

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

06 AUGUST 2020

DAY 246



Gauteng Transcribers
Recording & Transcriptions

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

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, *in as far as it is audible*, the foregoing is a **VERBATIM** transcription from the soundtrack of proceedings, as was ordered to be transcribed by Gauteng Transcribers and which had been recorded by the client

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

CITY OF JOHANNESBURG OLD COUNCIL CHAMBER

158 CIVIC BOULEVARD, BRAAMFONTEIN

DATE OF HEARING:

06 AUGUST 2020

TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



Gauteng Transcribers
Recording & Transcriptions

PROCEEDINGS RESUME ON 06 AUGUST 2020

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PRETORIUS SC: Morning Chair.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: By agreement three witnesses have been set down for today. The first is a Mr Zulu. He is represented and you will hear from his counsel in a minute. The second is Mr Manyike and the third possibly will not be
10 called Mr Duminy from SMD Motors.

CHAIRPERSON: Hm okay. Thank you. Counsel for Mr Zulu. They must just sanitise the podium before you – you.

ADV DAYAL SC: Thank you Mr Commissioner.

CHAIRPERSON: Yes thank you. Just for the record you can just place yourself on record again.

ADV DAYAL SC: Yes. Mr Commissioner my name is Shane Dayal I am counsel from Durban and Johannesburg.

CHAIRPERSON: Hm.

ADV DAYAL SC: I am instructed in this matter by Mr Manoj
20 Maharaj of Attorneys Maharaj Attorneys. I represent two witnesses today. The first Mr Duminy you have heard from my learned friend about Mr Duminy's evidence and I represent a witness who I do not wish to obviously disclose for reasons that will become clear as I address.

CHAIRPERSON: Okay.

ADV DAYAL SC: Mr Commissioner.

CHAIRPERSON: Thank you.

ADV DAYAL SC: Mr Commissioner just by way of a brief background you will recall that during the course of last year in August I together with my learned friend Mr Hellens SC appeared for a witness. He was given a Section 3.3 Notice by the commission in respect of certain evidence that allegedly implicated him that was to be given by a Mr Dukwana.

10 Now Mr Dukwana you will recall Mr Commissioner has already given evidence during the course of last year and a I understand from my learned friend Mr Pretorius his address to commission yesterday which I watched that all of the evidence that is going to be led during the course of this week relates to what is termed the Asbestos Project in the Free State.

 The very basis of that evidence that the commission has at this stage is as a consequence of Mr Dukwana's evidence.

20 Now during the course of last year when I did appear, we put before the commission an affidavit from my client. We raised in that affidavit certain issues we have with Mr Dukwana leading evidence on a certain aspect. It was a spread sheet if you recall I will not go into any further detail but I think you do recall and you have seen – you have seen

the affidavit in any event.

CHAIRPERSON: Yes. Ja.

ADV DAYAL SC: And we raised the issue about – we raised two issues.

CHAIRPERSON: I am sorry do not speak too far away from the microphone.

ADV DAYAL SC: I am sorry.

CHAIRPERSON: They are so – if you are too far away, I cannot hear.

10 **ADV DAYAL SC:** I apologise.

CHAIRPERSON: Yes.

ADV DAYAL SC: I am sorry.

CHAIRPERSON: Yes.

ADV DAYAL SC: Yes you will recall that we – we raised two issues in the affidavit. We said firstly that before our client is called in a very public forum such as this one on TV and before his reputation in any way is tarnished or dragged through the mud so to speak, we would like two things. One is we would like the commission to properly investigate the
20 allegations in Mr Dukwana's affidavit and we would also like the commission to consider that we would like to cross-examine Mr Dukwana.

Now we specifically in our affidavit if you recall tendered full cooperation to the commission. We tendered our documents, bank statements whatever the commission

required. But we specifically said in the affidavit that before we are called into a very public forum these – given the importance of the commission and its responsibilities to investigate these allegations and to please give us an opportunity to cross-examine Mr Dukwana.

Anyway, that affidavit and you will recall that affidavit was – was given the commission during August last year. Mr Hellens and I then appeared I think it was the 27 August there is a transcript in respect of that where various things
10 were raised and Mr Commissioner then after considering all of the issues raised then decided that it is prudent for the commission to properly investigate and thereafter to make a determination on calling Mr – calling the witness.

What happened then was two things. Firstly, in regard to the investigations we cooperated. In regard to the issue of the cross-examination that was on the commission's own letter held in abeyance and at this stage if I may just make reference to the further affidavit delivered by client which I think is before Mr Commissioner.

20 **CHAIRPERSON:** I do not know whether the bundle you have is the same.

ADV DAYAL SC: It is probably not but I am – I am... am...

CHAIRPERSON: Ja – yes.

ADV DAYAL SC: But I am specifically referring to its annexure TW2 – TWZ2.1.

CHAIRPERSON: The first affidavit of ...

ADV DAYAL SC: Can I – for the sake of convenience.

CHAIRPERSON: Ja.

ADV DAYAL SC: I can just ask my attorney to give me a copy of the letter.

CHAIRPERSON: Yes. And it may be that if you read.

ADV DAYAL SC: And I can then – I can then hand up my copy of my letter please.

CHAIRPERSON: Oh okay. Yes.

10 **ADV DAYAL SC:** Thank you.

CHAIRPERSON: Thank you. Yes.

ADV DAYAL SC: Sorry Mr Commissioner can I just ...

CHAIRPERSON: Yes.

ADV DAYAL SC: Thank you Mr Commissioner I apologise for that.

CHAIRPERSON: Yes.

20 **ADV DAYAL SC:** Yes if one looks at this letter this is a letter addressed by the commission itself. It is by the secretary of the commission Mr Tshabalala and it makes reference to the initial statement that my – the initial affidavit that my client put up last year.

CHAIRPERSON: Hm.

ADV DAYAL SC: And it confirms receipt too of the affidavit. It notes what is stated in paragraph 7.2 and 11 that is the unequivocal tender by my client to cooperate with the

commission's investigations. To make any documents available including bank statements. To make himself available for an interview. To make himself available to answer any questions.

CHAIRPERSON: Hm.

ADV DAYAL SC: And then it say:

“In view of those undertakings in the following – on the following page the commission's investigators will conclude its existing investigations and revert to you. In this regard
10 they will make contact with you in order to interview you with the – and obtain the relevant documentation.”

But most importantly it says in paragraph 4.

“Consequently, your client's application will be held in abeyance pending finalisation of our investigations.”

CHAIRPERSON: Hm.

ADV DAYAL SC: That is the...

CHAIRPERSON: Ja.

ADV DAYAL SC: Reference to the application to cross-examine Mr Dukwana.

20 **CHAIRPERSON:** Yes.

ADV DAYAL SC: Now ...

CHAIRPERSON: Unfortunately, the letter does not give a reference so that one could see who within the commission prepared it. Of course, it is signed by the acting secretary but she signs a lot of letters that come from different work

streams and different units of the – of the commission and I would have like it if there was an indication as to the reference. I – I – but I – I suspect looking at the letter that it may have been prepared by somebody within the legal team who may have been involved in – in the Dukwana – in the Free State Asbestos matter. That is my – but the letter does not give an indication. But – I think continue to make the point you wanted to make.

ADV DAYAL SC: Just on that issue if I may?

10 **CHAIRPERSON:** Yes.

ADV DAYAL SC: You will recall that it was not my learned friend Mr Pretorius.

CHAIRPERSON: Ja.

ADV DAYAL SC: That was leading the evidence last year.

CHAIRPERSON: Ja, no.

ADV DAYAL SC: It was Advocate Mokoena.

CHAIRPERSON: Yes.

ADV DAYAL SC: Mokoena.

CHAIRPERSON: Yes.

20 **ADV DAYAL SC:** That was leading the evidence.

CHAIRPERSON: Yes. Yes.

ADV DAYAL SC: So it could very well – I am speculating but it could very well be...

CHAIRPERSON: Well by – I think by 13 December he had – he was no longer involved in the commission so it may be

other members of the legal team.

ADV DAYAL SC: I see.

CHAIRPERSON: Who were involved.

ADV DAYAL SC: Yes.

CHAIRPERSON: Or somebody who was involved.

ADV DAYAL SC: Yes.

CHAIRPERSON: But that is fine. That does not necessarily say anything about the point you want to raise.

ADV DAYAL SC: Yes.

10 **CHAIRPERSON:** Your point is – you received or your client's attorneys received a letter from the commission and this is what it was saying.

ADV DAYAL SC: Indeed. And that was in December last year.

CHAIRPERSON: Yes.

ADV DAYAL SC: And then you will recall we have put in as I have said two affidavits but what happened then after December is eventually a Mr Lambrechts – Etienne Lambrechts from the commission came back and
20 communicated directly with my client and so on and subpoenaed documents from the bank and when we in fact had already said that we cooperating there is no need to do that. But be that as it may I just want raise the issue of not just the conduct of some of the representatives of the commission and I – and I say that will all humility and

respect but with an equal amount of strength that my client has been treated rather shabbily and unfairly.

For one when he made this tender as far back as August last year.

CHAIRPERSON: Hm.

ADV DAYAL SC: The tender was not in fact taken up. In fact, what happened then was there were subpoenas issued for bank statements and so on. There was a threat that he must be – he is going to be summonsed before the
10 commission.

CHAIRPERSON: Hm.

ADV DAYAL SC: There was a stage where there was direct communication with the client instead of my instructing attorney know full well that my attorney is on record.

CHAIRPERSON: Hm.

ADV DAYAL SC: There was somewhat of harassment as to my client being forced to disclose his whereabouts for certain things to be served on him. This is all dealt with in the further affidavit. I need not.

20 **CHAIRPERSON:** I have seen it.

ADV DAYAL SC: Yes, I think you have seen it.

CHAIRPERSON: I have seen it yes.

ADV DAYAL SC: But the point of my address is simply this at this stage. Other than the manner in which my client was treated it appears that there is a procedural...

CHAIRPERSON: Maybe I must just say this before you move away from the – your client's complaints about how he has been treated. I do understand that there will be an affidavit that – the response to the allegations of how your client has been treated because I would like to see a response to the allegations. So I cannot say much now but I have read what your – what the allegations are and I understand that at some stage there will be enough evidence that will be – that I will look at to see what the response is.

10 And then I can only say something once I have seen that.

ADV DAYAL SC: Yes I appreciate that Mr Commissioner.

CHAIRPERSON: Ja.

ADV DAYAL SC: That aside there would also need to be a response in respect of our application to cross-examine.

CHAIRPERSON: Hm.

ADV DAYAL SC: And at this stage may I just refer firstly to the affidavit of my client – the first affidavit in August last year and I think you have that before you.

20 **CHAIRPERSON:** Well I know I have got no less than two affidavits from your client.

ADV DAYAL SC: It is the first affidavit.

CHAIRPERSON: Is it the one with seven pages?

ADV DAYAL SC: That is right and...

CHAIRPERSON: Or you mean the first to be provided to the commission?

ADV DAYAL SC: Indeed, and that affidavit is in fact attached to the further affidavit as well as a matter of convenience.

CHAIRPERSON: Well Mr Pretorius has got the same bundle as myself he might be able to tell me where – where I find it in the bundle.

ADV PRETORIUS SC: Chair under 1 at page 150.

CHAIRPERSON: 150. That is Bundle FS1 page 150 and 150 refers to the black numbers hey?

10 **ADV PRETORIUS SC:** Yes Chair.

CHAIRPERSON: Yes okay. Yes I have got it.

ADV DAYAL SC: Thank you.

CHAIRPERSON: Yes.

ADV DAYAL SC: Mr Commissioner if you – firstly you would look at paragraph 7 and obviously our page numbers are different so I apologise I cannot tell you which page but it is paragraph 7.

CHAIRPERSON: Well – my paragraph – my paragraph 7 starts with “I wish to make a number of”.

20 **ADV DAYAL SC:** That is the one.

CHAIRPERSON: That is the one ja.

ADV DAYAL SC: Yes.

CHAIRPERSON: Okay.

ADV DAYAL SC: So just bearing in mind the background that Mr Dukwana is if I may term it the commission’s star

witness on the asbestos eradication project.

CHAIRPERSON: Hm.

ADV DAYAL SC: In the Free State.

CHAIRPERSON: Hm.

ADV DAYAL SC: So bearing that in mind this is what my client. He said, firstly he wants to make a few things – he wants to make a few points and he says:

“In regard to the statement or with regard to the statement of Mr Dukwana any responsible legally trained person who has
10 regard to the statement to which I am referred would be reckless and indeed – sorry would be reckless. If they did not conclude that the statement comprises an undirected rambling gossip sheet there appears to be no substantiation whatsoever for the allegations loosely made by the deponent.”

And then he says the following if you could please go Mr Commissioner to paragraph 7.4 or 7.3 rather. He says:

“I would remind the commission that it has to go about its work in a responsible manner and that it is positively under a
20 legal duty to avoid unsubstantiated allegations from being publicly aired with the consequent damning consequences. In my case they will be serious indeed.”

And then he says:

“I insist on a right to cross-examine Mr Dukwana”

In paragraph 7.

CHAIRPERSON: Is that what he regards as an application for leave to cross-examine?

ADV DAYAL SC: Yes.

CHAIRPERSON: That one sentence?

ADV DAYAL SC: And – well no.

CHAIRPERSON: And he does not have a right.

ADV DAYAL SC: Mr Commissioner can I...

CHAIRPERSON: He only has a right to apply.

ADV DAYAL SC: Yes. But can I ...

10 **CHAIRPERSON:** Not a right to cross-examine.

ADV DAYAL SC: Can I – can I – can I make two points on that score? You have a discretion and I read – I have read your rulings.

CHAIRPERSON: Ja.

ADV DAYAL SC: You have a discretion, the test is well set out in your rulings. There is no right to cross-examine.

CHAIRPERSON: Hm.

ADV DAYAL SC: But my point is our application has not even yet been considered.

20 **CHAIRPERSON:** Yes but I am – if you rely on this sentence to say there is an application for leave to cross-examine, I think you probably will have difficulty.

ADV DAYAL SC: Well...

CHAIRPERSON: Because he is not applying here for leave. He is just stating what he believes – what right he believes

he has. What he does indicate is that to say the least he has an intention.

ADV DAYAL SC: Yes.

CHAIRPERSON: To cross-examine probably that part. But on the face of it it would seem to me that if this is what is relied on, he possibly still needs to make a proper application for leave to cross-examine.

ADV DAYAL SC: That may very well be and I take your point. But just bear in mind that as far as the commission is
10 concerned they recognised this an application to cross-examine because they said to us in December – well when I say they I apologise I mean the letter – the letter said to us in December written on behalf of the commission that your application will be held in abeyance. And it seems that they recognised two things. They recognised our tender to cooperate which is clearly set out in the letter and they recognised our application to cross-examine and they said, it will be held in abeyance. But even if – even if we have to bring a fresh application and Mr Commissioner is of the view
20 that this is not suffice as an application my point is that that still has to be decided. As far as we were aware the commission recognised it as an application to cross-examine.

CHAIRPERSON: Hm.

