.

10 **ADV SONI SC:** And so the pages had to be renumbered.

CHAIRPERSON: Okay.

ADV SONI SC: Because Mr Botes gave evidence first.

CHAIRPERSON: Yes, okay that is fine.

ADV SONI SC: So that is why the number...

CHAIRPERSON: Yes.

ADV SONI SC: And then what we did is, we took Judge Makhubele's complaint which he has been referring to and we have put it as part of the affidavit.

20 **CHAIRPERSON:** Yes. No, that is fine. The commissioner's interim report is at page 65 in terms of the black numbers. Yes, Judge Makhubele we are there.

JUDGE MAKHUBELE: Are you there Chairperson?

CHAIRPERSON: Yes, I have got it.

JUDGE MAKHUBELE: Yes. So that is the commissioner's interim report of the inquiry in terms of Section 417(1) and

418(2) of the Companies Act 61 of 1973 read with Item 9, 305(?) of the Companies Act 71 of 2008.

And it gives a brief summary of the evidence that he explains in paragraph 1, his appointment, the company resolution and that he has read an inquiry on 28 and 31 August 2017.

And then paragraph 3, who was representing who. Mr Botes was representing ...[intervenes]

CHAIRPERSON: Well, I think you might wish to just go
10 straight to the real issues you wanted ...[intervenes]

JUDGE MAKHUBELE: To the real issues ...[intervenes]

CHAIRPERSON: ...you wanted to draw my attention to.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: The other stuff, I can read for myself.

JUDGE MAKHUBELE: Yes. Maybe paragraph... the representation for PRASA is indicated as mister... the head council, Mr Tsatsawane and the instructing attorney was Mr Madiwe(?).

The witnesses Chairperson are in paragraph 4. It is...
20 there are six witnesses. The relevance of this paragraph is because I mentioned somewhere that I consulted with these witnesses.

And these are the witnesses who were still employed at PRASA. And that will be your Mr S Baltac and Mr ...[indistinct] And then there are those who had been issued

with subpoenas but not yet appeared.

I think they are... I will talk about them. Maybe there are two or three. But in this list, the ones that were still at PRASA is Mr Baltac and mister... the one in 4.4.

So I never had any consultation or dealings with people who are no longer at PRASA. That is the point I want to make.

And then the summary of the evidence of each witness. I am not sure if Chairperson has already... already has this
10 evidence on record so that I do not repeat it but maybe
...[intervenes]

CHAIRPERSON: No, you can make the... what you consider to be important features ...[intervenes]

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: ...of what he says for your case.

JUDGE MAKHUBELE: Then maybe the only... the witnesses that I consulted with. The evidence of Mr Sorin Baltac. Mr Sorin Baltac, in addition to this, wrote a report to me which I will give Chairperson.

20 I saw it somewhere in the annexures in the court application but I do not think it has been annexed in the documents before you.

So in the addition to this, Mr Baltac gives... also provided a report. And his evidence... he was asked to testify. He says he is a general manager signalling and

telecommunication.

And he was asked to testify about the project, indicated the technical assistance for supervision of national signalling project stage 1, phases 1 to 5 agreement and then he confirmed the agreement entered into between PRASA and the company in liquidation on that 31 May 2011 and indicates the amount just above 4 million. He confirmed he was personally involved and had personal knowledge of the way the contract was implemented and executed.

10 The reason I want this on record, Chair, is because the issues raised are that I said there were concessions by the witnesses.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: So that is not me, it is what the report is saying.

CHAIRPERSON: Yes, I think what – I think my understanding is that what has been said is that you said that in terms of the interim report it is said that they made major concessions. I thought that was what was said but
20 you can deal with it and respond to it if you never said – if all you said was, I am relying on the report because it said they had major concessions, that is fine.

JUDGE MAKHUBELE: Well, you can use the word measure or concessions, there amount would probably not be really an issue, Chair, because what is being contended

is that the witnesses never considered anything. So it is a – when issues are concession are being met it is something very strange. But, you know, English is not my first language but when I see the word confirm and then I also consult with the very same person and ask him look at this report, they say you – this is what you told the Commissioner, did you really tell the Commissioner what is written here? And the person says yes, that is what I said.

And the person writes as even a separate report to
10 you saying yes, that is what I said and I am not talking about an illiterate – let me not use the word illiterate, I am not talking about a person who is not illiterate, who may say maybe the report was not – I do not know what is written, it is not what I said, but it is a person that actually confirms what is in this report, Chairperson, so I will give Mr Soni's separate statement from this, what the Commissioner has written as well as after I have transcribed my notes that these are the dates but to me, these are concessions, whether you want to classify them
20 as major, minor, but they go to the heart of the issues that was asked to deal with, so...

CHAIRPERSON: Well, I was looking at paragraph 5 where it talks about Baltac, 5.1.7 at page 67, if you look at the black numbers. Is that where you are as well?

JUDGE MAKHUBELE: They testified about – to I think

...[intervenes]

CHAIRPERSON: Because I thought you were talking about Mr Baltac's...

JUDGE MAKHUBELE: Yes, he starts at page 29, the bottom of 29.

CHAIRPERSON: Yes, well it says – it says that - 5.1.2:

10 Mr Baltac confirmed that he was familiar with the above agreement which was entered into and concluded between PRASA and the company in liquidation on the 31 May 2011 which was for technical assistance for the supervision of national re-signalling project, stage 1, this is 1 to 5, and that the value of the contract was R54 537 600.

Then 5.1.3:

20 “He further confirmed that he was personally involved and had personal knowledge of the way the contract was implemented and executed and that according to his knowledge the company had complied with the conditions of the contract. Mr Baltac also said that he had no reason to believe that the company had not complied with the terms of the contract according to the company. The amount outstanding in terms of the contract is R15 319 491.01. Mr Baltac could not confirm or deny that this figure was accurate and agreed to

consult PRASA's records to confirm what was due in terms of the contract and then never – and referred back to the liquidators and the Commission with the correct amount. The 8 September 2007 I received a letter from PRASA's attorneys in which they said that their clients were investigating the matter and that they would as soon as possible make their findings available to the Commission."

JUDGE MAKHUBELE: Yes, so subsequent to this, the
10 report that I will give, Chairperson, which Mr Mogashoa also acknowledged having received was Mr Baltac was reporting back to the Commission, the Commissioner to say remember in that paragraph the only 5.1.5, the only issue was the amount, which he said he was tasked to do and investigate the amount of the invoice.

Then in the report, that I will give you, Chairperson, he was confirming that he has made investigations and then the amount, the correct amount is this and I think it is less than this 15 million if my memory serves me well. So
20 his task was to confirm the amount because the claim was 15 million and Mr Sonic was not certain and then he came back with a report that says no, it is not 15 million it is less than that, so that is with regard to this agreement and then he also testified about the other agreement it is titled Consultancy Agreement for Technical Adviser for the New

Digital Railway Signalling Unit, work contract HO-infra(E)301/01/2013.

In the summons, in the pleadings you will see which claim relates to which contract. There is a contract number.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: And that is how they are identified. So he also – he testified and then he – 5.1.8, he was familiar with the agreement and according to my
10 understanding he was someone who can call the supervisor when – during implementation stage he will be the person overseeing the work. And then 5.1.8 he says:

“The Commissioner says it appears the amount due in respect of agreement would not agreed upon by the parties to the contract so the company represented by Mabunda its former CEO and Mr Baltac agreed to meet to try and calculate the amount which is due and payable to the company and to submit their answer to the Commission and
20 their liquidators by 11 September 2017.”

And then the next page, 5.1.9:

“On the 6 September the Commissioner received a letter by email from PRASA’s attorneys addressed to the Commissioner and the liquidator’s representative Mr Boshoff in which they confirmed

that client Mr Baltac was requested to engage with Mr Mabunda to calculate the amount which is due in terms of the contract that number.”

So you can see there, Chairperson, that the parties are in agreement about what outstanding issues they must still investigate and I will look in my records but I think this letter is in some bundle.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: So that was the issue and in the
10 aforesaid letter they said that:

“The contract was with a company called Siyaya Rail Solutions and not with Siyaya Consulting Engineers, the company which is the subject of the Commission of Inquiry. Accordingly, they say that it is not clear why their client has been called to testify about the affairs of Siyaya which has no link with the company which is the subject of the inquiry. In the circumstances it would, in my view, be appropriate to have the contents of the aforesaid
20 letter raised before the Commission when it commences.”

Chairperson will see later on that there were some claims which were not settled. One, if I remember was because it was not part of the liquidation inquiry of insolvency inquiry and the other one that was not settled was because there

were outstanding issues that could not be resolved and I think it is a claim that involved the witnesses that I said were not longer at PRASA, Mr Montana and Mr [indistinct] **26.28** and I think, so that claim was not settled for the simple reason that there were issues that no one...[intervenes]

CHAIRPERSON: I see 30 minutes has expired but I will allow you a bit more time to continue and then I will start your questions.

10 **JUDGE MAKHUBELE:** Chairperson, do you intend to ...[intervenes]

CHAIRPERSON: So I will allow you to ...[intervenes]

JUDGE MAKHUBELE: Do you intend to adjourn what time?

CHAIRPERSON: I would like us to continue and see how far we have gone by seven but I think we will not leave before seven so we might go to eight.

JUDGE MAKHUBELE: Because this, Chairperson, although I said the issues I diverted from that statement,
20 we deal with the evidence.

CHAIRPERSON: Ja.

JUDGE MAKHUBELE: But...

CHAIRPERSON: Well, when I ask you questions some of the issues you will be able to deal with.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: Yes. But I will let you continue now for another ten minutes.

JUDGE MAKHUBELE: So that is Mr Baltac and I – the next one is – I think he testifies again somewhere but maybe the best place where I can tell Chairperson for certainty is when I read some of – maybe let us go to page 35.

CHAIRPERSON: We are looking at the red numbers?

JUDGE MAKHUBELE: The red number, that is the...

10 **CHAIRPERSON:** Okay.

JUDGE MAKHUBELE: That is Mr Babuwe(?) **28.49.**

CHAIRPERSON: That is page 72 on the black numbers, 35 on the red numbers, yes. You want to draw to my attention there?

JUDGE MAKHUBELE: The evidence of Mr Babuwe is paragraph 5.4.

CHAIRPERSON: Yes.

20 **JUDGE MAKHUBELE:** We sat with this witness for a very long time trying to unpack the issues here and if Chair can allow me, I will deal with it in my statement.

CHAIRPERSON: Okay, that is fine.

JUDGE MAKHUBELE: So maybe I can leave this for now, the report, but the next document that Mr Botes brought was page 39 which is the correspondence or email communication between him and Mr Madimpi where they

were reminding each other about what happened at the inquiry and I think ...[intervenes]

CHAIRPERSON: And what page is that?

JUDGE MAKHUBELE: It is page – the red number is 39.

CHAIRPERSON: Okay. Yes, continue?

JUDGE MAKHUBELE: The email of this page ...[intervenes]

CHAIRPERSON: And that is an email from Mr Botes to Mr Mogashoa who was the – Mr Botes was counsel for the
10 liquidators and Mr Mogashoa was PRASA’s attorney. What do you want to draw to my attention in that email?