ADV DAYAL SC: We now learnt for the first time today and

in fact this morning that it is not recognised as an application to cross-examine but that – I am not making much of that at this stage. It is something that we have to deal with.

CHAIRPERSON: Hm.

ADV DAYAL SC: But it – more importantly it is something that the commission procedurally has to deal with because if indeed we are given a right – are given leave by Mr Commissioner to cross-examine then firstly our application
10 itself would have to be determined. Mr Commissioner would have to apply your mind to that application and then it is yes or no depending on how Mr Commissioner views it. And thereafter we either cross-examine or we do not. But at this stage it is premature to even go into the application when on the commission's version that application in any event is in abeyance.

CHAIRPERSON: Hm.

ADV DAYAL SC: And obviously has not been decided as yet. So we say with all due respect that is yet a further
20 prejudicial aspect to my client. That causes serious prejudice with respect because now we have a situation where initially the commission says to us last year, here is a Section 3.3 Notice in respect of Mr Dukwana's evidence. We come along and we say to the commission, we have difficulties with Mr Dukwana's evidence for the reasons set

out in our affidavit we would like to cross-examine him.

CHAIRPERSON: Well – well let us start where probably we should have started namely what the point of your address is. I think the point of your address is that you are applying for the postponement of the hearing of your client's evidence. Is that right?

ADV DAYAL SC: Mr Commissioner yes.

CHAIRPERSON: Or not?

ADV DAYAL SC: Simply put I am saying that procedurally
10 we have a right to certain things including having our application to cross-examine before our client or my client is put into the witness box and is asked questions surrounding this asbestos project in the Free State and we say that the very evidence or basis that the commission is now proceeding this week to ask these questions and this much is clear from Mr Pretorius' address yesterday is Mr Dukwana's evidence on what the commission heard last year on the asbestos audit.

CHAIRPERSON: Yes but I just want us to be on the same
20 page.

ADV DAYAL SC: Yes.

CHAIRPERSON: Is the purpose of address to apply for the postponement of the hearing of Mr – of your client's evidence?

ADV DAYAL SC: Yes.

CHAIRPERSON: Yes. And the basis for that application is that he seeks to cross-examine Mr Dukwana and he believed that he had filed an application for leave to cross-examine him. He was told that that application would be held in abeyance. He believes that he should – that application should be decided first before he gives evidence and gets questioned. That is the basis is that right?

ADV DAYAL SC: Ja the essence of my submissions yes.

CHAIRPERSON: Yes. Now I think that the – in part your
10 application is based on a certain sequence of events. One of which is that your client believes he – if he is going to be granted leave to cross-examine, he should cross-examine Mr Dukwana first before he can give evidence, is that right? Obviously if his application is unsuccessful, he would say okay I will go into the witness stand and testify if – is that correct?

ADV DAYAL SC: Mr Commissioner I think there are two aspects to that. Before he even gets to the point of the cross-examination, he would like his application decided.

20 **CHAIRPERSON:** Yes, no, no but that is what I am saying.

ADV DAYAL SC: Yes.

CHAIRPERSON: I am saying first he wants – he says his – he believes he has a pending application for leave to cross-examine Mr Dukwana.

ADV DAYAL SC: Yes.

CHAIRPERSON: He believes that should be decided first.

ADV DAYAL SC: Yes.

CHAIRPERSON: Before he can be called to give evidence and to be questioned?

ADV DAYAL SC: Yes.

CHAIRPERSON: And if his application is decided first obviously it can be that his – it is granted or it is refused.

ADV DAYAL SC: Yes.

CHAIRPERSON: If it is granted, he would further in – say
10 he must first cross-examine Mr Dukwana before he takes the witness stand. If his application or leave to cross-examine Mr Dukwana is unsuccessful, I take it he will say okay then in that event I would take the witness stand.

ADV DAYAL SC: Well he – yes. I think I would like to make just one point to add to that if I may.

CHAIRPERSON: Hm.

ADV DAYAL SC: Remember he came last year – my client came along last year to the commission and said, these are the issues I have with Mr Dukwana's evidence please can I
20 cross-examine him.

CHAIRPERSON: Hm.

ADV DAYAL SC: The commission then said to us in December we recognise implicitly in that letter.

CHAIRPERSON: Hm

ADV DAYAL SC: We recognise your application to cross-

examine but it is in abeyance. So he procedurally with respect his application for cross-examine – to cross-examine has – is still in abeyance in respect of a witness that I am given to understand has already given evidence at length.

CHAIRPERSON: Hm.

ADV DAYAL SC: About the asbestos project.

CHAIRPERSON: Hm.

ADV DAYAL SC: So the point is that he would like his application – he would like Mr Commissioner to apply your
10 mind to the application first before he is compelled into the witness box in a very public forum to be questioned about issues surrounding the asbestos project.

CHAIRPERSON: Well I – my recollection from even last year is that your client’s concern was largely – largely revolved around a certain amount of money that was reflected in the spread sheet as having been given or intended to be given to somebody with certain initials. I am not sure if there was any other concern at that stage that he raised.

20 **ADV DAYAL SC:** Well he could not raise any other concern at that stage.

CHAIRPERSON: Yes.

ADV DAYAL SC: Because Mr Dukwana had not yet given evidence.

CHAIRPERSON: Ja.

ADV DAYAL SC: Mr Dukwana had given an affidavit and as is the customary practice with the commission.

CHAIRPERSON: Ja.

ADV DAYAL SC: Mr Commissioner then sends a Section 3.3.

CHAIRPERSON: Yes.

ADV DAYAL SC: Notice to say you are possibly implicated.

CHAIRPERSON: Ja.

ADV DAYAL SC: This is the evidence that you are
10 implicated in or allegedly implicated in you now have rights. You can seek to cross-examine. You can come and give evidence or you can send someone on your behalf to give evidence.

CHAIRPERSON: Hm.

ADV DAYAL SC: So we had not at that stage heard any of Mr Dukwana's evidence.

CHAIRPERSON: Yes.

ADV DAYAL SC: Then Mr Dukwana after we came along on the 27 August and Mr Commissioner found that that aspect
20 should not be dealt with at all and so on and we left the commission at that stage. Mr Dukwana then gave evidence at length.

CHAIRPERSON: Hm.

ADV DAYAL SC: As I am given to understand of the transcripts about the Free State Asbestos Audit.

CHAIRPERSON: Hm.

ADV DAYAL SC: So just bearing in mind at that stage that is what we were asked to deal with. It could very well be a case at the stage when we either have to bring a fresh application call it to cross-examine or supplement our application to cross-examine. It may be other aspects that we require to be – to cross-examine or not.

CHAIRPERSON: But as you stand there is the position that for all intents and purposes as far as you know your client's
10 concern arises from Mr Dukwana's evidence in relation to what was in the spread sheet?

ADV DAYAL SC: Mr Commissioner if I may. Can I just ask you before I answer that question because the answer to that question is no that is not my only concern.

CHAIRPERSON: Yes. Ja.

ADV DAYAL SC: But I think I need to tell you why and if you look for example at the further affidavit of Mr – of my client and that appears – I am sorry I do not have the page number but it is the further affidavit.

20 **CHAIRPERSON:** Yes.

ADV DAYAL SC: But attached to that affidavit appears the – to – appears the questions that were put to my client.

CHAIRPERSON: Ja.

ADV DAYAL SC: By the commission's investigators.

CHAIRPERSON: Ja.

ADV DAYAL SC: And that is annexure TWZ8.

CHAIRPERSON: Yes. Is that the one relating to the car?

ADV DAYAL SC: Sorry Mr Commissioner?

CHAIRPERSON: Is what you are talking about allegations about a car?

ADV DAYAL SC: It is not just – no it is not – it is not just the car.

CHAIRPERSON: Oh ja okay.

ADV DAYAL SC: If for example if one looks at this
10 document – can I perhaps just point you to.

CHAIRPERSON: Ja.

ADV DAYAL SC: So the document is dated the 14 May 2020
it is from the commission. This time it is signed by – oh
sorry it is not signed by anyone but I think it is clearly a
document from the commission because it was a letter
saying these are the questions, we would like you to answer
and then we answered the questions. But the questions
revolved around some of - some of the questions revolved
around the following: It referred firstly to the signed affidavit
20 of Mr – oh sorry the signed affidavit of my client dated the 23
August.

CHAIRPERSON: Hm.

ADV DAYAL SC: It asked questions about whether that is a
document signed by him. It then asked questions about Mr
Dukwana's spelling of his name and so on. It then asked

questions about the spread sheet in paragraph 2.4 that Mr Dukwana made reference to in his affidavit. And it then asked various other questions about companies and parties such as Blackhead and – and so on which are issues that we all – we have addressed completely in the letter. But the point I am trying to make is that the questions that were asked revolved around Mr Dukwana’s evidence.

CHAIRPERSON: Hm.

ADV DAYAL SC: Those are the questions that were asked
10 by the commission and those were the answers we gave.

CHAIRPERSON: Yes.

ADV DAYAL SC: And that is what the commission wants us to deal with today by getting into the witness box to deal with. And I see it as... it is all due ...[intervenes]

CHAIRPERSON: Yes, but from what I have read, it seems to me that your client is ready to deal with any of these allegations from what I have heard.

The impression that I have is that he is ready to deal with all of these allegations. It may well be that he would
20 prefer to cross-examine Dukwana before he takes the witness stand.

But when I read all these affidavits, I certainly get the impression of somebody who is ready to say, “Bring them on. I will answer these. I will deal with all of these.”

That is the impression I get. It may be a wrong

impression but that is the impression I get.

ADV DAYAL SC: Can I perhaps correct that impression, if I may?

CHAIRPERSON: [laughs] Ja.

ADV DAYAL SC: The answer to those questions, because of the conduct of the Commission's investigators ...[intervenes]

CHAIRPERSON: Ja.

ADV DAYAL SC: ...and I can take you through the affidavit but he answered those questions ...[intervenes]

10 **CHAIRPERSON:** Ja. No, no, no. I ...[intervenes]

ADV DAYAL SC: ...under pain of the possibility of subpoenas and being summonsed to the Commission and been asked about his whereabouts.

CHAIRPERSON: H'm. No, no, no.

ADV DAYAL SC: And he answered those... I am sorry to interrupt you but... and he answered those questions consistent with his tender that he originally made last year to say, "Please, interview me. Ask me these questions. Do not subpoena my bank accounts. Do not embarrass me".

20 **CHAIRPERSON:** Yes.

ADV DAYAL SC: "I am cooperating".

CHAIRPERSON: Ja. Okay. No, that is fine. I think I understand what your client is to say. I would like to hear what Mr Pretorius has to say.

As we speak, my concern is that if the witness has had

enough time to deal with the issues and as put in his affidavit, it may be that it is not something that should warrant postponing his evidence. That he might prefer to cross-examine a witness before he gives evidence.

Number two, there is the problem in that, as I have indicated, on the face of it, for me, if reliance is placed simple on that one sentence, the way he says, "I insist on my right to cross-examine".

That if reliance is based on that to say there is a
10 pending application, there might be difficulties with that. I accept that you received or he received a letter from the Commission which seemed to think that it was an application for leave to cross-examine.

But I will hear what Mr Pretorius has to say. Those are my current thoughts to say there might be difficulties. But certainly to the extent that there might be doubt about whether that is an application for leave to cross-examine if he decides he does want to file an application or file documents or affidavits, that will make it clear, he is
20 applying for leave to cross-examine, that could still be done.

He might have to file a combination application to the extent that it might be outside the time limit but there is no bar that says you cannot do it anymore.

He can explain the position. And it may well be that if he gets evidence, by the time he finishes, even he is

satisfied that after sufficiently... with whatever Mr Dukwana said, I think... I do not think maybe I should bother about cross-examining anymore.

But also, it might emerge that there is very little in terms of disputes, disputes of fact. Remember that with regard to Mr Dukwana and amounts of money which were reflected in the spreadsheet, remember that he was simple talking... interpreting what he was seeing there.

And there, in regard to your client, there were just
10 certain initials, certain amount. He does not know... he did not know anything, as far as I recall, beyond that and except knowing various of government officials who had something to do with the Asbestos Project.

That, as far as I recall, that is about all that I think he was saying, you know. He could not be definitive about anything.

ADV DAYAL SC: Sorry, can I just address you very briefly on that?

CHAIRPERSON: Ja. H'm.

20 **ADV DAYAL SC:** When... firstly, I think it must be borne in mind that this is a very public forum Mr Commissioner. As we stand here, we are being televised ...[intervenes]

CHAIRPERSON: Ja.

ADV DAYAL SC: ...the country, around the country.

CHAIRPERSON: H'm-h'm.

ADV DAYAL SC: When one has to get into a witness box on... in this kind of forum, which is public as this is, one obviously has certain rights which need to be protected.

Now if Mr Commissioner is of the view that you can carry on with the evidence and there really is no prejudice at the end of the day, I ask Mr Commissioner just to bear this in mind.

The prejudice is extreme because if my client was cooperative with the Commission at all material times and he
10 has answered their questions, both by way of written answers and in terms of two affidavits now, and he is then, for the sake of it just called into the witness box to be publicised ...[intervenes]

CHAIRPERSON: No, I am sure he is not being called for the sake of it.

ADV DAYAL SC: Well, that is my point.

CHAIRPERSON: Ja.

ADV DAYAL SC: Is that really what it is coming down to?

CHAIRPERSON: No, I do not think it is coming to... down to
20 that.

ADV DAYAL SC: Well, I say this to you with all due respect, then just bear in mind that it is a public forum.

CHAIRPERSON: Ja.

ADV DAYAL SC: And there is a responsibility that the Commission has in, not only finding a balance between what

must be done correctly in terms of the Constitution's purposes, but in respect of witnesses' integrity and reputation.

CHAIRPERSON: Ja.

ADV DAYAL SC: That is the first thing.

CHAIRPERSON: Yes.

ADV DAYAL SC: The second thing is. I am not asking Mr Commissioner to stop this Commission dead in its tracks while I go ahead and bring my application to cross-examine.

10 There are other witnesses who will be given evidence over the next few days as I understand. The Commission can carry on with its work.

But the point I am trying to make is this. When Mr Commissioner says that: "Well, we can deal with the issue of the cross-examine later". And later it might actually transpire that we do not even want to cross-examine.

I ask Mr Commissioner to just bear this in mind, that the very basis of the Commission's allegations in respect of the asbestos audit arise from the evidence of Mr Dukwana.
20 When it comes to my client, that is why he is being called as a witness. That is why he has been asked questions.

To not give him an opportunity, firstly, for an application to cross-examine Mr Dukwana, to be decided, and then if that is decided in his favour for him to cross-examine Mr Dukwana, is extremely prejudicial to my client.

CHAIRPERSON: Thank you.

ADV DAYAL SC: I am sorry, Mr Commissioner. Can I just...

CHAIRPERSON: Yes. Okay, you just want to... ja ...[intervenes]

ADV DAYAL SC: Just to make sure that there is nothing further.

CHAIRPERSON: Ja. Yes. H'm.

ADV DAYAL SC: Right. Mr Commissioner ...[intervenes]

CHAIRPERSON: Yes?

10 **ADV DAYAL SC:** I just... my instructing attorney just reminds me to raise this point. And that is, when Mr Commissioner says that my client can give evidence before Mr Dukwana is cross-examined and then can decide later whether he wants to cross-examine him and so on.

Just bear in mind that what then Mr Commissioner is then permitting, is for Mr Dukwana's untested evidence to stand and for my client to then give evidence.

And then at some later stage to be given, firstly, an application... firstly, an opportunity to have his application
20 decided to cross-examine and test that witness and then possible test that witness under cross-examination which is a bit like putting the cart before the horse, so to speak.

Because as much as you say, "Well, my client can come and give evidence". And then decide at a later stage whether to cross-examine Mr Dukwana or not, it works the

other way as well and that my client may want to cross-examine Mr Dukwana first and then decide.

Indeed, the Commission may then decide say, “Well, there is no need to call my client”.

CHAIRPERSON: Well ...[intervenes]

ADV DAYAL SC: Because, in fact, there is no evidence that he needs to deal with.

CHAIRPERSON: Well, remember that you could... remember that it would be permissible to have a situation where a
10 witness has implicated you and you give evidence without cross-examining that witness.

And it would happen where your application for leave to cross-examine has been refused and properly so. So the whole thing does not exclude... the whole scheme does not exclude that happening.

ADV DAYAL SC: Yes.

CHAIRPERSON: So you could have a situation where you have to come and give evidence without cross-examining the witness who has implicated you. So from that point of view,
20 assuming that you are correct about saying Mr Dukwana’s evidence would stand, then in that way, it stands. By the time you come and give your evidence, you have not cross-examined.

ADV DAYAL SC: Indeed. But that is speculation because at the end of the day, until ...[intervenes]

CHAIRPERSON: No, no. I am talking about the principle.

ADV DAYAL SC: Yes, I ...[intervenes]

CHAIRPERSON: In law... in law ...[intervenes]

ADV DAYAL SC: Yes.

CHAIRPERSON: ...within the context of the Commission where there is no right to cross-examine ...[intervenes]

ADV DAYAL SC: Yes.

CHAIRPERSON: ...but you have to apply for leave to cross-examine.

10 **ADV DAYAL SC:** Indeed. Yes.

CHAIRPERSON: Some applications would be granted.

ADV DAYAL SC: Yes.

CHAIRPERSON: Others will be refused.

ADV DAYAL SC: Yes.

CHAIRPERSON: So you... what you... the point you made was simple that if your client gives evidence without Mr Dukwana being cross-examined, you will be given evidence in circumstances where Mr Dukwana's evidence has not been tested. And I am simple saying, legally within this
20 context that can happen.

ADV DAYAL SC: Mr Commissioner, I take your point and it can happen but my point is, it is not just that. My point was his application to cross-examine has not even yet been decided and that is where I find, with respect, the procedural ...[intervenes]

CHAIRPERSON: Yes. Look ...[intervenes]

ADV DAYAL SC: ...irregularity because it is if... it... and I think I have conceded that you do not have to give him the leave to cross-examine. There is a discretion. There is a test and you exercise the discretion judicially.

But even before you have exercised that discretion and applied your mind, that application has to be decided which is presently being held in advance on the Commission's own version and it has not yet been decided.

10 **CHAIRPERSON:** Yes.

ADV DAYAL SC: So it could be a case that you give us leave to cross-examine or not but you even decided that yet, with respect. And that I think is point made.

CHAIRPERSON: Ja. Well, of course, it is unfortunate that there has to be an argument whether there is an application for leave to cross-examine.

ADV DAYAL SC: Yes.

CHAIRPERSON: But we all know that what you rely on in terms of the affidavit and what you rely on in terms of the
20 Commission's letter ...[intervenes]

ADV DAYAL SC: Yes. Mister ...[intervenes]

CHAIRPERSON: ...that of December 13th.

ADV DAYAL SC: Mr Commissioner, I must tell you this.

CHAIRPERSON: Yes?

ADV DAYAL SC: If I knew... if I had known that the

Commission's approach was that there is no application, I would, obviously, brought an application.

CHAIRPERSON: Yes.

ADV DAYAL SC: But I was under the impression, particularly in light of the letter of December, until this morning that there was an application to cross-examine and it has been held in advance.

CHAIRPERSON: Yes, okay.

ADV DAYAL SC: Thank you.

10 **CHAIRPERSON**: Thank you. Mr Pretorius.

ADV PRETORIUS SC: Thank you, Chair. Chair, we take issue with the current application, whatever its implications are on two fundamental basis.

Firstly, Mr Dukwana is not the star witness before the Commission in relation to these issues. Nothing that will be put to Mr Zulu, hopefully today, will deal with the evidence that Mr Dukwana gave.

It is true that he put a spreadsheet, a Cost of Business Schedule. He did it as a whistle-blower. He could not testify
20 to it with authenticity and he gave evidence of a largely speculative and hearsay nature.

That the legal team and the Commission... Commission's investigators have put aside entirely. They have made their own investigations. They have done their work.

And it is at those investigations and that work that has

already been put to Mr Zulu in the questions, it is that investigation and the product of that investigation that we will deal with in questioning, hopefully today.

So there is an entire break between what Mr Dukwana said on the one hand and what we are dealing with today with Mr Zulu.

The Cost of Business Schedule by way of an example has been put to the witnesses and has been authenticated, as was said in my opening address. You will recall in my
10 opening address, not one part of that opening address refers to the evidence of Mr Dukwana.

So the idea that Mr Dukwana must be cross-examined on the basis that he could not... cannot deal with the authenticity of the schedule is an entirely collateral to the issues that will be dealt with.

The issues that will be dealt with today with Mr Zulu are entirely based on investigations that happened after Mr Dukwana.

Mr Dukwana could be criticised. He could be dealt with
20 on the basis that he did not know what he was doing when he put up the 10.6. That he was speculative.

It is not going to assist you Chair to reach the decisions that you must reach about this matter. You will have to evaluate investigations, what witnesses say about those investigations and a host of documentary evidence. There is

no link between what is going to happen today except a historical fact.

Chair, the questions today will deal with, firstly, Mr Zulu's participation or facilitation of the Asbestos Project in the procurement process. Mr Dukwana is entirely unhelpful in that respect and gave no evidence in that respect.

The second is Mr Zulu's participation or facilitation of adjustments to the provincial budget something that Mr Dukwana cannot help at all. No cross-examination is going
10 to assist in that.

And the third is. We will deal with two payments. Not any allegation that appears on the Cost of Business Schedule but the product of investigation with the motor car dealer in Pietermaritzburg in two payments. One of R 1 million and one of R 600 000,00.

Again, entirely unrelated to anything that Mr Dukwana says. But I am happy Chair to give you and my learned friend an undertaking that I am not going to deal with anything that Mr Dukwana says.

20 It will be entirely documents obtained through the investigation and evidence obtained in regard to this spreadsheet from other witnesses.

In fact, Chair, the Cost of Business Schedule, I do not intend to deal with Mr Zulu at all. I am dealing with entirely different evidence in that regard. That is the first issue in

respect of which ...[intervenes]

CHAIRPERSON: And that, of course, it seems would make... that, of course, it seems would suggest that there would be hardly any justification to postpone the hearing of Mr Zulu's evidence today, just so that he can cross-examine somebody who gave evidence on something that he is not going to be questioned about today.

ADV PRETORIUS SC: Indeed Chair.

CHAIRPERSON: Ja.

10 **ADV PRETORIUS SC:** And in fact, it does not take much speculation. One can look at the allegations made by Mr Zulu in both his affidavits. He says, in essence, in relation to Mr Dukwana's evidence: "You have put up something to which you cannot testify at all. It is entire speculation. This document, if it is a real document at all, cannot be put by you before the Commission".

20 So Mr Dukwana admits that or he does not admit it and he denies that. How does that help you Chair when the test of the authenticity of that document which I am not going to deal with today in any event. I am going to deal with entirely... the fruits of investigations on an entirely different basis.

What does it help Chair? You would have say, "Mr Dukwana, you based your evidence on an entirely hearsay document. You could not justify it. You could not talk to its

authenticity”. And that is the end of it.

But in any event Chair, I have made it clear. The issues that will be dealt with today have all been put to Mr Zulu. He has put it on affidavit.

Now when he answered those questions on affidavit or as an annexure to an affidavit, he did not say, “I cannot deal with these issues”. He has given evidence. That evidence is on affidavit. He has not said, “I can only do this when I need to cross-examine”.

10 That leads to the second point Chair. We cannot have a situation in this Commission. The Commission is under tremendous pressure.

It must deal with its matters. You, Chair, with the discretion that you have, subject to elements of fairness, of course. You, Chair, will decide what the sequence of events will be.

When witnesses would come, what issues they will deal with – that is within your discretion. You have an onerous task. It must be completed by December by all accounts.

20 So it does not help the progress of this Commission for witnesses to tell you in effect how you should run the Commission, Chair.

Chair, if I could just for your assistance please deal with... the formal way to deal with this matter is perhaps not the best way to deal with the matter but it is significant.

Rule 3.4 makes it very clear that if you want to cross-examine, you must do so in a particular way. That read with Rule 11.3. It says:

“Any application must follow a particular format...”

It must be a proper motivation and a proper application in terms of the Rules. A line in an affidavit does not suffice.

The fact that there was an incorrect statement in the letter does not elevate that application to a proper application. It does not do so at all.

10 The fact remains, there has been no application to cross-examine in terms of the rules but there are other ways to deal with it rather than that formalistic approach and I have given that to you.

If I may just assist you Chair by giving you the references to the relevant documents. On the 23rd of August 2019 in Mr Zulu’s first affidavit, he said:

“I insist on my right to cross-examine...”

Not accompanied by any other application. That is in FS1 page 153 paragraph 7.4. Then on the 28th of July 2020
20 in his second affidavit, Mr Dukwana says... it is not Mr Dukwana. My apologies. Mr Zulu says in his own words:

“I reserve the right to cross-examine...”

And then he says later on in the affidavit and this is at FS1 page 162:

“My request to cross-examine Mr Dukwana has gone

unanswered...”

And then on the 13th of December 2019, the State Capture Commission said... the secretary said:

“Your client’s application will be held in abeyance...”

Now that is an unfortunate statement Chair. There is no getting away from it but it does not excuse an application that must be made in terms of the Rule 3.4 read with 11.3. That duty remains.

And in the Rule 3.3 notice, the person implicated,
10 attention is pertinently drawn to how or in terms of what rules applications must be made.

Then Chair on the 28th of July 2020 when the second affidavit was put up by Mr Zulu, there was an agreement to appear on 6 August 2020.

It was an unconditional agreement. On that basis today has been set aside for Mr Zulu and it... or at least a large part of today.

That was unconditional. There was no statement there
“but we first want to cross-examine”. This is something... it
20 may be that it just seeks to avoid what is the inevitable consequence of having to answer questions before you, Chair.

In relation to complaints as to how Mr Zulu has been treated. I, in the course of the last week... I only came into this matter two weeks ago Chair.

CHAIRPERSON: Ja. H'm.

ADV PRETORIUS SC: In the course of the last two weeks, I have asked for a full response to be prepared. That has been prepared. It is part of the bundle that we can give it to...

But that, however important it may be to Mr Zulu and however important it may be to the Commission, Chair does not go to the central issue of today's proceedings and those are the three areas that need to be covered.

10 The second point is that Mr Zulu is not been taken by surprise. He knows what issues are going to be dealt with. He has been presented with ten documents that he has been given an opportunity to consider and consult with his lawyers.

So his agreement to appear on 6 August 2020, is understandable in that context. I must say that the correspondence between the parties is quite cordial and polite and constructive.

20 What is not, in our view, very constructive is the tone and content of the various affidavits but that can be dealt with in due course.

The former point I have made. One more... two more points Chair. This is not an adversarial process. It is not a trial where you allow one side to win and one side to lose.

Mr Zulu is not here in a contest against Mr Dukwana or

anyone else for that matter which can be won or lost. The formal rules of court proceedings do not apply in a commission.

You, Chair, will decide it in a matter that best assist you to make findings in relation to your Terms of Reference and that requires both a procedural set of considerations, as well as, a substantive set of considerations.

And the answer is, what is going to assist you Chair to get to the bottom of the allegations today? And to allow the
10 witness to answer and ventilate his answers to the product of the investigations that have taken place on those three issues. Those are our submissions Chair. We must proceed.

CHAIRPERSON: Thank you. Any reply from counsel for Mr Zulu? Thank you, Mr Pretorius. They will sanitise the podium before counsel for Mr Zulu goes there.

ADV PRETORIUS SC: Thank you, Mr Commissioner.

CHAIRPERSON: Yes.

ADV DAYAL SC: So from what I gather from my learned
20 friend's address to Mr Commissioner, he is going to be leading then evidence only in relation to what is stated by Mr Duminy, as I understand it, in his affidavit. And I say that because Mr ...[intervenes]

CHAIRPERSON: Well, he says – let us say what he says, Mr Zulu, on the basis of what Mr Dukwana may have said

he will be questioning him on the basis of the product of the investigation of the Commission subsequent to Mr Zulu having brought to the attention of the Commission certain things and he says Mr – it is not going to be helpful for Mr Zulu to really cross-examine Mr Dukwana for purposes of today because he would be questioned on the basis of the product of the investigation conducted by the Commission. Ja, that is what he says.

ADV DAYAL SC: Mr Commissioner, as I understood him,
10 he said that he is going to be asking my client questions relating to certain payments that were made to a motor car dealership in Pietermaritzburg.

CHAIRPERSON: Well, that includes that, I think.

ADV DAYAL SC: Yes.

CHAIRPERSON: But I do not know if you want to – if you can make it the only thing. He says it is the product of the investigation of the Commission and it is not really so much about what Mr Zulu may have said – Mr Dukwana may have said about Mr Zulu.

20 **ADV DAYAL SC:** Yes, the point I am just trying to understand here is if there is not going to be any questions at all about Mr Dukwana then the questions that my learned friend wish to put, firstly I just remind the Commission that my client received another Section 3.3 notice in respect of allegations made by Mr Duminy and he

received a separate Section 3.3 notice in respect of certain allegations made by Mr Mogese.

In his affidavit before the Commission he says I take no issue with those affidavits, I have received the Section 3.3 notice, those allegations made in those do not implicate. So he does not want to give any evidence, he does not need to give any evidence on that. That evidence is already there.

CHAIRPERSON: Well, if he has no issue with it, you will
10 say that he can say that – if he asked anything about it, he can just say I have already said I do not dispute what they say.

ADV DAYAL SC: Yes.

CHAIRPERSON: That is it.

ADV DAYAL SC: The point I am just trying to make is that this is the Commission's procedure, we were given 3.3 notices to say we are possibly implicated persons in respect of allegations made in two affidavits and we said in our – in his affidavit he says I do not have a problem,
20 nothing in those affidavits implicate me, so I just want to draw that to your attention.

CHAIRPERSON: Ja, okay.

ADV DAYAL SC: So whether or not there is evidence that is actually required by my client is a question that obviously the Commission needs to determine because if

there is not going to be any questions revolving around the evidence of Mr Dukwana then what we are left with really is the evidence of Mogese and Duminy and my client has already said he takes no issue with that. That is my first point.