JUDGE MAKHUBELE: This – firstly, in my answer to his statement I said he is actually – Mr Botes is actually – was actually the one who was persistent that the claims must be settled because even before I went the parties were discussing that look, there is nothing more to go to arbitration for. This email is 6 September and he was actually just telling Mr Mogashoa and he was reminding him about the evidence of the witnesses, all the witnesses
20 and also that he broke down the amount and in page 42 he was telling Mr Madimpi not to play cat and mouse because there was nothing more to discuss and in the last paragraph he was saying:

“In the event that we are successful to settle some of the claims we should continue with the arbitration

only in respect of the remainder of the claims which are still in dispute and then he confirms the arbitrator's availability."

That email is dated 6 September 2017 is the point you said to make that even prior to your appointment as Chairperson of the PRASA board there were some communications between the legal team of the Siyaya Group or the liquidators and PRASA's lawyers, is that the point you want to make?

- 10 **JUDGE MAKHUBELE:** Yes. That obviously the PRASA lawyers were saying they will revert to you but then Siyaya people were saying but you had your witnesses, what more? Let us try to separate. Where the issues cannot be settled we then go to arbitration knowing that we are only going in respect of where there is still disputes but where there are no disputes, for example, with the evidence of the witnesses that I will refer to, why are we still going on an arbitration? This was even before I went to PRASA. Those emails are September 2017. I think page 43 is the
20 email of Mogashoa to Mr Botes, 5 September 2017, he says:

CHAIRPERSON: It says:

"I trust that we are on the same page now and that you will obtain proper and meaningful instruction from your client to dispose of all the outstanding

issues in an effective and expeditious manner. We should not be seen to drag our feet and to play for time at our client's expense. We are duly bound to act in a responsible and diligent manner. We should therefore display leadership and act proactively in resolving these disputes.”

Is that the part you want to emphasise?

JUDGE MAKHUBELE: Yes, that is the conclusion of Mr Botes but I wanted to highlight an earlier email of Mr Mogashoa where he was – they were basically talking about the readiness of the arbitration and whether it should be postponed or not. This was an email that Mr Botes was referring to. Actually, he was just saying there is no need to even be talking about postponements and readiness, why do we not settle because already – separate the issues, where there are disputes, we can go on arbitration on disputes. I am trying to see page 45. I see it has my name but it is just something – I do not know what it is.

CHAIRPERSON: Yes, I am going to help you now but if you have a last point to make, make it and then I can ask you questions. Some of my questions will touch on some of the matters that you may have wanted to deal with.

JUDGE MAKHUBELE: Then after – the point that I want to make before I get to the gist of the issues between me and Ms Ngoyi is that they – I saw in Mr Dingiswayo's

statement he says when I arrived at PRASA the first thing I asked about was this Siyaya matter and that is not true, Chairperson. My evidence in my sworn statement and as I am talking to you now, that is not true. I met them before – even before Mr Botes came into the picture with the Siyaya matter. I spoke to them after the board came back from parliament where parliament had put us under pressure to give answers about the investigations that had been carried out at PRASA and a status. So as part of
10 consultation – and I think Ms Ngoyi refers to it in her statement.

CHAIRPERSON: Ja, Ms Ngoyi refers – does not say that in the first meeting that you had with here, which Mr Dingiswayo I think attended.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: Does not say that you raised the issue of the Siyaya claims.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: He says – she says you raised them in
20 the next meeting.

JUDGE MAKHUBELE: In the next meeting.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: So between her and Mr Dingiswayo there is no consistency but the point, Chairperson, is when I met the two, these two legal officials, it was just a

general discussion about issues in PRASA, the issues – everybody knows about the controversies at PRASA and the parliamentary portfolio committee had asked the board to give a report about the AG's report, the irregularities which were specifically directed to report about things like the appointment of – I call them Werksmans but I understand it is not the correct pronunciation, it is Werksmans but I...

CHAIRPERSON: I think there are lots of people, including
10 me, who are not always sure whether it is Werksmans or Werksmans.

JUDGE MAKHUBELE: Yes, apparently the correct one is Werksmans. So they were various reports about the appointment Werksmans which we were directed to take up, just first go to PRASA and start sniffing around about Siyaya. We discussed about issues and we had a collegial discussion, I was meeting them for the first time. We were asking them who they are, Ms Ngoyi, why her surname is spelt with an e at the end, she confirmed that no, indeed, I
20 am from – I am a descent of Lillian Ngoyi and she told me how they came about to spell ...[intervenes]

CHAIRPERSON: I am sure it is Home Affairs.

JUDGE MAKHUBELE: Yes, so – and also Mr Dingiswayo. You know, we reminisced about those issues, that both of them are from great or well-known in the history of South

Africa and we had no issues, we were happy that we are going to work together in peace.

CHAIRPERSON: That is the first meeting.

JUDGE MAKHUBELE: That is in our first meeting, even before Mr Botes came there.

CHAIRPERSON: And I think the first meeting was...

JUDGE MAKHUBELE: I think it is on the 9 November.

CHAIRPERSON: I think ja, it was on – I think Ms Ngoyi says it was on the 9 November.

10 **JUDGE MAKHUBELE:** Let me confirm with my records. Yes, it is here a date 9 ...[intervenes]

CHAIRPERSON: And the second one was on the 14th.

JUDGE MAKHUBELE: 9/11/'17 at PRASA, Martha Ngoyi, Fani Dingiswayo and then we were also with the then acting Group Chief Executive Officer. My notes here says we talked about the appointment of Werksmans, what they should give the board with regard to the appointment of Werksmans and then discussions. We talked about how Werksmans was appointed, according to them. We talked
20 about the report of the Public Protector as well as the report of Makhubele and Huntley and we were to continue our discussion.

There was no mention of Siyaya because even me, I did not know anything about that at the time. And then we adjourned our meeting, that we will have a follow-up

meeting. The second meeting is on that date when after Mr Botes came then I called them again because I was sitting with the Group CEO. Then we discussed the report that I have just – that we were just reading, Chairperson, and in my statement, I mention – or not statement, in my memo I mention that Ms Ngoyi appeared to have a faint idea about the insolvency inquiry. So, Chairperson, that is my first encounter.

CHAIRPERSON: Yes.

10 **JUDGE MAKHUBELE:** Then maybe I can stop here.

CHAIRPERSON: Ja.

JUDGE MAKHUBELE: But I will elaborate.

CHAIRPERSON: Ja, let us go back and start a little earlier.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: Before your appointment as Chairperson of the PRASA board you had been practicing as advocate since 1999, is that right?

JUDGE MAKHUBELE: Yes.

20 **CHAIRPERSON:** Yes, and in October of 2017 you were interviewed by the Judicial Service Commission for appointment as a judge, is that right?

JUDGE MAKHUBELE: That is correct.

CHAIRPERSON: Was the interview on the 4th or what was it? Are you able to remember the actual date?

JUDGE MAKHUBELE: I cannot remember ...[intervenes]

CHAIRPERSON: Early in October.

JUDGE MAKHUBELE: I cannot remember offhand but it is usually first week of October.

CHAIRPERSON: Ja, it is usually first week of October.

JUDGE MAKHUBELE: Should be maybe ...[intervenes]

CHAIRPERSON: I think it was first week of October.

JUDGE MAKHUBELE: 3 or 4 or 3.

CHAIRPERSON: Yes. Now you had been nominated for
10 appointment as a judge as far back before October was ell.
In other words, when were you nominated or when did you
put in your nomination documents? Would it have been
around July?

JUDGE MAKHUBELE: I think the closing date was maybe
July.

CHAIRPERSON: Maybe around July.

JUDGE MAKHUBELE: Maybe around July.

CHAIRPERSON: Yes, yes. I take it that at that stage you
had made up your mind that you wanted to go to the bench,
20 if you could be appointed to the bench, is that right?

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: Yes, and then you had the interview, I
think it was on the 4th if I am not mistaken, of October from
what I have read.

JUDGE MAKHUBELE: 3 or 4 that...[intervenes]

CHAIRPERSON: Ja, now you were recommended for appointment, the JSC recommended that you be appointed as a Judge. Is that right?

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: And when did you get to know that that would be their recommendation, was it like a day after your interview or a few days after the interview?

JUDGE MAKHUBELE: It is normally, no it is normally not days, it would be maybe, it would be the next day.

10 **CHAIRPERSON:** Would be the next day as well.

JUDGE MAKHUBELE: It does not take long.

CHAIRPERSON: Ja, no that is my experience as well that either hear on the same day of the interview, or you get told the following day.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: It does not take long, so it can be at least by the beginning of the following week after the interviews you knew that you had been recommended for appointment.

20 **JUDGE MAKHUBELE:** Yes.

CHAIRPERSON: And at what stage had you been approached for possible appointment as a Director of the PRASA Board? When you went to the interviews had you already been approached or not yet?

JUDGE MAKHUBELE: It must have been – I am trying to

think about the date, because I have these things in my – I have already drafted some statement to respond to this at some forum where remember they do...[intervenes]

CHAIRPERSON: Oh.

JUDGE MAKHUBELE: Remember the JCC...[intervenes]

CHAIRPERSON: At the JCC.

JUDGE MAKHUBELE: The JCC is already...[intervenes]

CHAIRPERSON: Has had a meeting with you.

JUDGE MAKHUBELE: It is actually considering that very
10 issue...[intervenes]

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: The position, that they is asking me or where are you are going to...[intervenes]

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: Or why did I go to PRASA when I had already been nominated to practice...[intervenes]

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: For the bench.

CHAIRPERSON: Yes.

20 **JUDGE MAKHUBELE:** My answer Chair...[intervenes]

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: Is I will give the date in – I will – I will reduce that statement into a sworn affidavit, if I – the reason I did not...[intervenes]

CHAIRPERSON: Don't speak far from the mic.

JUDGE MAKHUBELE: Oh sorry.

CHAIRPERSON: Because when you speak – when you are a distance away, I cannot hear you.

JUDGE MAKHUBELE: The applications to the JSC are closed, maybe four months before the interviews and my recollections is the approach to serve in the PRASA board was in September.

CHAIRPERSON: Was in September?

JUDGE MAKHUBELE: Was in September.

10 **CHAIRPERSON:** Okay.

JUDGE MAKHUBELE: Yes, was in September and definitely before the interview, yes.

CHAIRPERSON: And who approached you for possible appointment to the board?

JUDGE MAKHUBELE: There is a neighbour of mine who obviously if you know each other you hear about opportunities and then you – even amongst circle of friends or even families. So it was a neighbour he said there is a – he heard the Minister of Transport would be constituting
20 interim or temporary boards because his under pressure.

I think there was some court applications for the Minister to constitute permanent boards. But then apparently, he wanted to constitute interim boards when he was in the process of constituting permanent boards and then I then said look I have already decided that I no

longer want to practice. I want to go to the bench, I have submitted an application and if I am successful I will – between this and the bench I will choose a bench.

So he said anyway give me your CV, then I- I then gave him my CV. I will – if Chairperson wants this communication because it was SMS to me...[intervenes]

CHAIRPERSON: Yes, yes.

JUDGE MAKHUBELE: I will give it to you.

CHAIRPERSON: Okay no, that's fine that may be helpful
10 or maybe you can include it in your bundle.

JUDGE MAKHUBELE: I will include it in my statement.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: So I gave him my CV and definitely before the JSC interview and then we forgot about it.

CHAIRPERSON: Yes, are you able to give the name of the neighbour?

JUDGE MAKHUBELE: It is Mr Chauke.

CHAIRPERSON: Mr Chauke?

JUDGE MAKHUBELE: Chauke, yes.

20 **CHAIRPERSON:** Yes, and what is the name?

JUDGE MAKHUBELE: His name is Richard.

CHAIRPERSON: Richard?

JUDGE MAKHUBELE: Richard, yes.

CHAIRPERSON: Mr Richard Chauke.

JUDGE MAKHUBELE: He is a Doctor now, you can call

him Doctor.

CHAIRPERSON: Oh is that a medical Doctor, academic Doctor?

JUDGE MAKHUBELE: No, the learned Doctor, there is a – he is not a medical Doctor.

CHAIRPERSON: Oh, okay he has a doctorate.

JUDGE MAKHUBELE: He has a doctorate, yes.

CHAIRPERSON: Okay no that is fine.

JUDGE MAKHUBELE: I understand those are the real
10 Doctors.

CHAIRPERSON: Well I am sure the medical Doctors will contest that...[intervenes]

JUDGE MAKHUBELE: I mean for the title Chairperson.

CHAIRPERSON: Oh for the title, oh okay.

JUDGE MAKHUBELE: The title belongs to those who have a PhD, I am told.

CHAIRPERSON: Ja.

JUDGE MAKHUBELE: The medical ones it is a job.

CHAIRPERSON: Ja.

20 **JUDGE MAKHUBELE:** I am not saying anything I am just ...[intervenes]

CHAIRPERSON: Ja.

JUDGE MAKHUBELE: Yes so I will give you the trail of that correspondence between then two of us.

CHAIRPERSON: Yes, okay that will be helpful, yes.

JUDGE MAKHUBELE: So when – then I went for an interview and we did not talk again about my CV.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: But what I understood and what he said in return to the communication that I submitted my CV was that he was going to forward it to the department.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: And I did not hear anything from any one and I did not until – I think on that day it was
10 maybe 23 or 19 October then I just heard people saying my name was mentioned on television when they made cabinet announcement that I have been appointed in the PRASA interim board control.

The cabinet has endorsed the names and thereafter then I received the call from the department. Then I indicated that – for how long is this appointment because one other thing Chairperson before you – maybe that will be your next question. I do not want to – I am not anticipating your questions but because this issue has
20 been raised...[intervenes]

CHAIRPERSON: Has been, yes.

JUDGE MAKHUBELE: So I know the issues there concerned.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: So, I am not anticipating.

CHAIRPERSON: Yes, no, no that is fine address it yes.

JUDGE MAKHUBELE: Yes, before I went to the interview, before I even submitted my application for judicial appointment, I had spoken to the JP and...[intervenes]

CHAIRPERSON: That is Judge, President Mlambo?

JUDGE MAKHUBELE: Mlambo.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: And then in the course of our discussions obviously is to establish your readiness and I
10 think I did mention in my interview that he is the one who was persistent that I must apply, I must join there because I have been acting a lot. Then I – before I then said to JP at that time, I was holding the position of Chairperson of the Water Tribunal that if I am appointed, I will have to give notice to the Minister of Transport not transport of water and sanitation because I cannot simply leave.

Then there is a stage where the Water Tribunal collapsed because the Chairperson left for a judicial appointment without duties and then when we were
20 appointed obviously, we re-established the tribunal. So I said I will at least want to give notice of about three months. So I was very clear from the beginning that when I get the appointment I am not – I will first have to be give notice from the Water Tribunal and that was our understanding.

So when I accepted to serve in the interim board of PRASA it was on that basis that anyway I have time that when I am finalising my work other than the Water Tribunal there were other matters that had been sat down went into November and some into February and March of 2018. So that this thing will fall within that – because I was told it is a – it was going to be the Minister was given four months to constitute a permanent board.

10 So people are always asking where does this date of 1 April come from because that is the date, I had indicated that I will be ready to start with my judicial appointment Chairperson, so that is how it went. So when the announcements that the President has approved the recommendations that came after – I was already at PRASA.

CHAIRPERSON: I am sorry just repeat the sentence I did not hear it.

JUDGE MAKHUBELE: When the President made the appointments...[intervenes]

20 **CHAIRPERSON:** Yes, okay to appoint you as a Judge.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: I was already at PRASA, yes.

CHAIRPERSON: Yes, because you were appointed as Chairperson of PRASA...[intervenes]

JUDGE MAKHUBELE: 19 October...[intervenes]

CHAIRPERSON: On the 19th of October.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: And the announcement of the decision of the President in terms of appointing various Judges, new Judges it seems it was made on the 2nd of November or it is early November. Is that your recollection?

JUDGE MAKHUBELE: It is early November.

CHAIRPERSON: It is early November.

10 **JUDGE MAKHUBELE:** I was already at PRASA.

CHAIRPERSON: Yes, you were already at PRASA.

JUDGE MAKHUBELE: I was already at PRASA.

CHAIRPERSON: Yes, yes.

JUDGE MAKHUBELE: So then when that announcement was made then that we all starting on the 1st of January. Then I again engaged the Judge President...[intervenes]

CHAIRPERSON: You what?

JUDGE MAKHUBELE: Then I engaged the Judge President.

20 **CHAIRPERSON:** Yes.

JUDGE MAKHUBELE: Mlambo about it. I will provide Chairperson with – because I mean that is no longer a secret everything must be – whatever is available we have to provide. I will provide our communication because I was expecting that my appointment would have a date of 1

April.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: Not 1 January. So JP even before the President signed the letters of appointment, he issued a notice for the recommended candidates of which I was one. His – the directive was telling us that he was congratulating us for even been recommended and saying that usually from here the President will sign the certificate.

10 He has asked him to sign for the 1st of January but usually the President will take time but even if he takes time the appointment gets backdated to the date that he has given me and he also was explaining some other logistics, appointment logistics. And I immediately wrote to JP by return email to say well I accept that you want to place me in Pretoria and asked other questions and then I said but JP with regard to the date can I have a discussion with you.

If you remember we had a discussion I want to meet
20 with you with regard to the effective date and remember Chair by then the President had not yet signed, then according to that letter. So JP said to me in reply Nana I am busy put your thoughts about the effective dates in writing, which I did by return mail to him to say JP you remember we agreed that I want to start on the 1st of April

for these reasons.

And then we further exchanges between us and apparently in between maybe because of my delay in responding to him because in one email he said I responded late the President has already put the date of 1 April. And then we had further meetings with the JP and until we came to the understanding that he will engage the Minister of Justice to ask the President to change that date to as I had requested.

10 And obviously I had to ask JP but JP why did you not give the President from the beginning a date? And then his reply was that no he received many requests and they...[intervenes]

CHAIRPERSON: Don't move away from the mic.

JUDGE MAKHUBELE: Many requests and then he wanted - I don't know what he - but the long and the short of it was that he did not communicate that date to the President at that time when he made that submission and that is the story Chairperson. Yes, I will provide the documents that I
20 am referring to from the...[intervenes]

CHAIRPERSON: Well we - the commission does have some correspondence from the JP and it is not in the bundle I think because it came recently. We asked the JP for the letter asking for recommending a deferment of your appointment to say it must be at a later dates but we have

got that letter and then we've got a letter from UniteBehind, I think if I am not mistaken that UniteBehind may have written – I don't know whether to you or to the JP about their concerns in regard to you and PRASA.

There maybe a letter that you either wrote to the JP or wrote to UniteBehind but we wanted to see the letter that went to either the Minister or the President as your appointment must be deferred.

JUDGE MAKHUBELE: Yes, I have that correspondence.

10 **CHAIRPERSON:** You have got that correspondence?

JUDGE MAKHUBELE: I have that correspondence.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: Because immediately UniteBehind started writing to JP Mlambo in – end of January 2018, towards end of January they said there is a Judge – one of your Judges is a PRASA and according to the court roll we see she is also sitting in court. A Judge cannot hold dual positions and I think that is when they engaged with JP and he responded to say no she has asked to start 1 April.

20 I have already asked the Minister to ask the President to do this December. That is where it starts. I have the correspondence the first and even the correspondence that JP sent to the Minister subsequent to that. I also have – because a legal controversy developed, the controversy was whether that date of 1 April can simply

be changed.

And then – by then President Zuma was gone it was President Ramaphosa. So the legal, the State Legal Advisors sort an opinion which President Ramaphosa wanted whether he lawfully, he can grant that change. I have that opinion because it concerns me, they provided me with that opinion and I did not even start on 1 April because now the controversy grew bigger and bigger and bigger and then the President wanted to make sure that
10 before he changes that date.

So I stayed home I am no longer at PRASA because I resigned at PRASA. I am no longer at PRASA, I am no longer practising as an Advocate.

CHAIRPERSON: When did you stop practising as an Advocate?

JUDGE MAKHUBELE: I – on the 13th – end of March.

CHAIRPERSON: End of March 2018, 2018?

JUDGE MAKHUBELE: 2018, yes.

CHAIRPERSON: Okay.

20 **JUDGE MAKHUBELE:** Because I was still even appearing in court and I am also doing Water Tribunal work.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: So I am - my effective date...[intervenues]

CHAIRPERSON: So we – after we got the JP's letter or

correspondence and we saw that what was said to the Minister as the reason for the deferment was, I think the work at Water Tribunal the commission.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: They made contact with the Water Tribunal about the work that was to be done as well.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: You said there was some work to be done there.

10 **JUDGE MAKHUBELE:** There was I did some sittings at the Water Tribunal in the month of February and I have – I will give you a copy of my letter of resignation.

CHAIRPERSON: Yes, yes.

JUDGE MAKHUBELE: But there was work that I was doing at the Water Tribunal on specific dates which I will provide you with.

CHAIRPERSON: Yes. Now the – if I recall correctly the correspondence I saw seems to suggest that there was appeal which had been heard on a number of days up to
20 the end of 2017 but the judgment had been reserved and it was handed down later at some stage in 2018, I think mid-2018. But in terms of sittings the correspondence suggested that the sittings were only in 2017. Would that be your recollection?

JUDGE MAKHUBELE: No, I will give Chairperson the

details...[intervenes]

CHAIRPERSON: Yes, you will give a full account of what was there.

JUDGE MAKHUBELE: Yes, I will give you a full account of what was there.

CHAIRPERSON: Yes, yes.

JUDGE MAKHUBELE: And which sat on which dates.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: And when the controversies arose
10 because it was clear that I was not going to be working as
Judge on the 1st of April. I then asked JP, JP and Minister
Masutha I was writing to them to say please tell me am I
still going to be a Judge or can I just forget about this and
go back to practice because JP's position was that we
cannot risk putting me on the bench before that
controversy was resolved and I remembered I had been –
the JP Ditaba had put me in the recess role of April of
2018.

But JP Mlambo said no I cannot until that
20 controversy is resolved because the risk of that certificate
of appointment which we do not know whether it is valid or
not until we hear from the President. And he cannot
appoint me to sit on the bench on an acting basis. So I did
nothing in April, I did nothing in May and mid-May then
President Ramaphosa made a decision. I do not know if

Chairperson has copies of the decisions?

CHAIRPERSON: I think I have seen at least; I don't know if it is a letter from the Minister saying the President made a decision which I understand it to be – the effects to which I understand to be that you were going to start on the 1st of June or you have been appointed with effect from the 1st of June.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: Of course, it is a little confusing
10 because you had already been appointed with effect from the 1st of January.

JUDGE MAKHUBELE: Yes, but...[intervenes]

CHAIRPERSON: And then now the letter says you are being appointed like again with effect from 1st of June, I found it a little bit confusing.

JUDGE MAKHUBELE: There may be what Chairperson missed is the proclamation by the President. There is a proclamation that say...[intervenes]

CHAIRPERSON: The presidential minutes.