My second point is my learned friend says that well there was an agreement for my client to appear here today. Well, that is not entirely correct. As much as there was an agreement to appear, that agreement has a background.

10 The background is that my client was being threatened with a summons to appear today, irrespective of what has happened before and what we have said in the affidavits before.

So hands tied, so to speak, here he is because otherwise he would have been summoned. He does not want to disrespect the Commission and he certainly does not want to run foul of the law so he is here. That is the point, it is not simply a case of well, we are here because we are happy and we agree to it.

20 **CHAIRPERSON:** It may well be that to the extent that your client may have already at the date – I think Mr Pretorius said the 28 July. If at the time he had already received a summons – and I do not know if he received a summons or just a notice but it may be that within the context of a summons it would have been expected if – it

would have been expected that if you client was – or believed that he should be allowed to cross-examine first, cross-examine Mr Dukwana, that he would say because I have issued a summons I will appear there but I want you to know that I will appear but I will still argue that before I give evidence I should be given a chance to cross-examine Dukwana. I do not know whether that is what he means in that context.

10 But, you know, it just seems to me that if for purposes of today Mr Dukwana – what Mr Dukwana said plays no role at all or play a minimum role that there is no reason why we should not continue and Mr Zulu should give evidence. That is that because your entire application for a postponement was really based on saying he is now going to be asked about Mr Dukwana's evidence and Mr Pretorius says but that is not what is going to happen.

ADV DAYAL SC: Mr Commissioner, firstly on the issue of the summons, it is dealt with in the further affidavit from paragraph 31 onwards.

20 **CHAIRPERSON:** Yes.

ADV DAYAL SC: Where on the 21 July Mr Lambrechts said that he has been instructed to prepare a summons for my client.

CHAIRPERSON: Okay, okay.

ADV DAYAL SC: Now this after – there has also been

correspondence between the attorney, there is an Advocate Renate at the Commission, my attorney corresponded with her with Lambrechts to say we are willing to cooperate at all material times, we have been willing to cooperate. Despite that, there was then the email from Lambrechts saying he is now instructed to prepare a summons for my client.

CHAIRPERSON: Well, I can tell you this about being instructed to issue a summons, we have recently been
10 experiencing a lot of difficulties for a long time from 2018 and last year we mostly simply requested people to appear without issuing a summons, it did happen with regard to certain people and the approach was informed by – or the approach was if people are cooperating there is no need for a summons, okay? But of late there have been certain challenges and the fact that we have a very serious time constraint so recently I was even saying – I think it was in an open hearing, maybe the Commission should issue
20 summons against everybody irrespective whether you are cooperating or not because sometimes somebody is cooperating and then something comes up and because there is no compulsion it is easy to then change whereas if there is a compulsion then you know you cannot change that.

So there are certain challenges. It might not reflect

on a particular individual if a summons is issued, it might be that if we want to make sure that we minimise the prospects of our time not being used properly.

ADV DAYAL SC: Yes.

CHAIRPERSON: The best thing is to issue a summons and if you receive a summons do not feel bad that – do not think that the Commission thinks I am not cooperating but sometimes the summons even protects you when somebody else may be your superior at work, might say hey, hey, hey, 10 no, something else has come up now so you can say that is a summons, I have to go there whereas if there is no compulsion you might be prevailed upon to not come, so – but I am just mentioning that to give the context but I think coming back to your application, as we speak, my inclination would be to dismiss it because it was based on Dukwana and Mr Pretorius says the evidence or the questioning really will not be based on Dukwana.

ADV DAYAL SC: Mr Commissioner ...[intervenes]

CHAIRPERSON: And you may still have another point. I 20 am saying that is my inclination.

ADV DAYAL SC: Yes.

CHAIRPERSON: If you have another point you can still put it, ja.

ADV DAYAL SC: I appreciate fully the issue of the summons; I am just putting in context this agreement that

it was as a result of this threat of the issue of the summons.

CHAIRPERSON: Okay, okay.

ADV DAYAL SC: And I fully appreciate the importance of the work of the Commission.

CHAIRPERSON: Yes.

ADV DAYAL SC: And the necessity to summons witnesses but in this context when my learned friend says well, we agreed to be here today, we agreed to be here today
10 because despite us cooperating and saying we will be here today there was a threat of a summons.

CHAIRPERSON: Ja.

ADV DAYAL SC: That is the only point there.

CHAIRPERSON: Okay.

ADV DAYAL SC: Mr Commissioner, on this issue of it is based only the application for the adjournment to deal with the issue of cross-examination is based only on the evidence of Dukwana, I just have this to remind Mr Commissioner about. As I understand my learned friend's
20 address from yesterday, all the evidence that the Commission is dealing with this week or from yesterday or today, tomorrow or whatever the case is, including the evidence of my client, is evidence in respect of the asbestos audit in the Free State. It is not evidence about anything else, it is not evidence about general aspects of

the issues, it is related specifically to that audit.

Now if one, without me going into the details of the questions which appear in TWZ28 – sorry, TWZ8 to the papers, that is the letter that the Commission sent setting out the questions and the answers given my client. It is – you cannot look at that evidence in a vacuum and say well, because you did not have a right to cross-examine Mr Dukwana who gave evidence on an aspect of the Free State asbestos audit, therefore any other evidence outside
10 of that, despite it being related to the Free State asbestos audit is permitted before you are allowed to cross-examine Mr Dukwana. That, with respect, is looking at the issues in vacuum whereas if one looks at the purpose of my client being called today to give evidence it is clear, it is evidence related to the Free State asbestos audit.

Now simply to say well, I am going to ask for my learned friend to say I am going to ask questions – sorry...

CHAIRPERSON: But there is no – even on your own approach, there is no application that your client has
20 lodged for leave to cross-examine anybody in regard to any evidence other than Dukwana. So – and from what one can see and Mr Pretorius also made the point, your clients knows exactly what the issues are in regard to the other evidence that is not Mr Dukwana's evidence, he has answered questions, he has not say no, I need more time

to answer these questions, he has answered the questions.

ADV DAYAL SC: That is correct, he has cooperated in accordance with his tender.

CHAIRPERSON: Yes.

ADV DAYAL SC: But the point I am simply making is this, one cannot just divorce that evidence from – and ignore all of the evidence that has already been given by Mr Dukwana and look at the evidence ...[intervenes]

CHAIRPERSON: But if I postpone, for what purpose
10 would I postpone?

ADV DAYAL SC: The purpose is simple this, that before my client is called ...[intervenes]

CHAIRPERSON: If we take out Dukwana.

ADV DAYAL SC: Sorry...

CHAIRPERSON: If we leave Mr Dukwana out of it.

ADV DAYAL SC: Yes.

CHAIRPERSON: What would be the purpose of postponing?

ADV DAYAL SC: The purpose is this, Mr Commissioner,
20 before my client is called into a very public forum to be asked questions relating to the Free State asbestos audit, he should be given an opportunity to cross-examine the very witness that the Commission relies upon in respect of that particular aspect of the Commission. Mr Dukwana has been the witness that the Commission has relied on, has

been the witness, call it the complainant, so to speak, in respect of this Free State asbestos audit. Now to simply look at Mr Dukwana's evidence in isolation is, with respect, inappropriate because before my client is then asked to get into the witness box in a public forum such as this where his reputation may be affected, where he may suffer defamation, where he may be asked unnecessary questions, he surely should be given an opportunity to cross-examine the very witness that the Commission is
10 relying upon to continue with this evidence on the Free State asbestos audit.

And that really is the point, that you cannot separate the evidence, you cannot simply look at Mr Dukwana's evidence in complete isolation to the evidence that is now being sought to be led today by the Commission.

CHAIRPERSON: Okay, I will give you three minutes to conclude, is that fine?

ADV DAYAL SC: That is it, I have got no further
20 ...[intervenes]

CHAIRPERSON: You have no further submissions.

ADV DAYAL SC: Those are my submissions.

CHAIRPERSON: Yes.

ADV DAYAL SC: I just implore Mr Commissioner not to look at the evidence completely in isolation to what Mr

Dukwana has already laid as the basis for this Commission to proceed to question my client on the Free State asbestos audit.

CHAIRPERSON: Yes.

ADV DAYAL SC: Thank you.

CHAIRPERSON: Okay, thank you very much. The application brought by Mr Zulu for the postponement of the hearing of his evidence is dismissed. If reasons are asked for, they will be given. We will take the tea adjournment
10 now and it is twenty eight minutes past eleven, we will resume at quarter to twelve. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, are we ready to continue?

ADV PRETORIUS SC: Thank you Chair. Mr Thabani Wiseman Zulu is as it were on the stand, may he be sworn in?

CHAIRPERSON: Okay please administer the oath or affirmation. Mr Zulu you might wish to either remove your
20 mask or move it a bit otherwise the transcribers will not hear you. Yes, okay.

REGISTRAR: Please state your full names for the record?

MR ZULU: Thabani Wiseman Zulu.

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

MR ZULU: No.

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

MR ZULU: Correct.

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

MR ZULU: So help me God.

THABANI WISEMAN ZULU [d.s.s.]

10 **CHAIRPERSON:** Thank you, you may be seated.

ADV PRETORIUS SC: Not a good time for that to happen, my apologies. Morning Mr Zulu.

MR ZULU: Morning.

ADV PRETORIUS SC: Mr Zulu you have in these proceedings submitted two affidavits.

MR ZULU: Right.

ADV PRETORIUS SC: The first affidavit appears at page 159 of the bundle marked Free State 1. You have it in front of you?

20 **MR ZULU:** Yes.

CHAIRPERSON: Just tell him Mr Pretorius that when you refer to page numbers you will be referring to the black numbers on the left of each page.

ADV PRETORIUS SC: Mr Zulu if you look at any page in that bundle you will see in the top left-hand corner Free

State 01 and then a number. Can you see that?

MR ZULU: Yes.

ADV PRETORIUS SC: And in the top right-hand corner you will see numbers in red those are for record purposes you do not have to bother yourself with those numbers.

MR ZULU: Okay.

ADV PRETORIUS SC: So when I refer to a page number, I will be referring to the number in black in the top left hand corner of each page. So the first affidavit that you
10 submitted to the...[intervenes]

CHAIRPERSON: Hang on Mr Pretorius we are going to be using bundle FS1. Is that right?

ADV PRETORIUS SC: Correct FS1. I don't know if your spine has yet been...[intervenes]

CHAIRPERSON: I have requested...[intervenes]

ADV PRETORIUS SC: Amended.

CHAIRPERSON: This be written on the spine although it was not with me. So if all others can be reading bundle FS whatever so that one would know that FS1 refers to the
20 bundle.

ADV PRETORIUS SC: That instruction has gone out, Chair.

CHAIRPERSON: Okay, alright.

ADV PRETORIUS SC: In any event...[intervenes]

CHAIRPERSON: So Mr Zulu when either Mr Pretorius or I

refer to bundle FS1 we will be referring to this bundle that bundle that is in front of you and on the spine, you will see FS1 maybe it is not written bundle but that is bundle FS1.

MR ZULU: Okay.

CHAIRPERSON: And if you want to write it on the spine with you it is fine as well but if you will remember that is okay.

MR ZULU: Okay.

ADV PRETORIUS SC: And Mr Zulu if it is easier for you,
10 you can lower your mask when you speak so that we can all hear.

CHAIRPERSON: And of course, Mr Zulu when you nod that will not be captured in the transcript it is better if you say yes or no, okay.

MR ZULU: Noted Chair.

ADV PRETORIUS SC: So if we go Mr Zulu to FS1 the bundle in front of you at page 159 you will see an affidavit. That is your second affidavit but perhaps I should do it in order...[intervenues]

20 **MR ZULU:** 159, yes.

ADV PRETORIUS SC: So let's start I am sorry at page 148 you will see a cover page.

MR ZULU: 148, yes got it.

ADV PRETORIUS SC: Do you have that?

MR ZULU: Yes.

ADV PRETORIUS SC: And if you go to page 150 of FS1 you will see an affidavit. Do you see that?

MR ZULU: Yes.

ADV PRETORIUS SC: If I may ask you then to identify the signature on page 6 on page 155 rather. Is that your signature?

MR ZULU: 155? Correct.

ADV PRETORIUS SC: That is your signature? Would you speak up please Mr Zulu.

10 **MR ZULU:** Yes, it is.

ADV PRETORIUS SC: Do you know the contents of this affidavit?

MR ZULU: Correct.

ADV PRETORIUS SC: Are they as far as you are aware...[intervenes]

CHAIRPERSON: Did you confirm that it is his signature that appears on page 155? Is that your signature?

MR ZULU: Correct.

CHAIRPERSON: Okay.

20 **MR ZULU:** Yes.

ADV PRETORIUS SC: He did say so but not loudly enough for the stenographer to hear.

CHAIRPERSON: Yes, okay.

ADV PRETORIUS SC: And then if we go to Exhibit TT5.2 on page 157 please.

CHAIRPERSON: Mr Pretorius is it not easier that we immediately you ask me to admit this as a certain exhibit?

ADV PRETORIUS SC: Yes please.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: I would have done it at the end but now it is convenient.

CHAIRPERSON: Ja, it is convenient to do it now.

ADV PRETORIUS SC: Would you Chair admit the affidavit which appears in bundle FS1 at page 150 and the following
10 as Exhibit TT1.

CHAIRPERSON: TT5.1 or TT1?

ADV PRETORIUS SC: Sorry TT5.1.

CHAIRPERSON: Ja, 5.1 so the affidavit of Mr Thabani Wiseman Zulu appearing at page 150 and I am referring to that number will be admitted as Exhibit TT5.1.

ADV PRETORIUS SC: And then if you go please in the same bundle FS1 to page 157 you will see there the cover page of another exhibit, Exhibit TT5.2. Do you see that, page 157?

20 **MR ZULU:** Yes.

ADV PRETORIUS SC: And if you go please to page 159 you will see the first page of another affidavit that is Exhibit TT2 together with all its annexures.

MR ZULU: Correct.

ADV PRETORIUS SC: If you would please identify the

signature then at page 159 sorry not page 159 my apologies that is the first page...[intervenes]

CHAIRPERSON: It is 173, yes.

ADV PRETORIUS SC: Yes.

MR ZULU: 173?

CHAIRPERSON: Yes, is that your signature there above despondent?

ADV PRETORIUS SC: Is that your signature?

MR ZULU: I am getting there.

10 **CHAIRPERSON:** 173.

MR ZULU: Correct.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: And as far as you are aware the contents of this affidavit are they true and correct?

MR ZULU: Correct.

ADV PRETORIUS SC: There are a number of annexures to the affidavit which appear in the following pages and we will come to those in the course of your evidence. But if I may draw your attention to one of the annexures at

20 page...[intervenes]

CHAIRPERSON: Are the...[intervenes]

ADV PRETORIUS SC: ...204. I am sorry Chair.

CHAIRPERSON: Are the annexures separate from the affidavit to which there are annexures?

ADV PRETORIUS SC: No they follow on Chair from the

affidavit.