20 **JUDGE MAKHUBELE:** The presidential minutes.

CHAIRPERSON: Ja.

JUDGE MAKHUBELE: That says I had previously appointed you with effect from 1 January and now I am changing that date to 1 June and then there is the appointment certificate. So that is what I am saying that

you maybe did not see.

CHAIRPERSON: Yes, now the letter that was written by the Judge President to the Minister about the deferment of your appointment certainly says in effect it is because of your work as in the Water Tribunal that you were seeking the deferment. Is that correct?

JUDGE MAKHUBELE: I don't think it says so.

CHAIRPERSON: Oh maybe I should ask what is the reason that made you ask for the deferment?

10 **JUDGE MAKHUBELE:** I have not seen; I have not seen that Chairperson.

CHAIRPERSON: Oh, okay.

JUDGE MAKHUBELE: I said when I asked to defer it was to finalise my work. I still had matters set down up to the beginning of the next year.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: And secondly it was to resign from the Water Tribunal and give notice until 31 March and I said the PRASA issue is something that happened because
20 I want to make it clear Chairperson I did not – Jake Mlambo did not give me permission to go to PRASA. No, he did not. I already said that when they said the appointment will not be longer than four months, I said I can do this because anyway I have time.

So it was on economic decision like I was still

practising – going to court doing everything that an independent legal practitioner could do. So when the opportunity came, I said I can do this and then it will be finished before my due date to start with the...[intervenes]

CHAIRPERSON: I saw in a – I think your statement or letter to the bar counsel in relation to your complaint against Mr Botes.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: I saw that you indicated that you had
10 asked for the deferment of your appointment in order to wrap up your practice...[intervenes]

JUDGE MAKHUBELE: My practice, yes.

CHAIRPERSON: Is that correct?

JUDGE MAKHUBELE: I have it here with me.

CHAIRPERSON: Yes, I think I did see there something to that effect.

JUDGE MAKHUBELE: Paragraph 1, I say I was a member of Pretoria society...[intervenes]

CHAIRPERSON: It will not be...[intervenes]

20 **JUDGE MAKHUBELE:** I resigned from membership of the bar with a view to prepare for taking up judicial appointment. My appointment would have been with effect from 1 January however I requested an indulgence of four months to wrap up my legal practice. So it was – I just generalised here.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: So and then I say I would have commenced duties on 1 April but the date was amended to 1 June 2018. I took office as a Judge on 8 June.

CHAIRPERSON: Well part of the concern I have is that in the letter to the Minister asking for the deferment the reason that is mentioned and I assume that the JP mentioned it because that is what came from you was your Water Tribunal commitments. But in this statement, it says it is wrapping up
10 your legal practice and about ...

JUDGE MAKHUBELE: Have not seen that letter
Chairperson.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: I ...

CHAIRPERSON: Okay no it...

JUDGE MAKHUBELE: I cannot comment on it.

CHAIRPERSON: Yes okay.

JUDGE MAKHUBELE: But – but...

CHAIRPERSON: Yes.

20 **JUDGE MAKHUBELE:** The request that I made.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: Was to wrap up my legal practice.

CHAIRPERSON: Your legal practice.

JUDGE MAKHUBELE: Indeed, the Water Tribunal.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: That is part of my legal practice.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: So I – I do not see the contradiction
Chairperson.

CHAIRPERSON: Yes you saw – you see it as

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: The Water Tribunal is part of your practice.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: Ja okay.

10 **JUDGE MAKHUBELE:** I was – I was appointed when whilst
– I was not a fulltime – it was not a fulltime job.

CHAIRPERSON: Hm.

JUDGE MAKHUBELE: It is a – it is a – Chairpersonship
where you are called to adjudicate matters as and when
there are matters. And it is – and whilst you are doing any
other work that comes your way as a legal practitioner.

CHAIRPERSON: Hm.

JUDGE MAKHUBELE: Yes.

20 **CHAIRPERSON:** So – so you say after and I think you said
you resigned from the bar with effect from the end of
November, is it right?

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: And then you continued practicing.

JUDGE MAKHUBELE: Membership.

CHAIRPERSON: After – membership of the bar.

JUDGE MAKHUBELE: Because you can – you can practice as an advocate.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: In your house or anywhere.

CHAIRPERSON: Yes. I understand that.

JUDGE MAKHUBELE: But membership of the bar.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: I resigned.

CHAIRPERSON: You had resigned ja.

10 **JUDGE MAKHUBELE:** Yes.

CHAIRPERSON: But in terms of your practice.

JUDGE MAKHUBELE: I continued.

CHAIRPERSON: You continued ja.

JUDGE MAKHUBELE: I continued.

CHAIRPERSON: At that stage you were no longer keeping chambers.

JUDGE MAKHUBELE: No I was no longer keeping chambers.

CHAIRPERSON: You were practicing from home.

20 **JUDGE MAKHUBELE:** I was practicing from home.

CHAIRPERSON: From home.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: Of course, I guess you must have had quite some work because if you defer your appointment as a Judge from 1 January to up to end of March it means you

would be forfeiting three months' salary as a Judge. So your practice must have been ...[intervenes]

JUDGE MAKHUBELE: Well compared to – compared to the matters that I had I had already scheduled – I – it was worth it.

CHAIRPERSON: It was worth it.

JUDGE MAKHUBELE: It was worth it because I had – I had court hearings.

CHAIRPERSON: You had court hearings.

10 **JUDGE MAKHUBELE**: I had court hearing even in Polokwane.

CHAIRPERSON: Hm.

JUDGE MAKHUBELE: High court Pretoria I was still consulting.

CHAIRPERSON: Hm.

JUDGE MAKHUBELE: And the Tribunal paid per sitting and this Chairperson they are – there is administrative work that precede sittings because you are the one allocating matters.

CHAIRPERSON: Hm.

20 **JUDGE MAKHUBELE**: You are the one allocation means you must have read the files and everything. So it was – and it was really not about money it was about putting my – my life in order that I want to close this chapter. I still have matters. I still have accounts to render and I – I must do this let me – let me defend my appointment.

CHAIRPERSON: hm.

JUDGE MAKHUBELE: So I – yes I forfeited Judge’s salary for not just those three months but because the appointment was delayed further for five months.

CHAIRPERSON: Hm. And of course, when you...

JUDGE MAKHUBELE: It was no longer my choice I was simply not in a position because I could not now assume duties because they – I was told the certificate must first be changed.

10 **CHAIRPERSON:** Now tell me in regard to your position as Chairperson of the Water Tribunal.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: What was the notice period you were required to give? Was it three months or in terms of the law or what was the notice?

JUDGE MAKHUBELE: There is no – there is no specified notice period.

CHAIRPERSON: There is no specified period.

JUDGE MAKHUBELE: I – I chose to give that.

20 **CHAIRPERSON:** Ja.

JUDGE MAKHUBELE: Because I – there were a lot of – there were a lot of outstanding matters Chairperson and as I said I did not want to disrupt the Tribunal because if there is no Chairperson there is no Tribunal.

CHAIRPERSON: Hm.

JUDGE MAKHUBELE: And at that time there was even – when it became – when it almost happened that on the 30 – maybe it was the end of March when I realised that this thing of changing the appointment date is – may not happen soon. I even considered withdrawing my resignation.

CHAIRPERSON: Hm.

JUDGE MAKHUBELE: At the Water Tribunal because I – I wanted to – to go back to practice and I – I think there was a – there was that attempt to withdraw. I was no longer.

10 **CHAIRPERSON:** Hm.

JUDGE MAKHUBELE: I felt let me go back and withdraw my resignation and forget about this judicial appointment.

JUDGE MAKHUBELE: Hm.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: In the interview in the JSC they asked you when you would be available to commence duties as a judge if you are appointed.

JUDGE MAKHUBELE: No.

CHAIRPERSON: They did not ask you about that?

20 **JUDGE MAKHUBELE:** No. No.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: When I have – I have seen again I am not pre-empting your questions.

CHAIRPERSON: Hm.

JUDGE MAKHUBELE: But because Judge Tuchten – you

know he wrote the judgment and then he – he mentions in his judgement that – did she consider the fact – some facts from the JCC was there something she should have told the JCC definitely no-one asked me anything. I mean the record is – can be accessed.

CHAIRPERSON: Hm.

JUDGE MAKHUBELE: There were no questions that when are you available? Can you start tomorrow, next week or when? And my understanding Chairperson and you should
10 know and it – and it is a fact that can be established that there are – there are judges who - who asked and were given much longer than three months.

CHAIRPERSON: Hm.

JUDGE MAKHUBELE: So it was not – it is not – there is nothing untoward about someone asking to defer their appointment. It has happened.

CHAIRPERSON: Hm.

JUDGE MAKHUBELE: And there is nothing as far as I know there is no rule that you – you cannot ask. There is no rule
20 that once you are recommended there is a specific date that you must start in and in my interactions with the Department of Justice because we had a lot of interactions and I will mention it in my statement and also refer to the people that I was consulting with. The logistics of the appointment I – are with the Head of a court because he knows when he needs

capacity, and even we attend the same interviews Eastern Cape the judges would be required to start a month earlier and in another division maybe a different date and my understanding is the JP gives the Minister a date that I want my appointees to commence on this date. And – and from there it becomes – it becomes an employment issue that is the information I received that in reality the – the people doing the logistics of the appointment should be asking you, here is – when do you want to start? And then you say, no I want to start next when, when and then you sign the – forms be signed or salary for the declarations of interest and all those things. For my understanding from the information that has been provided to me is that that is allowed and until now I do not know maybe the JCC – the JSC may want to – to do something about it and – because we are not behind as – has gone as far as to suggest that once you are recommended it means you – your economic activity starts. But they forget that the recommendation as Chair is already set. It is only after the interview and the effective date of the appointment would be two months later even if one were to take that appointment. But then who is going to support you in-between?

CHAIRPERSON: Well I certainly know that there have been occasions when persons who have been recommended for appointment as judges did not start or took quite some time

before they started or before their appointments took effect. And I understand that some of them raised those issues in the JSC to say, although I have made myself available, I want to say that I will not be able to start like within the time that it normally happens. I will – I will talk to the Head of court because I could – I might want to make an arrangement for – for my practice. There have been those instances but I do not know the details in regard to all of them. I just do know that there are some of those instances.

10 **JUDGE MAKHUBELE:** Yes Chairperson. And the other thing is I am not aware of any prohibition that whilst you under recommendation – let me put it that you are under recommendation the kind of work you can or cannot do. I agree...

CHAIRPERSON: Well you see ...

JUDGE MAKHUBELE: I really do not know because it was stretched to say I could – I should not have gone to PRASA. But what should I have done? No-one told me that you are now limited to do this. If you have you cannot do that. I am
20 not.

CHAIRPERSON: Well you see.

JUDGE MAKHUBELE: I am not aware.

CHAIRPERSON: You see Judge Makhubele part of what makes your case strange at least to me.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: And I – I am putting this to you so that you can address it. Is that here is somebody who – who wants to be a judge. She has gone to an interview with the Judicial Service Commission. She knows that she has been recommended for appointment as a Judge. She knows about her recommendation early in October and around 19 October she allows herself to be appointed as Chairperson of an SOE. It could have been maybe a private company but an SOE. In circumstances where she knows that in all
10 probability she is going to be appointed.

Because I think we both know that once the judicial service commission has recommended to... actually, the Constitution says... has advised the president to appoint you, almost invariably the president will appoint you, you know.

There may be one or two cases that I am aware of where there was some queries but I do not remember anybody over the years who in respect of whom any president was advised to appoint... to make an appointment and did not accept the
20 advice.

So you are dealing with the situation where you are almost sure that you are going to be appointed. You go to the bench.

It is towards the end of the year. It is maybe reasonable to think that your expectation would be that you would start

early in the new year.

So then the question arises, but why is she taking this PRASA appointed? Why is she taking on new responsibilities when she knows she is due soon to start her functions, her duties as a judge?

Why is she taking on more responsibilities instead of reducing her responsibilities in preparation for going to the bench?

JUDGE MAKHUBELE: Well, Chairperson. The problem with
10 that analyses is that there is an attempt to link the two scenarios. The non-taking up of the appointment and having gone to PRASA...[intervenes]

CHAIRPERSON: Ja, not wanting to take on ...[intervenes]

JUDGE MAKHUBELE: Then there is a ...[intervenes]

CHAIRPERSON: ...the judicial appointment but wanting to
...[intervenes]

JUDGE MAKHUBELE: There was a ...[intervenes]

CHAIRPERSON: ...take on a non-judicial appointment.

JUDGE MAKHUBELE: There is an ulterior motive which is
20 what is being... I do not know if... I can only explain what I am explaining. And then ...[intervenes]

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: Then the complainants will be saying, "Yes, the reason she did not is because she wanted to go and commit this irregularity at PRASA". But if you can

separate the two issues, then you will see that they are not... they would not necessarily be linked.

Because suppose I had gone to PRASA and then under similar circumstances and I come out without any allegation of wrongdoing, there would not be any controversy about it.

CHAIRPERSON: Well, to me it... there will still be something strange about taking the PRASA job.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: Because as I say, when you... you know
10 you have been recommended for appointment as a judge and you know that soon you will be expected to commence your duties as a judge, one would expect you to begin to wrap up because you know you are soon going to be starting as a judge.

One would not be expecting you to take on more responsibilities. That is point one. Point two, these responsibilities... these are... this was a position that would be seen as not consistent with being a judge to say but this person wants to be a judge.

20 She has made her choice. She wants to be a judge. She knows she has been recommended. In due course she must start working as a judge. Why is she adding on another responsibility that has got nothing to do with your function?

JUDGE MAKHUBELE: Well, Chair. I am ready to answer to any suggestions that may be put as the reasons before I

can... if I have to dispute the suggestions. But I have already given my... how it happened.

You know you... Chairperson, you are sitting there with the hindsight ...[intervenes]

CHAIRPERSON: Yes, but I just want you to address ...[intervenes]

JUDGE MAKHUBELE: You are setting there with hindsight, questioning the motives of someone who says it happened because I had time. I was... I had time until end of March as far as I am concerned.

And that in the period, there was nothing to prevent me to have taken up the appointment. You know if the suggestion or if what was being put to me was to say you know there is a prohibition that you cannot do this, then I will start to begin to say... to want to justify to say I did not know.

But I am saying, as far as I am concerned or as far as I knew, there was no prohibition and I did that out of a need. And I am telling you that I was still adjudicating matters at the Water Tribunal. It was not a full-time job. It was on a holding basis.

And same with PRASA. It was not a full-time job. It was... I am already in this tribunal and board. For me it would sound the same that even there I would go when I am needed.

There are meetings, schedules of meetings that we are given, and then that other side, there is also schedule and then there are court hearings which are also scheduled.

And I did not see any... besides not seeing any conflict, I did not deem it as a job that Chairperson would call a huge responsibility.

And I will tell you again, I am not anticipating the questions because I know the questions have been asked by everyone.

10 Even at the JCC, there is a ruling that chief justice and his committee have already made that of all the cases at PRASA, she concentrated on the Siyaya matter.

And I am not... I am going to prove that I did not concentrate on Siyaya matters.

CHAIRPERSON: H'm?

JUDGE MAKHUBELE: And I... maybe not to you, but I am ready to ...[intervenes]

CHAIRPERSON: Yes. No, but I am going there but let us deal with this first. I am going there.

20 **JUDGE MAKHUBELE:** I am going to prove that we did a lot at PRASA and I will be happy to share what we did with you so that you can see that there was nothing strenuous about it. I carried it and I also carried what I had to carry at the Water Tribunal and also in court.

So I will... so I am ready to answer that question that...

other than Siyaya, what did you do. Chairperson, if you want to get to it now.

CHAIRPERSON: Yes. No, no, no. I think we... but let us finish on this. I am surprised that you say that you did not see your position as chairperson of the PRASA Board as a position that came with huge responsibilities.

I am surprised by that because my own understanding is that indeed any position of chairperson of a board of any of these SOE's comes with a lot of responsibilities but also
10 ...[intervenes]

JUDGE MAKHUBELE: Chairperson, can I correct you? I did not ...[intervenes]

CHAIRPERSON: No, before that. I will give you a chance.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: Also, purely from what one has been hearing about PRASA in the public domain even before this Commission, the allegations of corruption and what is happening there.

And of course, I have had some evidence within the
20 Commission, but even in the years, some years back in the public domain, it was quite clear that there were lots of allegations of corruption at PRASA.

And also, you may or may not be aware that your predecessor in that position, Mr Popo Molefe, has testified in this Commission.

My understanding of his testimony is that as a board they had a lot of work to do. So my impression is that there was quite of work. It was a lot of responsibility.

That is why I am saying that I am surprised that you... your evidence seems to be that no it was not such a heavy job.

JUDGE MAKHUBELE: Well, I... you did... you misunderstood me. The word that we were using was strenuous. And I said it was not a strenuous job. I did a job
10 very well and I will show you what we did.

Yes, there was a lot of work. And I told you Chairperson that the second day of our appointment, we were called to parliament and we were given certain tasks to report and we had meetings.

So I did not use the word there is no... it is no job. I said it was not strenuous. I was able to carry it. Yes.

CHAIRPERSON: Oh, so you do accept that the job came with a huge responsibility?

JUDGE MAKHUBELE: Yes, I do.

20 **CHAIRPERSON:** Yes, yes.

JUDGE MAKHUBELE: I do.

CHAIRPERSON: You see that is in part where my difficulty is, is namely that, here is somebody who should be winding down in order to be ready to take a new position as a judge soon but instead of winding down, she is taking on a new

position with a huge responsibility. That does not sound...
that seems strange to me.

JUDGE MAKHUBELE: If Chair can tell me how strange it is
and maybe tell me what informs your ...[intervenes]

CHAIRPERSON: Well, I think ...[intervenes]

JUDGE MAKHUBELE: ...worry ...[intervenes]

CHAIRPERSON: ...once you know ...[intervenes]

JUDGE MAKHUBELE: Because we have been [laughs] you
have been on this and I cannot take it further.

10 **CHAIRPERSON**: Yes.

JUDGE MAKHUBELE: Chair, we remain with that. Chair will
remain with the impression ...[intervenes]

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: ...that it is strange and I will
...[intervenes]

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: I cannot... in the absence
...[intervenes]

20 **CHAIRPERSON**: You cannot say anything more than what
you have said, yes.

JUDGE MAKHUBELE: ...in the absence of you telling me
what you think informed my decision to enable me to deal
with your thoughts, whether they are... it is just your
thoughts or the evidence that has been led before you, I
cannot take it any further.

CHAIRPERSON: No, no, no.

JUDGE MAKHUBELE: Can I request? I need to drink water
Chair. If you... if I can have an opportunity to just get my
water and drink it?

CHAIRPERSON: A comfort break?

JUDGE MAKHUBELE: I have been talking for long now.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: Okay let us take a 15-minute comfort
10 break. I see it is quarter past seven. So we come back at
half-past seven. Then we will see how...

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: ...when we can adjourn.

JUDGE MAKHUBELE: Yes, thank you.

CHAIRPERSON: Okay we will take an adjournment for 15-
minutes. We will resume at half-past seven. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: It is half past seven, we will adjourn at
20 eight. Yes, counsel and Judge.

JUDGE MAKHUBELE: Oh, sorry, I am going to start
afresh. The reason I asked what issues the Commission is
investigating because I obviously need to know what I am
supposed to respond to and yesterday I wrote a letter to
Chairperson. I am not saying you have seen it yet but you

can just take note, it is 4 August 2020 where I requested certain information and part of that information that I requested was that I see the witnesses before you have attached the judgment of Judge Neil Tuchten and in that judgment he has made some adverse remarks about me and he has also – one of the issues that he is dealing with is the issue of why did I not – why, what did I possibly withheld certain information, what was I doing at PRASA and then he makes a recommendation that he is of the firm
10 view that a platform should be created for me to answer the questions that he has raised. Some of the questions related to the allegations of the settlement of the claims but then again specific to the issues pertaining to my appointment as a judge and the very kind strange feelings that Chairperson says you have and then he says a platform must be presented – must be created to me. So in the letter that I wrote to you, Chairperson, yesterday, I specifically ...[intervenes]

CHAIRPERSON: I have not seen that letter. It might
20 have – it might be on the way.

JUDGE MAKHUBELE: I specifically asked if this Commission is that platform that Judge Tuchten has suggested must be created or what am I supposed to answer with regard to the judgment of Judge Tuchten which has attached to the witnesses' statements, Chairperson.

So at this point my request is that I – and when we started, Chair said no, you are only dealing with the issues pertaining to the settlement of the claims and I took comfort in that but then now, Chairperson, he is asking me questions about ...[intervenes]

CHAIRPERSON: Well, I said the issues that we will deal with are those that are in the affidavits in this Commission and then I mentioned the settlement, which is one of them.

JUDGE MAKHUBELE: Yes.

10 **CHAIRPERSON:** And actually, it occupies quite a big part of what Ms Ngoyi and Mr Dingiswayo talks about. One of the things that Ms Ngoyi raises is that – but the Chairperson of the PRASA board had been appointed as a judge. Actually, when she took up the position, accepted the position of Chairperson of the board of PRASA she had already been recommended for appointment. She raises those issues in her affidavit.

JUDGE MAKHUBELE: Well, she makes statements, she does not raise issues.

20 **CHAIRPERSON:** Well she is saying in effect ...[intervenes]

JUDGE MAKHUBELE: It is just the statement, the person that calls it, it is Mr Achmat, in his statement and I think when we deal with his evidence, I expect to address what he means by my controversial appointment.

But then, the issue that I am saying, Chairperson, is in the letter that I have written, which you say you have not seen, maybe if Chair can see the letter first because I referred to the rules of the Commission.

In terms of the rules of the Commission, if there are proceedings in any other forum that were conducted to be – so in this case, on this very same issues there is proceedings at the High Court in Pretoria before two judges, Holland-Müter and Tuchten. There are proceedings
10 before the JCC where I have already appeared and the rule, Rule 6.5 says a witness – well, I am obliged and the other witnesses are obliged to bring those to your attention, those proceedings, to tell this, so that secretary can procure the transcripts in those proceedings, Chairperson.

CHAIRPERSON: Ja.