CHAIRPERSON: The one that you were dealing with now the affidavit starts at page 159 and goes up to page 173.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: After that I do not have annexures, I have got another affidavit by Mr Zulu.

ADV PRETORIUS SC: Yes, that affidavit is in fact his first affidavit which is annexed to his second affidavit.

CHAIRPERSON: Yes, so that affidavit is also an
10 annexure?

ADV PRETORIUS SC: Yes.

CHAIRPERSON: It is an annexure to this...[intervenes]

ADV PRETORIUS SC: Yes, it is a repeat of his first affidavit.

CHAIRPERSON: Okay. If it is referred to in the affidavit starting at page 159 if it is referred to as an annexure I would think that we must leave it as part of Exhibit TT5.2 but if it is not referred to in the affidavit it would be a stand-alone affidavit even if it might have similarities in
20 terms of content were said.

ADV PRETORIUS SC: Yes, well in the further affidavit the one beginning at page 159 of the first one.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: That is paragraph 2...[intervenes]

CHAIRPERSON: Ja.

ADV PRETORIUS SC: He said on 23 August 2019 I had to first do an affidavit in response to a notice in terms of rule 33 that I received on 5 August 2019. For ease of reference I attach it to be marked Annexure TWZ1.1...[intervenes]

CHAIRPERSON: Okay.

ADV PRETORIUS SC: A copy thereof...[intervenes]

CHAIRPERSON: No, okay that is fine.

ADV PRETORIUS SC: So that is all there with its annexures.

10 **CHAIRPERSON:** That is fine.

ADV PRETORIUS SC: And it has its own annexures to.

CHAIRPERSON: Annexures to, okay.

ADV PRETORIUS SC: And I would like to draw your attention Chair to an important document amongst those annexures it appears on page 204 of Bundle FS1 if you would go there please its Annexure TWZ8 to the affidavit that we don't refer to that now we will just refer to the page number it is marked with tab 8, Chair.

CHAIRPERSON: Yes, yes I see it.

20 **ADV PRETORIUS SC:** With tab 8.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: That is a copy of a letter sent to you by the commission on the 14th of May 2020.

MR ZULU: At page 204.

CHAIRPERSON: I aim to find it. It is a letter from the

commission addressed to you at page 204.

MR ZULU: Yes, dated 14 May 2020.

CHAIRPERSON: Ja, ja.

MR ZULU: Correct.

ADV PRETORIUS SC: Now that letter was sent to you and your answers to the questions are contained in the letter. So this is actually not the letter sent to you this is your response because in each paragraph 2.1 to 2.2 and all the following paragraphs in italics in a different colour font
10 although it may not be very clear in this light Chair are your answers to the questions and we will get back to those answers.

CHAIRPERSON: Yes, I see you nodded you mean yes.

MR ZULU: Correct that is correct Mr Chair.

ADV PRETORIUS SC: And Mr Zulu we have a request of the Stenographer...[intervenes]

MR ZULU: I said it is correct and I know that.

ADV PRETORIUS SC: Thank you very much hey. Alright I would like you to refer you - there is a short route and a
20 longer route and I would like to ask you to comment on the statements of Mr Mokhesi. You know Mr Mokhesi?

MR ZULU: If you can elaborate.

ADV PRETORIUS SC: He is the head of department or was the Head of Department, Free State Human Settlement at the time that the events we are talking about occurred.

MR ZULU: Yes, I know him.

ADV PRETORIUS SC: You know him?

MR ZULU: Yes.

ADV PRETORIUS SC: Now he attested to an affidavit and I just want to ask your comment on the content there at a general level and your response would help the commission with its work and then we will if necessary, after that go to the original documentation. But if I could ask you to look at page 35 of bundle FS1.

10 **MR ZULU:** 235?

ADV PRETORIUS SC: Page 35.

MR ZULU: Page 35?

CHAIRPERSON: 35, yes.

ADV PRETORIUS SC: 35, the black number. We know and you would have come across this in the questions put to you by the investigators...[intervenes]

MR ZULU: Sorry just help me with the page number?

ADV PRETORIUS SC: I am sorry.

20 **MR ZULU:** Just help me with the page number on the bundle.

ADV PRETORIUS SC: Page 35, Free State 1 or FS1, page 35.

CHAIRPERSON: It is in the affidavit of Mr Mokhesi.

ADV PRETORIUS SC: This is an affidavit of Mr Mokhesi and this is his evidence to the commission.

CHAIRPERSON: Remember to look at the black numbers all the time or page numbers, page 35.

MR ZULU: Black numbers that is...[intervenes]

CHAIRPERSON: Page 035 but we just say 35.

MR ZULU: Yes, it starts with 0157.

CHAIRPERSON: Yes, okay disregard Free State, disregard 01, disregard the hyphen, disregard the zero. When we say 35 we just mean the last digits, two digits. So we will not be mentioning all the things that come
10 before it but if you look at the red page the numbers at the top is TT2.1 and NM508.

MR ZULU: On their Chair, thank you.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Just to place this statement that I am going to put to you in its context we know that as part of the asbestos project service providers joint venture comprising Blackhead and Diamond Hill made a proposal to the department, Free State Department of Human Settlements.

20 And this is the proposal that is referred to herein the pages that follow from pages FS135 and following and what I would like to draw your attention to is that this proposal for the present at least according to the evidence of Mr Mokhesi was made at risk. If you look please at paragraph 13.3.2 on page 36 it says they and that is a

reference to the service providers in the asbestos project undertook to execute the above work or mandate on a risk basis.

My understanding of this specific proposition was that they undertook the work subject to approval by National Department of Human Settlements and of course approval of a business plan relating to this project. Now before we deal with that paragraph at the time that this project was underway 2014 and 2015, what position did
10 you occupy in government?

MR ZULU: Director General, Department of Human Settlement.

ADV PRETORIUS SC: Right, you were the Director General of the national department, is that correct?

MR ZULU: Correct.

ADV PRETORIUS SC: And beneath the national department were your respective provincial departments in each province?

MR ZULU: Correct.

20 **ADV PRETORIUS SC:** And the arrangements we are talking about principally at least were arrangements between a service provider on the one hand we know that it emerged as a joint venture but that is something we can talk about at another stage and the Gauteng sorry the Free State we also deal with Gauteng, the Free State

Department of Human Settlements. There was a – the project involved those two parties, am I correct?

MR ZULU: Chair I am not sure whether you are referring to the paragraph that talks about business plans national department being responsible for that...[intervenes]

ADV PRETORIUS SC: The outcome to that in a moment, I just want you to give some background.

MR ZULU: Okay.

ADV PRETORIUS SC: Really for context purposes view.

10 **MR ZULU:** Alright.

ADV PRETORIUS SC: And because we have not placed on record your position at the time perhaps, we should. Your position at the time as I understand it was the National Director of Human Settlements, National Director of Human Settlements.

MR ZULU: Correct.

CHAIRPERSON: Well I do not know about National Director General. I think he was Director General of the Department of Human Settlements at national government
20 as opposed to provincial. Is that correct Mr Zulu?

MR ZULU: Correct, Chairperson.

CHAIRPERSON: Yes, okay.

ADV PRETORIUS SC: But this business proposal we know was made to the provincial department in the Free State. This particular proposal for the asbestos project in

the Free State, you know about that?

MR ZULU: Yes, Chair.

ADV PRETORIUS SC: Alright. Now if we can revert to paragraph 13.3.2 please. They that is the service providers undertook to execute the above work or mandate on a risk basis. My understanding of this specific propositions says Mr Mokhesi was that they undertook the work subject to the approval by the National Department of Human Settlements and of course approval of a business
10 plan relating to this subject. Do you agree with that proposition?

MR ZULU: I will agree with that proposition in so far as the national business plan was that falls under the jurisdiction of the Director General of the Department of Human Settlements. In that context I will agree with that statement.

ADV PRETORIUS SC: Sorry your voice is very soft I do not mean to badger you at all but could you just repeat that please.

20 **MR ZULU:** I am saying in the context that all projects that are being undertaken by different provincial departments are managed under the department of national department. So in that context including their business plans.

ADV PRETORIUS SC: Alright.

MR ZULU: Yes.

ADV PRETORIUS SC: So do I understand you correctly that this statement is a correct statement provided one understands that all projects of a provincial department or under the supervision if we can put it that way of the national department. Am I correct?

MR ZULU: It is a joint responsibility. The supervision is also within the Accounting Officers at a provincial level...[intervenes]

ADV PRETORIUS SC: Yes.

10 **MR ZULU:** And the national department because it approves the business plans also has an oversight over those plans. So it is a dual responsibility...[intervenes]

ADV PRETORIUS SC: So the approval of the business plan would be necessary and that approval would have to be given by the national department before it could properly proceed?

MR ZULU: I did not hear your first words when you started your sentence Mr Pretorius if you can please repeat your first words.

20 **ADV PRETORIUS SC:** Before any human settlements project can proceed at a provincial level it requires the approval of that business plan by the National Department of Human Settlement?

MR ZULU: Correct.

ADV PRETORIUS SC: Right. And if one then goes

to...[intervenes]

MR ZULU: If you want me to elaborate on that I can what I mean by that.

ADV PRETORIUS SC: Yes, sure.

MR ZULU: So every financial year the National Accounting Officer has a responsibility and duty in terms of the law to approve all business plans prior to budgets being allocated for implementation purposes. And should there be a deviation we need to deviate from any process
10 or any project during the implementation of those plans you will require the approval of the national department.

ADV PRETORIUS SC: And ultimately that is your approval?

MR ZULU: Accounting Officers responsibility of course in consultation with other structures.

ADV PRETORIUS SC: Yes, and you were the Accounting Officer at national level were you?

MR ZULU: Correct?

CHAIRPERSON: Mr Zulu although it is Mr Pretorius who
20 will be asking you most of the questions. His asking you so that you can tell me.

MR ZULU: Oh sorry.

CHAIRPERSON: Okay so...[intervenes]

MR ZULU: My apologies Chair it is just that he is asking me.

CHAIRPERSON: Ja, I understand ja perhaps when you look this side when you speak then I do not miss anything.

MR ZULU: I will try and balance my body language.

CHAIRPERSON: I am not saying do not look at him at all, so you can look at him but when you answer try and look this side.

MR ZULU: Okay, Chair.

CHAIRPERSON: Yes, Mr Pretorius.

ADV PRETORIUS SC: So to take that one step further Mr
10 Zulu the business plan as I understand it and please
correct me if I have it wrong. The business plan has the
consequence that certain budget allocations are made in
terms of that plan. Am I correct?

MR ZULU: Just elaborate on that.

ADV PRETORIUS SC: Well you – let me put it to you this
way so you can explain it in your own words. What is the
relationship between a business plan and the annual
budget of the province?

MR ZULU: All business plans that are approved first at a
20 provincial level and then submitted at national level for
confirming the availability of the budget are aligned with
the existing budgets.

ADV PRETORIUS SC: Ah, so when a business plan is put
to you and approved there must be an allocation in the
provincial budget so that that plan can be carried out. Do I

understand you correctly?

MR ZULU: Under normal circumstances that is how it is supposed to be.

ADV PRETORIUS SC: The normal circumstances?

MR ZULU: Yes.

ADV PRETORIUS SC: But there are circumstances when that does not occur and perhaps, we dealing with them here. If you go to paragraph 19 of that affidavit on page 44. There Mr Mokhesi refers to your involvement in this
10 matter in the project in your capacity as Director General national and what he says is that Mr Thabani Zulu and I am referring to page 44 of FS1 at paragraph 19.1. Mr Thabani Zulu was then Director General of the National Department of Human Settlements. That is a correct statement is it?

CHAIRPERSON: He just wants you to confirm that that part of the statement is correct.

MR ZULU: That I was the Director General of the department?

CHAIRPERSON: Yes.

20 **ADV PRETORIUS SC:** Yes.

MR ZULU: I have already confirmed that earlier on in the beginning Chair, yes.

ADV PRETORIUS SC: Yes, you did.

MR ZULU: Yes.

ADV PRETORIUS SC: Then he goes on to say before a

provincial department could reprioritise or amend its business plan it should make a motivation to the DGF national level to effect such reprioritisation which affects its business plan and ultimately its budget.

So let me put the following question to you before you deal with that statement Mr Zulu. If as in this case, there was no provision in the budget for the execution of this particular asbestos project the budget would have to be amended as it were to allow funds to be released for
10 the project. Am I correct?

MR ZULU: Yes, Chair the budget that is approved in the beginning of every financial year it is the first budget approved every quarterly session that you will have as a DG or as an Accounting Officer with your respective Accounting Officers of the provincial departments would be to seek the exact implementation of that particular budget as was budgeted from the beginning.

And along the lines then the budgets can be reviewed and if necessary, also business plans can also be
20 reviewed depending on the needs analysis or as circumstances as they may change as I have indicated earlier on.

ADV PRETORIUS SC: Okay, so it seems that like you and Mr Mokhesi agree but just to clarify. In this case there was no budgetary provision for the asbestos project for 2014,

2015 at the beginning of the year?

MR ZULU: Correct.

ADV PRETORIUS SC: In order to unlock funds for the execution of the project from the Free State budget it was necessary to make provision now for expenditure in terms of a revised budget and that could only be done by the submission of a new business plan to the national department and its approval. Is that a correct summary?

MR ZULU: It is correct but I would like to give context to
10 that as well Chairperson.

ADV PRETORIUS SC: Please do.

CHAIRPERSON: Yes.

MR ZULU: It may not be that there is no budget available at a provincial level. It may be that there is budget but it is not allocated for a specific project that you may want to do.

CHAIRPERSON: Hm.

MR ZULU: But if you want to review therefore your business plan you will have to get the National Department through its Accounting Officer to allow that review. So it may not be
20 necessarily that you have to get an additional budget.

ADV PRETORIUS SC: I see.

CHAIRPERSON: Okay.

MR ZULU: It may be for example that a particular project has not been implemented timeously for whatever reasons procurement delays or any other circumstances and want to

redirect your budget.

CHAIRPERSON: Hm.

MR ZULU: You are changing your business plan and therefore you need National Accounting Officer to do that.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: So that is instructive thank you Mr Zulu. I would like to understand it in terms of your answer so that we are clear what the position is. You say that a province may have a budget for a particular year in general
10 terms and that project then is or that budget rather is allocated to a number of projects?

MR ZULU: Correct.

ADV PRETORIUS SC: In this case the evidence will be that at the beginning of the financial year no funds had been allocated to the Asbestos Project but you say there is a procedure whereby one can move allocations from one project to another particularly where money is not required for a particular project it can go to another project, is that correct?

20 **MR ZULU:** It is correct.

ADV PRETORIUS SC: But for that to occur the National Department must approve an amended business plan, am I correct?

MR ZULU: You mean the revised business plan.

ADV PRETORIUS SC: The revised business plan yes.

MR ZULU: Correct.

ADV PRETORIUS SC: Thank you.

CHAIRPERSON: So in other words, if a provincial department at the beginning of the year had its budget allocated to project A, B, C, D, E.

MR ZULU: Yes Chair.