JUDGE MAKHUBELE: So I – and which is what in I have – the heading of this section of my letter says: Terms of Reference in PRASA Hearings because I, in all honesty, I
20 need to know that what exactly am I supposed to respond it to. That is why I started by referring to the affidavit of Ms Ngoyi where she says the people, she is going to talk about are people against who had been found wanting. And I emphasise that I am not one of those persons, no one has ever found me wanting for anything [inaudible –

speaking simultaneously]

CHAIRPERSON: Well, let me explain it to you so that we do not take too long on this.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: You look at the terms of reference of the Commission, you will see that they include that the Commission must investigate State Capture and corruption and fraud in the Public Sector including organs of state. As I said earlier on, many people know that for years there
10 have been all kinds of allegations of corruption at PRASA and that have been in the public domain.

Now the PRASA witnesses who have come forward have testified about allegations of corruption at PRASA, they have made certain allegations against the Siyaya companies in terms of corruption, they have made certain allegations against Mr Makhensa Mabunda, who I understand from Ms Ngoyi's affidavit, controls the Siyaya group of companies and they say here is some things that happened here, somebody who had been interviewed for
20 appointment as a judge and had been recommended for appointment gets appointed to come to PRASA and she comes to PRASA as Chairperson of the board and she shows special interest in the settlement of Siyaya claims and they say, contrary what you say you will tell me and you said you will give details, they say there were many

cases at PRASA but she only showed interest in the Siyaya ones. They said there were many others, she just wanted Siyaya claims to be paid.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: And they say she sidelined the legal department of PRASA, that is people who have always been handling PRASA matters, legal matters internally and they say, according to Mr Mogashoa, she, this Chairperson, tells Mr Mogashoa do not deal with the legal
10 department of PRASA anymore and then they say the next thing, these matters are settled and actually they say when you look at the so-called settlement, it is not settlement, it is capitulation by PRASA. When you look at the amounts that the Chairperson said must be paid, it is exactly the amounts that are claimed by the Siyaya Group against PRASA, it is not a compromise or anything and she says we had to intervene when there was a new Minister of Transport, Dr Blade Nzimande, we had to approach him and say Minister, there is something wrong, there was
20 something wrong happening, PRASA is about to lose about I do not whether it is 59 million but a lot of millions because a settlement that the Chairperson has pushed through. We are against it, please intervene and then they go to court and they say we succeeded ultimately to stop this. They say the Chairperson had no authority to settle

these matters, the authority was with the head of the legal department and they say we successfully prevented PRASA from losing a lot of money that PRASA was going to lose because of this Chairperson and they say since we succeeded the Siyaya companies have never pursued these claims, this arbitration that was supposed to go on. That is what they said.

So this Commission is looking into that to see whether – exactly what happened.

10 **JUDGE MAKHUBELE:** Thank you, Chair, we will obviously get to the other details. You remember we just stopped where I had talked about the reports of the Commissioner and then we then came to – we spent maybe the last hour talking about my appointment. But I am going to deny everything that they are saying.

I am going to show you that I am never one person that takes shortcuts. Even with the matter of Siyaya there is a - and I will deny that it is my decision and even with the Siyaya matter I always – or my board always involved
20 the internal auditor. I have request ...[intervenes]

CHAIRPERSON: internal auditor?

JUDGE MAKHUBELE: Yes, in every issue that we were dealing with that was required, some – so there is – I will show you, Chairperson, and I think you have seen from my statement that my relationship with the legal team, not just

my relationship, my board's relationship with the two incumbents of the legal unit broke down, so ...[intervenes]

CHAIRPERSON: Why did it break down?

JUDGE MAKHUBELE: Pardon?

CHAIRPERSON: Because as I understand the position from Ms Ngoyi – and I may be misunderstanding her evidence but my impression is that you sidelined them when – you sidelined them and they were against the settlement of the Siyaya claims because they believed that
10 PRASA has reasonable prospects of success and, as I indicated earlier on, Mr Dingiswayo testified that he was told by Mr Mogashoa who was PRASA's attorney that you had said the PRASA attorneys must not talk to the legal department at PRASA about the Siyaya claims.

JUDGE MAKHUBELE: Well, I will deal with it when I – I do not know what will happen first, maybe oral evidence or my statement, but I will deal with all that but what I am saying, Chairperson, is that maybe it is in that – in their oral evidence.

20 **CHAIRPERSON:** Is it also in the affidavits.

JUDGE MAKHUBELE: In the affidavit of Ms Ngoyi she mentions ...[intervenes]

CHAIRPERSON: Ms Ngoyi refers to it ...[intervenes]

JUDGE MAKHUBELE: In the last paragraph, yes, she mentions that, she says I may mention that the

Chairperson had been recommended as a judge – but she does not make any conclusions why that is relevant, Chairperson, which is why I am asking ...[intervenes]

CHAIRPERSON: Well ...[intervenes]

JUDGE MAKHUBELE: Whether there is a witness who has given evidence to say that I went – let me not say whether because there is a witness, maybe we can talk about him, Mr Botes, Advocate Botes. Advocate Botes is the only witness who ...[intervenes]

10 **CHAIRPERSON:** Well, let us leave Advocate Botes for now.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: Let us come back to Ms Ngoyi and Mr Dingiswayo. What do you say to Mr Dingiswayo's evidence that he was told by Mr Mogashoa that you had told Mr Mogashoa not to discuss the Siyaya claims with the legal department and, of course, you will have seen in Mr Mogashoa's affidavit that he confirms that that is true. What do you say about that?

20 **JUDGE MAKHUBELE:** I deny that, Chairperson, I never told Mr Mogashoa not to communicate with the legal services and I think I mentioned in my – the problem is when there are multiple investigations you do not know where you mentioned the issue but I mentioned it that – because at the JCC the allegation is I terminated his

mandate. But in his own statement before you, Mr Mogashoa does not say that, he says his mandate – he explains who terminated his mandate under what circumstances.

So I deny and I will deny. Anyway, I do not even have to deal with whether I terminated his mandate or not because in his own words, I am not the one who terminated his mandate but the issue of communication with him, I never told anyone not to communicate with him and as you
10 – it is being said, Chairperson, it is someone saying I was told by someone that someone told someone that someone says this ...[intervenes]

CHAIRPERSON: Yes, but ...[intervenes]

JUDGE MAKHUBELE: I never had any discussion of that nature with Mr Mogashoa.

CHAIRPERSON: But you did have meetings with him.

JUDGE MAKHUBELE: But the sequence of event with regard to the communication, Chairperson, is there is an email that I took exception to. Here is an executive is
20 asked to explain something, to give information because it is an information seeking question. Can you tell me what happened here and here and here? And then he takes that question to Mr Mogashoa to answer and I said there is an email to that effect.

This question I wanted you to answer to me

because before you go and ask outsiders you need to understand from within.

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

JUDGE MAKHUBELE: But that does not amount to me ...[intervenes]

CHAIRPERSON: No, you are on another question now, I am still on the question of whether on your denial that you told Mr Mogashoa not to discuss the Siyaya claims with the legal team of – legal department of PRASA.

10 Why would – it just seems strange that an attorney who gets work from PRASA and who is working with the new Chairperson of the board of PRASA would say to somebody in the legal department of PRASA your Chairperson said I must not discuss these matters with you when in fact that is not so and when in fact he expects or wants to get more work from this Chairperson and PRASA?

JUDGE MAKHUBELE: I do not know, Chairperson, but if you were to allow me an opportunity to deal with this statement because, as I said, maybe I have not said it here
20 to you but we had meetings and I will deal with what transpired in those meetings when Mr Mogashoa came to PRASA and then I think it was me and Mr Zide was still acting and the legal team was not there and I asked where are they? And I was given an excuse, a reason why they are not there and I think I say it in this statement and the

next meeting, where is Ms Ngoyi, she is not here, she is supposed to be here? And then I am told – I think the excuse then was there was a bereavement at home.

And so, Chairperson, at no stage was anyone excluded or told not to come. And, in any event, Chairperson, I am going to deny the version that they have put about what Mr Mogashoa told them that I have told him and if, Chairperson, thing has a strange feeling, maybe let me answer to the specific allegations because there is a
10 sequence of the meetings, what was discussed and who was there and what transpired later on, Chairperson, but I am noting your ...[intervenenes]

CHAIRPERSON: The areas that I particularly want to hear what you have to say about it.

JUDGE MAKHUBELE: Yes, I am noting what you are saying.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: I will address it, Chairperson.

20 **CHAIRPERSON:** Now you refer to Mr Botes. Mr Botes, you referred to the fact that he gave evidence and said you were the first one – you contacted him first.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: About the Siyaya clams and it is true, that is what he said in his evidence. You have said that

the investigation that has been done by the investigators of the Commission suggest that the probabilities are that he contacted you first.

JUDGE MAKHUBELE: Yes,

CHAIRPERSON: And he will get a chance to comment on that.

JUDGE MAKHUBELE: Yes, I have a statement ...[intervenes]

CHAIRPERSON: One of the things he has said is that in
10 the discussion that he had with you, I think it was the first one, whether he called or you called but that first one He said that you said to him that you had been appointed or deployed at PRASA to clean up the mess. Do you want to comment on that?

JUDGE MAKHUBELE: I filed an affidavit, Chairperson.

CHAIRPERSON: Yes and you deny that.

JUDGE MAKHUBELE: I filed an affidavit, it is part of the Commission's record.

CHAIRPERSON: Ja.

20 **JUDGE MAKHUBELE:** I have already denied – used the word deployed, I said I told him I was deployed by President Zuma to PRASA and I said I do not even know President Zuma, I have never met him, I have never seen – I see him on TV like any ordinary South African and I said the only time I have been within a breathing space, that is

the word I used, with President Zuma is during the inauguration of Dr Nkosazana Zuma at the University of Limpopo last year and that is the closest I have ever been.

I am not a politician, I have never been a politician, I understand the word deploy is used in those circles but- and I said, I also sketched my relationship with Mr Botes, that I could not have discussed such things with him, we are not close, we are not friends, I do not know what kind work he does, he does not even know what kind of work I
10 do, we have never been briefed by the same briefing attorneys or anything, I have never been to his – so it would be strange for me. You know, Chairperson, now when you – you must also understand because throughout you kept on using the word it is strange, it is strange, it is also strange for me when someone would make those kind of allegations to me.

And, you know, you get to a point when here is this allegation and then you can only give your version but to the mind of the next person it will still not make sense but
20 he has not – I do not know if he has denied my assertions and remember he – I do not know if he came back to the Commission but I told the Commission that this person, I laid a complaint against and he says it was dismissed. I said I did not even know it was being considered, he told you that I was invited to the disciplinary hearing. I did not

attend. I do not know if he has come back to you.

CHAIRPERSON: Yes.

JUDGE MAKHUBELE: But I ...[intervenes]

CHAIRPERSON: I understand that you deny what he said.

JUDGE MAKHUBELE: Yes, I deny ...[intervenes]

CHAIRPERSON: One of the things he said, I might not remember the exact wording but it related to what you thought of the legal department at PRASA and if I recall correctly, he may have suggested that you said that they
10 were undermining you or they were not good enough, I cannot remember, but he says that is what you said. Do you remember that part in his ...[intervenes]

JUDGE MAKHUBELE: I remember perfectly, Chairperson. Remember he is the person that made me to want to come and testify because I thought his evidence is out of this world. He used the word I told him I do not trust the ...[intervenes]

CHAIRPERSON: You do not trust the legal department.

JUDGE MAKHUBELE: I do not trust the legal team, they
20 want to waste PRASA's money by going to arbitration, they are undermining me and I denied and I think in my response I referred to his email, the email that we read when we started, that he is the person that uses that kind of language when he talks to people. He, in that email, that we talked about, Chairperson, he is the one who was

intimidating the legal - Mr Mogashoa and Adv Tsatswane calling them you are on – I do not know this word, you are on the frolic of your own and that kind of language and you want to waste money, why do we not settle, why are we still going on arbitration? That is when we started, Chair, I said even before I came in the picture Adv Botes was persuading the PRASA team to settle the matters.