CHAIRPERSON: And somewhere in the course of the year a proposal is made or there is some project that they think they should also accommodate but that project would not
10 have been part of the business plan that they had before they would have to change their business plan to take care – to cover this new project and seek the approval of the National Department, the approval of the change in the business plan and then because they cannot redirect funds from other projects to a new project without changing or adjusting their business plan.

MR ZULU: Correct Chair.

CHAIRPERSON: And once they have adjusted their business plan that – then they can move funds from one
20 project to the new project. But for all of that to happen they need the approval of the National Department.

MR ZULU: Correct Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: If we could go then to another document. These documents appear in various placed Chair

and I am going to have to move to Bundle FS8.

CHAIRPERSON: Yes okay. Somebody...

ADV PRETORIUS SC: Page 121.

CHAIRPERSON: Somebody will give you the relevant bundle Mr Zulu – they will give you the relevant bundle. Are the bundles behind Mr Zulu now all marked properly? Okay so if he looks at – behind him he will be able to see each bundle.

ADV PRETORIUS SC: Yes Chair.

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

ADV PRETORIUS SC: This is a letter addressed to Mr Mokhesi.

MR ZULU: Sorry where are we in this bundle?

ADV PRETORIUS SC: I am sorry.

MR ZULU: Where are we on this bundle?

ADV PRETORIUS SC: Oh page – I am sorry. Page 181 and take a moment to look at the letter please.

MR ZULU: 100?

ADV PRETORIUS SC: 181. FS8 – 181.

20 **CHAIRPERSON:** You will just have to repeat the page number for me Mr Pretorius.

ADV PRETORIUS SC: FS8 – 181.

CHAIRPERSON: 181 okay.

MR ZULU: I found it Chair.

ADV PRETORIUS SC: Right. This is what appears on the

face of it to be a letter signed by yourself in your capacity as Director General of the National Department of Human Settlements. It appears to be dated 13 August 2014 and it is addressed to Mr Mokhesi - Department of Human Settlements. Do you recall this letter? It has been discussed with you.

MR ZULU: Well Chair it is quite an old letter but surely.

ADV PRETORIUS SC: Have a look at it.

MR ZULU: It is my signature so I would make an ex –

10 **ADV PRETORIUS SC**: That is your signature.

MR ZULU: I will make an assumption that it is the letter that I wrote at the time.

ADV PRETORIUS SC: Yes. I am sorry I interrupted you. You said that is your signature? Mr Zulu?

MR ZULU: Yes it is my signature.

ADV PRETORIUS SC: Yes.

MR ZULU: Yes it is my signature.

ADV PRETORIUS SC: Right. For the moment we will come back to it later in another context but for the moment if I may
20 refer you to the last paragraph of that letter or the pen-ultimate paragraph of the letter it reads:

“Kindly be informed that the Free State Department of Human Settlements will be held liable for any financial implications or operations of the service provider.”

Now what we are talking about here as appears from the

heading to that letter this is the appointment of a professional resource team or service provider to a departmental panel relating to Human Settlements Departments and Municipalities within specific regional areas which is a long way of saying the Asbestos Project but we need not go there. I do not want to argue that point for you but this letter concerns the Asbestos Project.

MR ZULU: Yes I hope so. It will be nice to know which letter was I responding to or I just – I will doubt if I just rock
10 up and just wrote this letter surely, I might have been.

CHAIRPERSON: If you want to read that letter to understand the context you can just take half a minute to read it.

MR ZULU: No I have read it Chair.

CHAIRPERSON: Ja.

MR ZULU: I am just saying.

CHAIRPERSON: Oh, you would like to see the letter that you are responding to.

MR ZULU: To get the right context before I wrote this one.

20 **CHAIRPERSON**: Okay.

MR ZULU: Maybe I was responding to Mr Mokhesi's enquiry of something which I am saying then it will give a better context for me to talk better on this letter.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Well if you need to look at any other

correspondence in order to answer the question, I am going to put to you of course we can try and find that correspondence.

MR ZULU: Okay.

ADV PRETORIUS SC: For you.

MR ZULU: Yes.

ADV PRETORIUS SC: But for the moment and it may be necessary to look at other correspondence but that is in relation to a different issue.

10 **MR ZULU**: Okay. Alright.

ADV PRETORIUS SC: For the moment I just want to ask you to look at the last paragraph right. It says:

“Kindly be informed that the Free State Department of Human Settlements will be held liable for any financial implications or operations of the service provider.”

In other words that the Free State Department has to foot the bill for the project. Then it goes on to say and this is the part I want to put to you.

20 “If need be you may have to revise your current business plan accordingly so as to be in line with the National Treasury Regulations in order to achieve the objective.”

That statement saying that you may have to revise your current business plans accordingly in order to comply with financial provisions or directives is what we are talking about. Is that correct?

MR ZULU: Yes it is correct and again it confirms the point I made earlier that most probably if the letter that I might have been responding to will – will give me a better sense of why I had to mention this. But I could have been reminding the Accounting Officer which is my responsibility at National that if you want to make any changes on your business plan first you must make sure that there is budget allocation for that. But secondly also to put into the responsibility and accountability for any changes we make that financially and budget wise they remain the sole responsibility of a provincial department.

ADV PRETORIUS SC: But they need your permission if a business plan is to be revised?

MR ZULU: Correct.

ADV PRETORIUS SC: Alright. Then if we can go to the same bundle at page 188 please – FS1, 188.

MR ZULU: This document is too faint I cannot read it.

CHAIRPERSON: How is the lighting there Mr Zulu?

MR ZULU: It is not too good but I think it is document itself.

20 **CHAIRPERSON:** It is not good.

MR ZULU: It is a small – it is a very small font and it is faint. I do not know if you wanted to read it for me?

ADV PRETORIUS SC: My apologies. I would like you please to go to...

CHAIRPERSON: I just one second Mr Pretorius. Will

somebody speak to somebody I know I had said this light should be there and I know why they put it here but I wonder whether it is possible to get something. I think this particular witness may be struggling to read some of the documents. I do not know whether it is because of the poor quality of this specific letter it might be but, in the meantime, if something can be done about lighting for him that should be explored. Mr Pretorius I interrupted you.

ADV PRETORIUS SC: Yes Chair. Mr Zulu is the light good
10 enough for you to read?

MR ZULU: No. Actually, the problem is not with the light.

CHAIRPERSON: Oh it is the quality.

MR ZULU: It is the copy itself.

CHAIRPERSON: Oh okay alright.

MR ZULU: It is the quality of the copy.

CHAIRPERSON: Oh okay alright. No at least if it is not the
light that is fine.

MR ZULU: Thanks Chair.

ADV PRETORIUS SC: Alright. Well if necessary, we can
20 assist you there. This is a letter of appointment and it is a
letter of appointment of a joint venture by the – addressed
by the Head of Department to the joint venture dated 1
October 2014. I just want to place that on record so that it is
a letter that is important in the series of correspondence and
documents to assist you Mr Zulu. And if one goes to the

next page that is Bundle FS8 page 189 one will see there a service level agreement. The first page at least of a service level agreement.

CHAIRPERSON: I am sorry. What page?

ADV PRETORIUS SC: 189 Chair.

CHAIRPERSON: Oh the following page. Yes.

ADV PRETORIUS SC: This is a service level agreement which on the face of it at page 189 was entered into between the Department of Human Settlements represented by Mr
10 Nthimose Mokhesi in his capacity as Head of Department and Blackhead Consulting PTY Ltd Joint Venture and represented by Edwin Sodi in his capacity as Chief Executive Officer the service provider. That is the agreement which gave rise to the execution eventually of the Asbestos Project. If you would turn then please to page 231 of the same bundle FS8 one will see another...

CHAIRPERSON: Did you say we must move to another bundle?

ADV PRETORIUS SC: No FS8 same bundle page 231.

20 **CHAIRPERSON:** Okay.

ADV PRETORIUS SC: You have it in front of you?

MR ZULU: Yes, yes I do.

ADV PRETORIUS SC: Thank you. Mr Zulu would you just look at the email at the foot of the page it appears that it was an email addressed from your office from Thabani Zulu

on Wednesday 26 November 2014 to HODHS that is the Head of Department Human Settlements – Free State Human Settlements.gov.za. And the subject matter is Revised Business Plans for the Department of Human Settlements Free State. It appears then to be an email addressed by you to Mr Mokhesi. Do I have it correctly?

MR ZULU: Yes Chair. Yes, yes Chair.

ADV PRETORIUS SC: Would you like to take a moment to look at it? It is not very long.

10 **MR ZULU**: No I have already done that.

ADV PRETORIUS SC: Right. It says:

“Dear HOD please be informed that one of your items in the revised business plan for Human Settlements Development Projects relate to asbestos challenges in the Free State. I therefore would like you to provide my office as to why this item should receive priority as suggested in your revised business plan preferably before the end of business tomorrow at 27 November 2014. Warm regards Mr Thabani Zulu.”

20 You recall that communication?

MR ZULU: This communication it is in 2014.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Your voice...

MR ZULU: I can only say Chair. I can only say Chair because it is not signed by me so I can only ...

CHAIRPERSON: Yes.

MR ZULU: I can only say that probably.

CHAIRPERSON: Yes I.

MR ZULU: That is 2014.

CHAIRPERSON: Are you able – are you saying you are not able to remember sending this email but you are not necessarily saying you did not send it? You do not have enough context to know whether you sent it, is that what you are saying?

10 **MR ZULU:** I could have the context I am just saying Sir it is 2014.

CHAIRPERSON: Sorry.

MR ZULU: I am just saying it is 2014.

CHAIRPERSON: Yes.

MR ZULU: So most probably I would have sent such an email.

CHAIRPERSON: Yes.

MR ZULU: Based again on what ...

CHAIRPERSON: Yes.

20 **MR ZULU:** Unfortunately when you jump into...

CHAIRPERSON: Yes.

MR ZULU: Correspondence like this.

CHAIRPERSON: Yes.

MR ZULU: It would have, an event that would have happened.

CHAIRPERSON: Oh. Oh.

MR ZULU: That will give context to this.

CHAIRPERSON: Ja. Okay.

MR ZULU: Now I can only make assumptions.

CHAIRPERSON: Yes.

MR ZULU: That most probably ...

CHAIRPERSON: No I understand what you say.

MR ZULU: Most probably there was a revised business plan
I will make that assumption.

10 **CHAIRPERSON:** Yes.

MR ZULU: Which needed the attention of the Director
General.

CHAIRPERSON: Ja. So you – you ...

MR ZULU: Upon which – upon which you needed to check
the relevance of the revised business plan.

CHAIRPERSON: So at this stage you are only able to say
on the face of it.

MR ZULU: Ja.

CHAIRPERSON: It seems like an email I would have sent.

20 **MR ZULU:** Probably absolutely Chair.

CHAIRPERSON: But I cannot be more definite than that.

MR ZULU: Ja absolutely Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: And it would be consistent I presume
with the evidence that you have given in some detail Mr Zulu

that if there is a need for an amended business plan that has to be approved by the National Department under your authority as Accounting Officer you would have to be properly informed in relation to the reasons or the motivation for the revised business plan.

MR ZULU: Correct.

ADV PRETORIUS SC: And it would make sense therefore and this email is consistent with your evidence it appears that your office needs to have full information before it can
10 approve an amended business plan. Am I correct?

MR ZULU: Correct. Correct Chair.

ADV PRETORIUS SC: Alright. Well this – this was answered and we can turn the page to page 232. This is a long document which is sent to you – in fact I do not want to mislead anybody this is not a long document it is four pages and in the context of this commission that is not long at all. But if you would go to page 232 please. This is a document which appears to be addressed to you Mr Zulu as Director General of Department of Human Settlements and it is
20 apparently at least on the face of it at page 235 signed by Mr Mokhesi in his capacity as HOD Human Settlements on the 27 November 2014. That is the day after the letter that appears at 231 or the email that at page 231. Is that correct?

MR ZULU: Correct.

ADV PRETORIUS SC: And it says in the first paragraph:

“Your email of 26 November refers.”

And then it goes on to motivate the reasons for the Asbestos Project and it highlights the fact that the Free State Province has a significant number of pre-1994 houses roofed with asbestos. Majority are in an appalling condition structurally not sound, almost at the point of collapse. It then goes on to deal with the health dangers, the dangers to human health of asbestos and in essence is a motivation for the introduction
10 of the project relating to asbestos identification and removal.
Is that a fair summary?

MR ZULU: Yes it is.

ADV PRETORIUS SC: Right. You go over the page please and look at the paragraph two thirds down the page or just after halfway it say:

“The objective of the project is twofold. First bullet:

Quantify, audit and assess the number of houses roofed with asbestos sheets and

Second bullet.

20 Remove and dispose asbestos to an approved and accredited disposal site.”

It continues.

“The rate will be to conduct door to door assessment at R850.00 per house excluding VAT.”

You see that?

MR ZULU: Yes correct.

ADV PRETORIUS SC: It goes on to say:

“All asbestos will be removed and disposed of as laid out in the Occupational Health and Safety Act and Regulation 85 of 1993.”

That was the representation that was made to you in this Business plan – amended business plan. You wish to comment?

MR ZULU: That is what it is yes.

10 **ADV PRETORIUS SC**: It was told to you in other words a representation was made to you by Mr Mokhesi.

“All asbestos will be removed and disposed of as laid out in the Occupational Health and Safety Act and Regulations 85 of 1993.”

That is what you were told.

MR ZULU: Yes but...

ADV PRETORIUS SC: Yes.

MR ZULU: That is in terms of the process of doing the project.

20 **ADV PRETORIUS SC**: Yes, no I understand that.

MR ZULU: Ja.

ADV PRETORIUS SC: I understand that that is what...

MR ZULU: That is the overall...

ADV PRETORIUS SC: Is told to you the project involved.

MR ZULU: That is the overall objective Chair.

ADV PRETORIUS SC: Yes.

MR ZULU: But of course, it has got phases of how you go about doing that. You do not just wake up and remove asbestos – there is a process.

ADV PRETORIUS SC: Yes of course.

MR ZULU: But the overall objective is exactly what you are alluding to Mr Pretorius.

ADV PRETORIUS SC: But importantly you are being asked for your approval.

10 **MR ZULU:** Yes.

ADV PRETORIUS SC: And in – before you give it you quite properly, I might add ask for full information.

MR ZULU: Correct.

ADV PRETORIUS SC: As to this project because you are going to take a very important decision to allow this project and amend the budget for it.

MR ZULU: Correct.

ADV PRETORIUS SC: Correct.

MR ZULU: Correct.

20 **ADV PRETORIUS SC:** To amend the allocations within the budget.

MR ZULU: Correct Chair.

ADV PRETORIUS SC: Correct. The – what you are told continues. It says:

“The above rate includes the following:”

Now the rate you are given here is R850.00 per house right.

The above rate includes the following.

Submitting a works plan to an improved inspection authority of approval.

Notifying the Department of Labour in writing of our intention to remove and dispose contaminated rubble asbestos.”

Over the page at page 235.

“Contract the service of an approved inspection authority for the purpose of air monitoring.

- 10 Supply experienced medically fit staff and supervision for the purpose of removal.

The supply of all safety equipment and relevant PPE which we now know is Personal Protective Equipment.