So with the regard to the undermining part, I have in my – in the annexures, the Whatsapps and the SMSes
10 that I say I sent but they have not been bundled together, I have shown in one way was telling me that the legal team and the people at PRASA, I think even the CFO were – they are undermining you, you are a person of great integrity, these people are undermining you. So he is the one who was telling me that I am being undermined, I have ...[intervenes]

CHAIRPERSON: How would he have known that they were undermining you?

JUDGE MAKHUBELE: Remember he was making
20 enquiries about the payment of the claims. The claims were settled in December and then there was a period where it appeared there were no problems and then the legal team said they cannot authorise the payment, which is another thing why it would be strange when the people who are going to implement payments saying they have

been excluded because everybody knows that when it goes for payment, their signature is required at some point.

So I then said to Mr Botes early in January of 2018 that look, do not make enquiries with me, deal with – I think I actually used the word let your attorneys handle communication because I cannot help you.

Then he would – he was persistent and then I gave him the telephone number of the new CEO who he was then communicating with. The evidence is there,
10 Chairperson, when he packaged the documents you will see. Then he was communicating with the new CEO who was promising him that the claims will be paid.

So it is in that context when he – and he will be reporting to me that no, today I have spoken to this person and this is what I said. I said look, I am quiet because I can see that there are – although they are not saying it out loud, I can see – I can hear in the corridors that they are making allegations that these claims should not have been settled, so I do not want to deal with this matter anymore
20 and that is when he was telling me that they are undermining you. It is in that context, Chairperson.

CHAIRPERSON: Now you say you deny that – you deny his statement that he said you told him that you did not trust the legal department of PRASA.

JUDGE MAKHUBELE: Yes, yes.

CHAIRPERSON: Did you trust the legal department of PRASA?

JUDGE MAKHUBELE: I said when we started, we started very well, we had meetings where we were going to discuss certain issues and ...[intervenes]

CHAIRPERSON: Go closer to the mic.

JUDGE MAKHUBELE: We had meetings where we discussed certain issues and our discussions were open, they were giving me information and then we ...[intervenes]

10 **CHAIRPERSON:** But did you trust them? That is the question.

JUDGE MAKHUBELE: At that stage yes, Chairperson.

CHAIRPERSON: Earlier on.

JUDGE MAKHUBELE: Earlier on. Our relationship broke down because I did not even know they were not supporting the settlement. Our relationship broke down in – after the legal panel of PRASA was suspended, there was – the board ...[intervenes]

20 **CHAIRPERSON:** That was on the 1 December when it was suspended, if I recall correctly.

JUDGE MAKHUBELE: Yes but then the issues came to head beginning of the year.

CHAIRPERSON: H'm.

JUDGE MAKHUBELE: When Ms Ngoyi was asked to write a report to the board and then she wrote that report which

she was not supportive of that decision, the decision had already been taken and the report was very critical of the board and then that her report was leaked to the media and it was then published in some newspapers and then it was then used by Unite Behind when they challenged the decisions of the interim board.

So then – that is when our relationship, not just with me, with the board, broke down. So from there they ...[intervenes]

10 **CHAIRPERSON:** You did not trust them after that?

JUDGE MAKHUBELE: Well, I had a conversation with her that look, the report that you have written to the board, can you say something because it is in the newspapers and it is being used by people who are challenging the decisions or the decisions of the board, can you say something so that this issue can calm down? And she refused to, she said no, she is not willing to do that because what she has said is correct and I would not want to use the word trust, Chairperson, because I do not understand the context or
20 the meaning of the word when you say did I trust her or not, I am using the word the relationship between legal services and the board broke down and then ...[intervenes]

CHAIRPERSON: But you do not ...[intervenes]

JUDGE MAKHUBELE: I cannot say because I never had any dealings with them after that.

CHAIRPERSON: Yes, you see, we first – we talked about Mr Botes' evidence, that you told him that you did not trust PRASA's legal department.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: And you said you deny that you told him that.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: So my question arose out of that to say did you trust them?

10 **JUDGE MAKHUBELE:** I said in the beginning ...[intervenes]

CHAIRPERSON: So you can't say you understood what trust means when I was saying Mr Botes has said you said you didn't trust them, but you don't understand it ...[intervenes]

JUDGE MAKHUBELE: No I ...[intervenes]

CHAIRPERSON: I ask you whether you trusted them.

JUDGE MAKHUBELE: No I said in the beginning we had a good relationship, but then after the suspension of the
20 legal panel there was that discord between them and the Board and I never had any dealings with them, so I don't – I don't, I didn't use the word trust, I said we had a good relationship in the beginning.

CHAIRPERSON: Mmm.

JUDGE MAKHUBELE: And then it broke down, not just

with me, but with the entire Board, then until – until they were working against the Board and I have proof, I will prove to the Chairperson that they were working against us and until – because Chairperson if – if they had maybe because even if it is a board that is not lawful or properly constituted there would have been someone in the Board that they would have trusted to take the problems to, but they never did, and then they were doing their things and then going behind everybody's back until the Minister and
10 until the matter is before the Commission today.

CHAIRPERSON: So did you involve them in discussing the merits or demerits of settling the Siyaya claims, did you have a discussion with them to say as people who had been dealing with these claims for some time as the legal department before you came you say let's talk about the differences that you are putting up against these claims and let's look at the evidence, did you have that engagement with them before you or your Board instructed that those claims be settled?

20 **JUDGE MAKHUBELE:** Chairperson I have already mentioned that in the – after that first memorandum they did not respond to it, they ask ...[intervenes]

CHAIRPERSON: They did not?

JUDGE MAKHUBELE: They did not respond to the memorandum, they instead asked Mr Mogashoa to give a

report and the report that Mr Mogashoa was giving was about the pleadings, what they have pleaded in court, but they, and I mentioned it in my memorandum, that Ms Ngoye appeared to have some faint, they were not aware of what was happening, if I can put it like that.

CHAIRPERSON: Yes about the claims.

JUDGE MAKHUBELE: About the status of the matter, that even the insolvency inquiry, the status of the matter and when I enquired and I say it in my statement, that when a
10 head of the – and let me correct Ms Ngoye, Ms Ngoye is not – does not have, she appears to think she is the litigation manager, litigation is the head of three units, LRC, Legal, Risk and Compliance, the legal manager is Mr Dingiswayo.

So if they do not know the status of the matter Chairperson and I say it in my statement when I complained about Advocate Botes, it just shows the negligent manner in which the matter was being handled and you cannot say in future I intend to – I intended to
20 plead ...[intervenes]

CHAIRPERSON: But remember what my question is, my question is did you involve them, did you engage them, the Legal Department in discussing the merits and demerits of settling the Siyaya claims?

JUDGE MAKHUBELE: Chairperson I said – the answer I

give I said I did and they did not give me a report, instead they asked their attorney, their external attorney to answer on their behalf, I think that is my response.

CHAIRPERSON: So is the position that their only involvement in regard to the process that led to the settlement of the Siyaya claims was their involvement limited to the fact that you asked for a report from them about the status of the matters and they asked the PRASA attorney to prepare a report, is that what you are saying,
10 or do I misunderstand what you are saying?

JUDGE MAKHUBELE: I asked him to prepare a report, and I said, but then I want to know from you because yes the attorney can prepare a report, but I don't know Chairperson if they have given you any report written by them to me on the matters, and before I forget Chairperson there's a document that I am going to give you which is a letter that the Board directed should be written to them, Ms Ngoye, this is after she had gone to the Minister to say give us a report on these matters.

20 **CHAIRPERSON:** On the Siyaya claims?

JUDGE MAKHUBELE: Yes, on the reports on Siyaya, on Siyaya, on the evidence, it was in effect asking her that since she now says the claims should not have been settled can you please provide the Board with information, reports from the people that you say are saying, that

testified. Remember she is challenging, I say we consulted with those people but then she says no they gave – she also consulted, so the Board wanted ...[intervenes]

CHAIRPERSON: Yes, no, no ...[intervenes]

JUDGE MAKHUBELE: ...her to address the merits ...[intervenes]

CHAIRPERSON: No, no, no you are going outside my question. Can I put it this way.

JUDGE MAKHUBELE: Yes.

10 **CHAIRPERSON:** From what you are saying it seems to me that your answer is yes the only involvement the legal department had in the process towards this, that led to the settlement of the claims, was when you requested a report and they got the attorney to send a report plus what you have added but in terms of engaging and discussing the merits and the legal issues and why it should be settled, the matter should be settled or not be settled that did not happen, is that right?

JUDGE MAKHUBELE: They did not attend the meetings, I
20 think ...[intervenes]

CHAIRPERSON: Yes of course if they don't attend the meeting that means they do not engage.

JUDGE MAKHUBELE: I thought I already said that the meetings were scheduled and only Mr Mogashoa came and then – and remember the reporting lines, they were

reporting to the CEO, and then I would be asking the CEO, but in this meeting we are supposed to have the mandate, he will give a reason why they are not there, and the meetings would continue, but they had already given that report.

CHAIRPERSON: Ja.

JUDGE MAKHUBELE: By Mr – that gives, it was actually a status report to say we filed a plea, this is the plea, and ...[intervenes]

10 **CHAIRPERSON:** So who exactly was – did you involve in discussing the merits and demerits on whether to settle these claims and if so at what amounts?

JUDGE MAKHUBELE: I said in my statement Chairperson that there is a delegation of authority, a delegation of authority that I have that the Board, my Board was given, is attached in some documents and I have also attached the email from the Secretary transmitting that delegation of authority to the Board members and I have also said the reason I am saying this is because I see Ms Ngoye has
20 attached her delegation of authority which I do not know, but in terms of the authority you now who delegate that authority there would be limits for each person or office incumbent, so these, the executives which there will be the legal manager which is Mr Dingiswayo, he would have legal team, he would have his financial limit as the head, overall

head of that section. The Group CEO would have a limit, then the Board will have a limit. The claims fell within the delegated authority of a group CEO, so I deny that in terms of delegation of authority it was within Ms Ngoye's authority, in terms of the document in my possession she did not have that kind of authority, have authority and that somewhere and the claims were within the delegated authority of the group CEO, not even within the – because when – once it gets to above million that would be the
10 Board, but between – before one – not one million, hundred million ...[intervenes]

CHAIRPERSON: Don't worry about the figures because we can always ...[intervenes]

JUDGE MAKHUBELE: Yes but the point I am making is I deny that it was within her authority, in terms of the documents that were given to the Board and if there's any delegation of authority that she has then she misled the Board, or someone misled the Board because the one that I have says what I am telling you.

20 **CHAIRPERSON:** No, that's fine but you would be aware that in her affidavit Ms Ngoye effectively, as I understand her evidence, says that the Court rescinded the order that it had made on the basis of the arbitration awards that had been awarded to, given to the Siyaya companies, on the basis that you or the – you did not have authority to settle

those claims because in order to settle, to have those claims settled, certain procedural steps had to be taken which had not been taken. You would have seen that in her affidavit.