Cordon off the area to be stripped and place relevant signage.

Transport of the asbestos to a registered disposal site.

Disposal cost of the asbestos.

All relevant paperwork pertaining to health and safety legislation.”

- 20 Well the point is that what Mr Mokhesi was saying to you in the plan that you requested before you approved what you had to approve that is the reallocation of funds within the budget to allow the project to take place. You were told that the rate of R850.00 per house included the lawful disposal, removal and disposal of the asbestos. That is what this

communication appears to say to you.

MR ZULU: I think Mr Mokhesi would be better placed to give that context.

ADV PRETORIUS SC: Yes he can...

CHAIRPERSON: I am sorry.

MR ZULU: I was saying – I was saying Chair. I think the HOD who wrote this is better placed to give a context in terms of the pricing structure of the project.

CHAIRPERSON: Yes but what Mr Pretorius...

10 **MR ZULU**: I do not assume that.

CHAIRPERSON: What Mr Pretorius is asking is your own understanding of what he was saying because you were to approve.

MR ZULU: Ja.

CHAIRPERSON: His motivating to you if there is something you do not understand you are not going to approve?

MR ZULU: Yes Chair but...

CHAIRPERSON: So he is saying, was this your understanding of what he is saying?

20 **MR ZULU**: What I am saying Chair is that the context of pricing for the project has got – I will assume it had different phases. So I would not say it is all inclusive in terms of the pricing structure. I would not know that.

CHAIRPERSON: Yes.

MR ZULU: So I am saying the HOD is the Accounting Officer

is better placed to give context into what this pricing meant.

CHAIRPERSON: Yes but from your side was the question of pricing not one of the things that you would want to make sure you understood clearly.

MR ZULU: Yes.

CHAIRPERSON: Before you could give your approval.

MR ZULU: Yes Chair.

CHAIRPERSON: Ja.

MR ZULU: But that will be – that will be in the detail of the
10 project itself.

CHAIRPERSON: Yes.

MR ZULU: If you hear what I am saying.

CHAIRPERSON: Yes.

MR ZULU: Because every project it has got different phases.

CHAIRPERSON: Yes.

MR ZULU: So that will be in the detail of the project. I am not – that is why I am saying.

CHAIRPERSON: Yes.

20 **MR ZULU:** The best placed person is the Accounting Officer. For me this was too high level if I were to put it to you that way.

CHAIRPERSON: Yes. Mr Pretorius.

MR ZULU: So I would not like to interpret what the HOD meant with this.

CHAIRPERSON: Well Mr Pretorius might think differently.
Mr Pretorius.

ADV PRETORIUS SC: Well let us just as you fairly require some context. You have said to Mr Mokhesi of the Free State look you are responsible for the costs in this matter.

MR ZULU: Correct.

ADV PRETORIUS SC: If you need to amend your business plan to comply with the treasury requirements you must tell me. That is correct.

10 **MR ZULU:** Correct.

ADV PRETORIUS SC: You then on the – it is apparent from this email on the 26 November say to him – listen I want your motivation.

MR ZULU: Correct.

ADV PRETORIUS SC: Because you asking me to do something, I need to understand your motivation.

MR ZULU: Correct Chair.

ADV PRETORIUS SC: He gives you the motivation and, in that motivation,, he tells you Mr Zulu the flat rate of R850.00
20 per house includes all these issues set out on page 234 and 235 of FS8. That is what he tells you.

MR ZULU: Yes.

ADV PRETORIUS SC: He is making to you a representation and the purpose of that representation and the purpose of this whole document is to convince you to do what you have

to do. Correct?

MR ZULU: Correct.

ADV PRETORIUS SC: So why I am putting this to you is you were the recipient of this representation.

MR ZULU: Correct.

ADV PRETORIUS SC: And the representation is not too difficult to understand, Mr Zulu, it says:

“The rate will be to conduct door-to-door assessment at R850 per house.”

10 It then goes on to say:

“The above unit rate...”

And there is only one unit rate above.

“...includes the following.”

So clearly what he is telling you – and I am not sure that it needs much debate or further context, what he is telling you is that for R850 per unit all this work is going to be done, correct?

MR ZULU: Yes.

CHAIRPERSON: Just to make sure that we are all on the
20 same page, I understand your answer when you say yes to that question, you say you are agreeing that what Mr Mokhesi is telling you here is that that rate of R850 per house excluding VAT includes all the items which are listed next to the various bullets points on pages 234 and 235. We are on the same page on that? Is that what he is

saying?

MR ZULU: With the proviso that the person who is 01.34.

CHAIRPERSON: No, no, no, your understanding of what he is saying, that is what Mr Pretorius wants.

MR ZULU: My understanding.

CHAIRPERSON: Your understanding, when you read this.

MR ZULU: Yes.

CHAIRPERSON: And when you read it now.

MR ZULU: Yes.

10 **CHAIRPERSON:** You have a different understanding from the one that Mr Pretorius and I have.

MR ZULU: No, I do not, Chair, but if you are asking a further question to say is this what was meant by Mr Mogese? Then that is a different question.

CHAIRPERSON: Yes, but your understanding is same as ours?

MR ZULU: At a face value, yes, Chair.

CHAIRPERSON: Ja, that this is what he means.

MR ZULU: At a face value, yes.

20 **CHAIRPERSON:** If he comes here and says something else then we will deal with it then.

MR ZULU: Exactly, yes.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Mr Zulu, in fairness we will ask him what he meant but for the moment we are interested in

what you read.

CHAIRPERSON: Well, on the face of it, I cannot see it meaning anything else because it says:

“The above unit rate includes the following”

And the only above unit rate that he talks about on that page is R850 per unit but of course when he comes, we might not know, he might say no, no, you all I misunderstand me, this is what I meant and then we take it from there.

10 **ADV PRETORIUS SC:** Thank you, Chair. Mr Zulu you were given an opportunity ...[intervenes]

MR ZULU: Are we still on the same page?

ADV PRETORIUS SC: I am sorry?

MR ZULU: Are we on the same page?

ADV PRETORIUS SC: Leave it there for the moment.

MR ZULU: Okay.

ADV PRETORIUS SC: You may want to go back to it.

MR ZULU: Okay.

20 **CHAIRPERSON:** Well, he has limited space, maybe that is the reason why he is asking.

MR ZULU: Where am I going – which one am I at now?

ADV PRETORIUS SC: Yes.

CHAIRPERSON: If you are moving to another one he could take it off for the time being and he would bring it back when he needs it.

ADV PRETORIUS SC: Yes, Chair, we are going to have to deal with both so there will be some toing or froing.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: But we share the same challenges, this podium is not the most convenient, nor is yours.

CHAIRPERSON: Even myself I have limited space.

ADV PRETORIUS SC: Be that as it may, Chair.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: You were given an opportunity by
10 the investigators to deal with this document and so I would just want to refer you ...[intervenes]

MR ZULU: Which document, Chair? Which document are we at?

ADV PRETORIUS SC: The document that you have just ...[intervenes]

MR ZULU: Oh this one?

ADV PRETORIUS SC: Yes.

MR ZULU: Oh, okay.

ADV PRETORIUS SC: And it is a document that was
20 presented to you when you were speaking to the investigators.

MR ZULU: Let me ...[intervenes]

CHAIRPERSON: Just repeat which document you are talking about, Mr...

MR ZULU: Yes.

CHAIRPERSON: Is it the letter, the motivation? The motivation letter from the Free State HOD?

ADV PRETORIUS SC: Yes, it is the document which appears at page 232, Free State 8 or FS8. That document that we have just discussed.

MR ZULU: Yes.

CHAIRPERSON: I think it is in the bundle that you have put further away from you.

MR ZULU: Alright.

10 **CHAIRPERSON:** That you put away.

MR ZULU: Does he need to take – to bring it back, Mr Pretorius, to answer?

ADV PRETORIUS SC: No, he does not need it at the moment.

CHAIRPERSON: Okay, alright. Okay.

ADV PRETORIUS SC: Just to confirm that the document that we have just been talking about authored by Mr Mokhesi and sent to you and its contents were put to you in a consultation that you had with the investigators.

20 **MR ZULU:** Yes, Chair, if I may just...

ADV PRETORIUS SC: Yes.

MR ZULU: I am not sure consultation, what it means, but in the context of consultation ...[intervenes]

CHAIRPERSON: Oh, you had a meeting/interview with the investigators.

MR ZULU: I have never met the investigators.

CHAIRPERSON: You have never met them.

MR ZULU: I have only submitted an affidavit to the investigators.

CHAIRPERSON: Yes, okay.

MR ZULU: So I have never interacted with any of the investigators up to today.

ADV PRETORIUS SC: Yes, you are quite correct this was done in written communication.

10 **MR ZULU:** Correct, .That is why I wanted to get a sense of the context of [inaudible – speaking simultaneously]

ADV PRETORIUS SC: No, you are absolutely right, my apologies, Mr Zulu. If you could go to bundle 1, FS1 at page 210.

MR ZULU: Yes, I am there, 210.

ADV PRETORIUS SC: And perhaps to assist you, Mr Zulu, we should deal first with the paragraph here that talks about the communication that preceded that motivation of Mr Mokhesi to you but before we do so
20 perhaps, we had better identify the whole document.

You recall that next to your second affidavit was a series of questions and answers. The questions came from the Commission and the answers came from you.

MR ZULU: Correct.

ADV PRETORIUS SC: This question and answer

document annexed to your second affidavit, the whole of the document that I am now referring to. It appears in FS1 at page 204.

MR ZULU: Yes, I am there.

ADV PRETORIUS SC: You have that. That, on the face of it, is a letter dated 14 May 2020 addressed to Mr Thabani Zulu on the letterhead of the Commission.

MR ZULU: Correct.

ADV PRETORIUS SC: And you will see, for example, in
10 paragraph 2 it says:

“We have noticed that there are other issues or there are other matters that you should address in your affidavit which issues are not included therein. In this regard we request the following information from you.”

And then several questions are asked.

MR ZULU: Correct.

ADV PRETORIUS SC: And the answers to those questions were inserted by you or by those representing
20 you in italics in blue after each question, correct?

MR ZULU: Correct.

ADV PRETORIUS SC: Right. So that is the context of what I would like to put to you now. If you could go please to page 210 of the same document – perhaps we should take one step prior to that, page 209, paragraph 2.14. Do

you see that?

MR ZULU: Yes, I am there, thank you.

ADV PRETORIUS SC: The question there relates to a document 7. Now I can tell you, we do not need to go there, but I can tell you that document 7 is the email that you sent on the 26 November. Would you like to comment on this document? Would you like to check that?

MR ZULU: Just go to the paragraph on page 209 that you are referring to?

10 **ADV PRETORIUS SC:** 209, 2.14, it says document 7, would you like to comment on this document. Now I am just saying to you, Mr Zulu, to save some time that that document is the document at page 231 of bundle 8 and it becomes apparent in your later answer so you can trust me on that.

MR ZULU: Okay.

ADV PRETORIUS SC: And you were asked on that document and you say:

20 “The contents of the email are self-explanatory in that it poses a single and germane question to the head of department of the Free State Human Settlements department namely, why its project relating to the asbestos challenges in the Free State should receive the priority suggested in the department’s revised business plan.”

Right?

MR ZULU: Yes.

ADV PRETORIUS SC: And then if you go over the page to paragraph 2.15, document 8, would you like to comment on this document, you say:

“It is the response to my email dated 26 November 2014 being document 7.”

Now that response was put to you in this series of questions and document 8 is the motivation concerning
10 which you have answered some questions.

MR ZULU: Correct.

ADV PRETORIUS SC: It is the document that appears in bundle FS8 at 232. It was also given to you as part of the questions.

MR ZULU: Yes.

ADV PRETORIUS SC: Right? And you were asked:

“As per document 8...”

You are asked:

“What will the cost be of the project?”

20 And your answer appear here to be:

R850 per house excluding VAT.”

MR ZULU: Yes, Chair, as per the motivation submitted.

ADV PRETORIUS SC: In other words what you are saying to the investigators or the Commission is what you were told by Mr Mokhesi.

MR ZULU: As per that document that we spoke about earlier on.

ADV PRETORIUS SC: As per that document.

MR ZULU: Yes.

ADV PRETORIUS SC: Yes, as per document, I am sorry interrupted you.

MR ZULU: At the face value of it, yes, ja.

ADV PRETORIUS SC: Then 24, 10.15.2:

10 “As per document 8, what service will they be rendering?”

And your answer to that is:

“The specific services recorded at page 3 and 4.”

So in answer to the question in relation to what services would be rendered in terms of that document you quite correctly, I might add, refer to the services that we have just spoken about on page 234 and 235 of FS8 or pages 3 and 4 of the document. That is what you say.

MR ZULU: Yes, Chair.

20 **CHAIRPERSON:** Mr Pretorius, I think we are at one o'clock. Shall we take the lunch adjournment?

ADV PRETORIUS SC: Thank you, Chair.

CHAIRPERSON: Or do you want to complete something?

ADV PRETORIUS SC: No, we can happily take the long adjournment.

CHAIRPERSON: Okay. We will take the lunch break and

resume at two o'clock. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES:

CHAIRPERSON: Okay let us continue.

ADV PRETORIUS SC: Thank you, Chair. Mr Zulu, just to finish of the first topic that we were dealing with. If you would look at... under FS1 at page 210.

We are going to return to the answers that you gave in writing to the questions that were put to you by the
10 Commission's investigators, and if I can take you to paragraph 2.1.5, please, on page 210?

MR ZULU: [No audible reply]

ADV PRETORIUS SC: The document being referred to there is the motivation presented to you at your request on the 27th of November 2014 by Mr Mokhesi.

And 2.15.1 you were asked: "What will the cost be of the project?" And your answer was: "R 850,00 per house excluding VAT". That is consistent with your previous answers.

20 **MR ZULU:** Yes, Chair. And that is an answer that was provided by the head of the department of... that of Department of Free State. So that ...[intervenes]

ADV PRETORIUS SC: Yes. And that is the information that was given to you?

MR ZULU: From that, yes.

ADV PRETORIUS SC: In order to persuade you to make a decision?

MR ZULU: In order to agree with the revised business plan.

ADV PRETORIUS SC: Yes.

MR ZULU: Yes.

ADV PRETORIUS SC: And then 2.15.2: “As per Document 8, what service will they be rendering?” “The specific services as recorded at pages 3 and 4.” And those are the services are adjacent to the bullets that we went through
10 before the long adjournment?

MR ZULU: Yes, again provided by the actual head, Free State.

ADV PRETORIUS SC: Yes. Information provided to you on which you relied?

MR ZULU: It was not a complete information at this stage Mr Pretorius. Let me maybe state that. This was the first motivation that was submitted which were needed at a high-level to agree on the revised business plan.

ADV PRETORIUS SC: Yes. So...[intervenes]

20 **MR ZULU:** So there could have been more information that the actual HOD would have had at his disposal that may have not been part of this first information.

ADV PRETORIUS SC: No, I understand.

MR ZULU: Yes ...[intervenes]

ADV PRETORIUS SC: But on the face of it, what we see

before us, is a request by you on the 26th of November for a particular motivation.