JUDGE MAKHUBELE: I haven't seen that Chairperson, I remember when I say I read her overall affidavit there's somewhere where she says her settlement, the arbitrator set aside the settlement, I did not get a sense that it was a setting aside by the Court, but what – remember what
10 Advocate Botes says, Advocate Botes says PRASA did apply to set aside the settlement. The matter was set down for some time I think ...[intervenes]

CHAIRPERSON: Well this is what happened according to the evidence that has been led here.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: You instructed that the claims, you and your Board, instructed that the Siyaya claims be settled and a settlement agreement or agreements, I am not sure, were included and from there the PRASA lawyer and the
20 Siyaya lawyers went to the arbitrator who was supposed to arbitrate the claims, Judge Brand, and said there has been settlement, please make the settlement an arbitration award by agreement and that was done, and then when PRASA did not pay even when that step had been taken the Siyaya companies went to Court to make that

arbitration award an order of court. It was made an order of court and subsequently the Legal Department had to approach the Court first to interdict the Sheriff from paying over PRASA's money to Siyaya and secondly to rescind the order on the basis that you or your Board had no authority to settle the matters. That is what she says.

JUDGE MAKHUBELE: No Chairperson. Chairperson is reading the documents wrong.

CHAIRPERSON: Mmm?

10 **JUDGE MAKHUBELE:** Let me correct you. The – before under this case number that I said there's an affidavit yes the awards of Judge Brand were based on the settlement. Then Judge Holland-Müter made the arbitration awards orders of Court. Then PRASA went to Court to interdict the Sheriff, because the minute they were made orders of Court then the Sheriff attached I think it was – it was money, not I think.

20 Then PRASA went to Court to challenge the warrants, to set aside the warrants whilst waiting to rescind the orders of Acting Judge Holland-Müter. That application came before Judge Tuchten rescinded the orders that made the arbitration awards orders of court. That's when Judge Tuchten said the settlement is still in force and Makhubele will have her day when there is an application to set aside the settlement agreements

because that is where I was involved, but in the meantime if that enforcement application, you called it enforcement application, to enforce the settlement, is not – there won't be an appropriate forum, then Makhubele there must be another forum for Makhubele to state her case, so as far as the Courts are concerned that – those settlements have not been set aside and then Advocate Botes says the matter was set down to decide on the fate of those settlements, but then it was removed from the roll I think
10 last year, that is the status.

So that is the status Chairperson.

CHAIRPERSON: Yes, but you do accept that ...[intervenes]

JUDGE MAKHUBELE: So then what was being said Ms Ngoye in her affidavit said she is going to join me when there is that application to set aside the settlement agreement. Remember now I am the one who acted unlawfully, and without my involvement obviously, I mean in those proceedings if I decide to oppose, and I don't
20 think I would have wanted to get involved, because I don't know but I say in my statement I have never been – I have never been found guilty, that is what I am emphasizing that no one, no Court has ever found me guilty of anything.

CHAIRPERSON: What do you say about the complaint that you were running a board that did not have a quorum,

that all of these things that were being done by the Board was being done by a Board that was not constituted in terms of the applicable act and it had no authority to do anything until it was properly constituted.

As I understand the Act, and you must tell me if you understand yours differently, it is different, my understanding is that you needed, your board needed to have seven members, some of whom had to have certain expertise but your Board only had six members and that
10 the minutes will show that there was no meeting during your time, or rather some of the minutes where meetings apparently were held show six members or five members, I don't know whether the meeting of the 16th of March there was a new member which came, what do you say about that?

JUDGE MAKHUBELE: There is an application before the Western Cape High Court on that very matter Chair, I would not want to venture and answer without properly applying my mind, it is a legal argument that I – it is before
20 Court and PRASA filed an affidavit to reply to that, I was not kept abreast, I was not certain if the matter, but I am not certain if the matter has been finalised.

CHAIRPERSON: Yes, no ...[intervenes]

JUDGE MAKHUBELE: And I would not, I know there's an argument that was placed before Court, I will have to – I

will have to refresh my mind about it.

CHAIRPERSON: Okay, no that's fine because we are not finishing today.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: But it is something quite important because my own understanding is that one of the responsibilities of the Chairperson of any meeting, including a Board meeting, is to first satisfy themselves that there is a quorum before they can do any business
10 and therefore one would expect that is something that you would have looked at and probably you have a view as to whether that what they say is correct or not.

JUDGE MAKHUBELE: Yes well as I say I believe there is a legal argument that is afoot, I don't want to venture it, it is quite a long time, I need to read the papers.

CHAIRPERSON: Okay, no that is fine. The last question for today, for this evening for me is, one I talked about something that I said seemed strange to me, another one that seem strange to me is that the so-called settlement of
20 the Siyaya claims your instruction, or your Board's instruction was effectively as reflected in the settlement was effectively that PRASA must pay exactly in regard to each of I think about four claims the amount that was claimed and the interest that was, the interest I think running from the date of service of summons, the only

thing that I think wasn't there is that PRASA must pay costs. That didn't seem to me a usual settlement. In a settlement one would normally see that the plaintiff claimed five million but the actual settlement is less than that, because the parties are trying to settle so that they don't end up in court. Are you able to say anything about that?

JUDGE MAKHUBELE: Not at this stage Chairperson, as I said when I was dealing with that report and that the
10 evidence of – or rather the submissions of the relevant people with regard to – remember with some claims there would have been, the issue is the amount and then they would have indicated that the correct amount is here and I don't want to venture and answer without looking into the documents but I have noted your question and your – rather your – what makes you feel.

CHAIRPERSON: Some of this what I consider to be, what seemed to me to be strange features.

JUDGE MAKHUBELE: To be strange yes.

20 **CHAIRPERSON:** Ja, which you might be able to explain and once you have explained they might not be strange.

JUDGE MAKHUBELE: Yes, and I may not be able to explain that but then I am – you know Chairperson remember there are submissions by a person who says she is not trying to tell this Commission that her contentions

are correct and she is someone who has these strange feelings about documents and obviously those who were there must be able to explain Chairperson.

CHAIRPERSON: Ja, no, no it is fine.

JUDGE MAKHUBELE: So it is a – but at the end of the day I ...[intervenes]

CHAIRPERSON: It is a way of being fair to you to say you must know what is weighing in my mind so that you can address it properly.

10 **JUDGE MAKHUBELE:** I have seen that and I have seen Mr Mogashoa's response, because you know when things happen in the presence of attorneys they would know what to call the letter, you write without prejudice, with prejudice, it is a settlement, it is what, and it is things that happen under direction of legal advice. It is only lawyers who would be able to explain the wording and I would say I relied on these explanations but I first need to look at the documents.

CHAIRPERSON: Ja, okay, alright. We are going to
20 adjourn now, you must then remember that next time you must have – you must have looked at all the documents that you may wish to look at so that we can deal with everything, but in particular you will remember for when we resume next time that you will be looking – among other things you will be looking at the issue of what work you did

at Water Tribunal arising from the fact that I said the letter that the Judge President wrote to the Minister about the deferment of your appointment gave your work at the Water Tribunal as the reason.

JUDGE MAKHUBELE: I said I don't have that letter, can someone ...[intervenes]

CHAIRPERSON: Yes, no, no, you will get the letter.

JUDGE MAKHUBELE: Can someone give me that letter.

CHAIRPERSON: Ja, that letter as well as the
10 correspondence from the Water Tribunal, as I said to you, they said there was only one appeal but even that one appeal was on the head in 2017 and not in 2018 so you can look at all of those things, you can also have a look and be able to say here are cases I don't know what they are talking about that I was involved in and in terms of wrapping up your legal practice also you gave us information, you said you appeared in seven courts, what you are able to give us.

JUDGE MAKHUBELE: And I will also give you what we
20 were doing at PRASA.

CHAIRPERSON: Yes, yes, ja, do that as well.

JUDGE MAKHUBELE: Because of this belief that there was an obsession with the one matter, and Chairperson if I may also say I will also, I did indicate to you that I would also – I was reading the rules that if part of my response

will point to irregularities, remember the affidavit of Ms Ngoye says she wants to highlight the – where the leaders were found wanting in various reports of AG's, PP and National Treasury, and Chairperson I must say right now that she only talks about me as a person, as if I am – I was there alone, but she does not talk about herself, there are irregularities involving her, Ms Ngoye and Mr Dingiswayo which I am going to talk about and require an investigation by this Commission because once I mention it there is that
10 obligation.

She doesn't talk about the irregularities under the Board of Mr Popo Molefe, which I am also going to talk about. She only wants to talk about me as if I am just this branch, literally branch that was put there at PRASA with just on my own you know without – and she forgets about herself and the other Boards where there are irregularities that have been flagged by the Auditor General. We need to talk about everything, irregularities, corruption, maladministration does not change its name depending on
20 who is involved.

CHAIRPERSON: Ja, no, no, no that is fine. We are going to adjourn, I indicated on Monday that I was looking at the 17h of August. I am going to fix that date but that is – that may change because the Commission will talk to your JP but you indicated on Monday that you might wish

to talk to him as well to see if you can get some leave so that you can attend to this matter.

JUDGE MAKHUBELE: Yes.

CHAIRPERSON: Properly, so we will adjourn to the 17th but between now and the 17th there will be communication between the Commission and yourself and the JP. That date might stand, the date might change, but everybody will be advised.

JUDGE MAKHUBELE: I may mention through you Chair
10 that I have already sent the communication to JP Mlambo last night that I require time, I have requested that he must grant me special leave, because remember it is not just this matter, the JSC is sitting in October, so I want to deal with all these matters without the pressures of work, so I am looking at being released for quite some time to attend to all these matters because Chair I need – I also need to obtain the services of someone to assist me to draft the affidavits that I must draft so I am going to follow up with JP what his position is but I don't just want to released for
20 a week, I want time to deal with all these matters, but we should know maybe before the end of this week.

CHAIRPERSON: Yes, okay no that's fine.

JUDGE MAKHUBELE: But thank you Chairperson.

CHAIRPERSON: Thank you Judge Makhubele. Mr Soni do you want to say something?

ADV SONI SC: Yes. Chairperson before we adjourn you will recall that on Monday besides the question of Judge Makhubele testifying today you had raised the question of the status of the legal team, namely whether we would continue our participation or not, and it depended as I understood it on heads of argument being filed by Judge Makhubele on Friday and our filing heads of argument by Wednesday next week.

CHAIRPERSON: Yes that still stands ja.

10 **ADV SONI SC:** We would like that to stand.

CHAIRPERSON: Ja, that still stands.

ADV SONI SC: Because I must just say it is a bit awkward for me sitting as a leader of the legal team in this matter to be sitting as a participant, as a spectator in this matter.

CHAIRPERSON: Ja, no, no that directive stands, so and as I indicated it might be that I will decide the issue or it might be that I might find a practical solution to it but that does not - obviously if I find a practical solution to it
20 anyone who would not have filed there might be no need to file anything but until everyone is advised to the contrary that directive about Judge Makhubele filing her written submissions this Friday and the Commission's legal team filing its on written submissions on or before Wednesday next week stands.

Okay, alright.

ADV SONI SC: Chairperson we submit it is an important issue and I have not discussed it with the other members of the legal team and the Commission but one can expect that this sort of onslaught on the integrity of members of the legal team is going to continue unless the parameters within which the withdrawal or recusal or whatever one wants to call it is properly set Chairperson.

CHAIRPERSON: Thank you very much to everybody for
10 staying on until this time. We are going to adjourn and as I said the matter is postponed to the 17th of August at ten o'clock, unless the time is changed and the date might change, but until there is an advice that it has changed it will remain the 17th.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 6 AUGUST 2019