You have received it and you demanded it by the 27th. You have received it by the 27th and that contains certain information which is communicated to you. That much is clear.

MR ZULU: The point I am making Chair is that the information provided by the HOD, as per the revised business plan, may not have all the information about the project itself but this is the information that was given to me
10 ...[intervenes]

ADV PRETORIUS SC: Yes.

MR ZULU: ...at a face value.

CHAIRPERSON: Yes, but I think the... I think the point that Mr Pretorius seeks to make and wants to see what comment you have on it is that you asked for certain information
...[intervenes]

MR ZULU: Yes.

CHAIRPERSON: This is what was provided.

20 **MR ZULU:** Correct Chair.

CHAIRPERSON: And if what was provided was not adequate for your purposes to make whatever decision you needed to make, you would indicate.

MR ZULU: In any event Chairperson, once the plan is revised there are then other follow-ups.

CHAIRPERSON: Yes.

MR ZULU: When then, in any event, have a responsibility to check the business plan.

CHAIRPERSON: Yes.

MR ZULU: So the point I am making.

CHAIRPERSON: Ja?

MR ZULU: This could have not been the only information that overall was available.

CHAIRPERSON: Yes.

10 **MR ZULU:** So I am trying to make that to be clearly understood.

CHAIRPERSON: Yes.

MR ZULU: Ja.

CHAIRPERSON: Okay Mr Pretorius.

ADV PRETORIUS SC: Alright. You required information. The information was given to you but finally you gave your approval.

MR ZULU: Just repeat that.

ADV PRETORIUS SC: You required information.

20 **MR ZULU:** Yes.

ADV PRETORIUS SC: The information was given to you. We have been through that information.

MR ZULU: Yes.

ADV PRETORIUS SC: You must have taken that information into account in finally giving your approval?

MR ZULU: Correct. Correct, yes.

ADV PRETORIUS SC: In summary then in relation to the questions that we have been dealing with and your evidence Mr Zulu. Your intervention or your approval in your capacity as HO... sorry, Director General National Human Settlements was necessary and approval was given.

MR ZULU: It is a required process as I have explained earlier Chair.

CHAIRPERSON: Okay is your answer yes?

10 **MR ZULU**: Yes, you see ...[intervenes] ‘

CHAIRPERSON: Because they could not proceed without your approval?

MR ZULU: Yes, that is what I said earlier. That is what I am trying to say, I have explained how they... the business plan at national level works. And in the process of changes, what is also required in terms of the process.

CHAIRPERSON: Yes. No, no, no. That is fine.

MR ZULU: Ja.

20 **CHAIRPERSON**: I think Mr Pretorius just wanted you to confirm his understanding.

MR ZULU: Okay.

CHAIRPERSON: That your approval was required, it was necessary and it was granted.

MR ZULU: Yes, correct Chair.

CHAIRPERSON: H’m.

ADV PRETORIUS SC: I would like to move to a different topic if I may Mr Zulu?

MR ZULU: [No audible reply]

ADV PRETORIUS SC: And that is, Blackhead's appointment ...[intervenes]

MR ZULU: Which page?

ADV PRETORIUS SC: ...and by Blackhead, I mean Blackhead Consulting (Pty) Limited.

MR ZULU: On which page is it?

10 **ADV PRETORIUS SC:** I am sorry?

MR ZULU: On which page?

ADV PRETORIUS SC: You can put that away for the moment.

MR ZULU: Sorry?

ADV PRETORIUS SC: You can put that away that document.

MR ZULU: Oh, okay.

ADV PRETORIUS SC: So I would like to move to a different topic if I may?

MR ZULU: [No audible reply]

20 And that concerns the procurement process that preceded the appointment of the joint venture in the Free State. But it is necessary to go back a stage to what happened in Gauteng.

The issue that needs clarification is the nature of Blackhead's appointment in Gauteng, and by Blackhead, I

mean Blackhead Consulting (Pty) Limited, not the joint venture.

Do you recall that Blackhead Consulting (Pty) Limited provided services to the Gauteng Department of Human Settlements?

MR ZULU: As was informed and requested by the HOD of the Free State, yes.

ADV PRETORIUS SC: Yes. And we will come to the ...[intervenes]

10 **MR ZULU:** The request... Chair, just to be specific. The request that was made by the HOD to revise the business plan was in line with the work that Blackhead was doing in Gauteng. So that is the context I am giving.

ADV PRETORIUS SC: Yes, sure. Well, the correspondence that we are going to go through in a minute Mr Zulu is not entirely clear and let me just ask if you can recall. The appointment of Blackhead Consulting (Pty) Limited in Gauteng, what was that appointment?

Was it an appointment to a panel of service providers?
20 Was it an appointment arising out of the panel of service providers to do particular work? Was it an individual appointment of the company? What was it?

MR ZULU: To the appointment of Blackhead by Free State or by Gauteng?

ADV PRETORIUS SC: By Gauteng.

MR ZULU: Yes, it was done by Gauteng, Chair. So I would not be involved with the appointment of the company in department where I am not accountable for.

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

MR ZULU: So I cannot be responsible for it internally.

CHAIRPERSON: Yes. No, I think Mr Pretorius simply seeks your understanding of what the position was in terms of how... what was Blackhead was appointed by Gauteng to do because the Free State Human Settlements Department
10 sought to rely on the fact that Blackhead had been appointed in Gauteng to do whatever and they sought to rely on that to say, “We are not going to go to open tender”.

Now from what you have told me, this project, it would seem, would never have gone ahead if it did not had your approval as well?

MR ZULU: Not necessarily Chair. Let me explain.

CHAIRPERSON: Yes. Ja. Yes.

MR ZULU: My responsibilities as the National Director General of Human Settlements is when you want to revise
20 your business plan.

CHAIRPERSON: Yes.

MR ZULU: You see the necessary approval. Amongst those approvals is to consult the National Department. The appointments of service providers at a provincial level, is not the responsibility of the accounting officer at national level.

CHAIRPERSON: Yes. Okay no, it is ...[intervenes]

MR ZULU: So let us be clear about that ...[intervenes]

CHAIRPERSON: No, no, no. That is fine.

MR ZULU:so that we do not confuse it.

CHAIRPERSON: That is fine. I think that ...[intervenes]

MR ZULU: I do think ...[intervenes]

CHAIRPERSON: But I think that... from my point of view, I need that clarification.

MR ZULU: I do not have jurisdiction in the provincial
10 departments for the appointments and all of that.

CHAIRPERSON: No, no, no. I think everybody understand that. But you see, you have indicated that this kind of project... there was... you used the word joint... joint... between the joint, I think, corporation, joint approval or whatever between the national department and the provincial department. In the morning, you used that word.

So there needs to be some approval by the HOD in regard to a project in his department but there is also approval necessary in regard to certain things about such a
20 project from yourself.

And my understanding, and you must just tell me again if I misunderstood, my understanding is, if the HOD for the Free State Human Settlements Department had thought that this was a good project, they should pursue it.

But you did not provide your approval for the change of

the business plan and so on and so my understanding is that it would not have been able to go ahead. So am I... do I misunderstand the position?

MR ZULU: No, Chair. What I am saying is. I do not appoint ...[intervenes]

CHAIRPERSON: No, no, no. Do not tell me what you want to tell me.

MR ZULU: Yes.

CHAIRPERSON: I am asking you a specific question. I
10 have just told you what I understood your evidence to be.

MR ZULU: Yes.

CHAIRPERSON: Is my understanding correct or not of what you said?

MR ZULU: It is correct Chair.

CHAIRPERSON: It is correct. Okay. Then we can ...[intervenes]

MR ZULU: I cannot approve the business plan.

CHAIRPERSON: No, no, no. We can take it step-by-step.

MR ZULU: Okay Chair.

20 **CHAIRPERSON**: That part is correct.

MR ZULU: Okay Chair.

CHAIRPERSON: Okay.

MR ZULU: Ja.

CHAIRPERSON: But if you did not approve the change of the business plan, could the provincial department,

nevertheless, proceed with the project?

MR ZULU: If they would have done so Chair, they would have done it un-procedurally.

CHAIRPERSON: Which would not be permissible?

MR ZULU: Exactly Chair.

CHAIRPERSON: So they could not properly or lawfully proceed with the project without your approval of the business plan at least?

MR ZULU: Correct Chair.

10 **CHAIRPERSON**: Okay.

MR ZULU: But that does not stop them. That is the point I am trying to make Chair.

CHAIRPERSON: Yes.

MR ZULU: Yes.

CHAIRPERSON: Ja. No, let us deal with it.

MR ZULU: Ja.

CHAIRPERSON: That does not stop them from doing what?

MR ZULU: From continuing with the project irrespective of my decision not to approve the revised business plan.

20 **CHAIRPERSON**: But ...[intervenes]

MR ZULU: But if they were to do so, they would do so incorrectly or un-procedurally.

CHAIRPERSON: Yes, but ...[intervenes]

MR ZULU: If for somebody from the accounting office, yes.

CHAIRPERSON: Yes. Yes, but what we are talking about is.

In terms of what they are supposed to do in terms of the government procedures and authorities and the laws and the regulations, they could not proceed ...[intervenes]

MR ZULU: Yes.

CHAIRPERSON: ...if they did not have your approval of the change of the plan of the business plan?

MR ZULU: Correct Chair. Correct.

CHAIRPERSON: They could not proceed in a regular way?

MR ZULU: Correct Chair.

10 **CHAIRPERSON**: They would be doing something irregular?

MR ZULU: Correct. Correct Chair.

CHAIRPERSON: Okay. Alright. Mr Pretorius, I hope I have contributed to the understanding of the position?

ADV PRETORIUS SC: Yes, thank you Chair. In fact, Mr Zulu summarises it quite well himself. If I can just put to you?

CHAIRPERSON: [laughs]

ADV PRETORIUS SC: In Free State 1208, you say... if you want to look at it, you are quite welcome to do that. You say
20 in relation to a particular document, you say:

“It is not within my scope of authority and responsibilities to have become involved in a matter between a provincial department and its service provider...”

That is clear on your evidence that the... many of the

steps required for appointment of a service provider in a province is up to the provincial department. That much we agree on. Correct?

MR ZULU: Correct.

ADV PRETORIUS SC: You go on to say:

“As a force head my intervention would only be required if my approval was required for revision of the business plan and budget of the provincial department in question...”

10 Now in this case we know that your approval was required and asked for it and given.

MR ZULU: Correct.

ADV PRETORIUS SC: Thank you.

CHAIRPERSON: I think your answer was “correct”.

MR ZULU: Yes.

CHAIRPERSON: I do not think it was captured because ...[intervenes]

MR ZULU: Correct.

CHAIRPERSON: Ja.

20 **MR ZULU**: The approval of the revised business plan.

CHAIRPERSON: Yes, yes.

ADV PRETORIUS SC: If we can then move onto another topic and that is the procurement process that preceded the appointment of the joint venture involving Blackhead Consulting (Pty) Limited. Would you go please to FS8 page

110?

MR ZULU: [No audible reply]

CHAIRPERSON: Did you... bundle FS8?

ADV PRETORIUS SC: FS8 Chair.

CHAIRPERSON: Okay.

MR ZULU: Sorry, page Mr Pretorius?

ADV PRETORIUS SC: Page 110.

MR ZULU: Yes?

ADV PRETORIUS SC: Please help us clarify Mr Zulu. The
10 letter that appears on this page appears to be signed by
yourself as Director General of the Department of Human
Settlements, the National Department.

It is dated 7th of April 2014, it appears. And it is
addressed to Mr Edwin Sodi of Blackhead Consulting (Pty)
Limited. So far we are in agreement I presume?

MR ZULU: Yes.

ADV PRETORIUS SC: Would you look at it, please?
Because quite simple, it is not clear from the letter what you
said here. The title of the letter reads:

20 “Letter of Notification. Appointment of Professional
Resource Teams (PRT’s) to a Departmental Panel for
Provincial and Municipal Planning and
Implementation Support to the Human Settlements
Departments and Municipalities with the specific
regional areas...”

The question I would like to put to you and by reference to the document, perhaps you can answer. This appointment of Blackhead Consulting (Pty) Limited was it an appointment nationally or was it confined to a particular province?

MR ZULU: Chair, it is quite, again, a very old appointment but I would assume because it is seen by myself, this would be an appointment at national.

And the reason for that would be as simple as, I do not have jurisdiction to appoint any service provider at a provincial level. So this would be my submission right now.

CHAIRPERSON: Yes. Hm.

MR ZULU: A national appointment. And if I look at the title of this letter, it will be only but one service provider. It will be a combination of different service provides. All form part of the... of your PRT's ...[intervenes]

CHAIRPERSON: A panel.

MR ZULU: A panel at international level. So I would assume if I were to go back and check the records of the department, this will not have not been the only company that is appointed to be part of the PRT's.

CHAIRPERSON: H'm-h'm.

MR ZULU: But that will be inclination for now.

ADV PRETORIUS SC: But what your... what you say Mr Zulu, it does appear to be consistent with what appears in the paragraph which follows the title because it says you did,

dated 6 November 2013:

“...for appointment of professional resource teams (plural) to a departmental panel has been accepted...”

And then I skip a line.

“...has been accepted by the Department of Human Settlements...”

So it seems that what you say about this being a national arrangement is correct.

10 **MR ZULU**: Yes. Yes, it is correct Chair.

ADV PRETORIUS SC: Thank you. The contractual arrangements relating to the appointment of this particular panel, and I am talking about the panel and not any instruction to perform work which might have emanated from the appointment to a panel, those would be available, I presume, in the national department. The records in relation to this, not in the Gauteng department.

MR ZULU: Chair, it will depend. At national level it will be a different system that we use for this and for provincial
20 departments. Again, they have their own authorities. So we appear at that level as well. So this is only for national purposes.

ADV PRETORIUS SC: Yes.

MR ZULU: But of course, provincial departments may have an access to that information.

ADV PRETORIUS SC: Yes, they may have access to it but the questions simple is that the records would ordinarily be kept in relation to national arrangements in the national office.

MR ZULU: Correct. Correct.

ADV PRETORIUS SC: Okay. If I could you take please to another document in FS1. Sorry, you are going to have to put that away and refer to FS1. And if you would go please to page 214.9.

10 **MR ZULU:** Sorry, what page?

CHAIRPERSON: 2149, did you say?

ADV PRETORIUS SC: [No audible reply]

CHAIRPERSON: Mr Pretorius?

ADV PRETORIUS SC: Chair, if you would bear with me a moment, please?

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Because these documents have been added to the bundle and I am not sure whether they have been filed in your bundle. So I may just have to just
20 ...[intervenes]

CHAIRPERSON: No, that is fine.

ADV PRETORIUS SC: ...look for them elsewhere. Chair, the copy I have it may be repeated elsewhere in the documentation. So if you could just give me a moment, please?

CHAIRPERSON: [No audible reply]

ADV PRETORIUS SC: Chair, can I... may I ask if you have pages 214.1 to page 214... well, it goes onto 214.19.

CHAIRPERSON: [No audible reply]

ADV PRETORIUS SC: This document is the settlement affidavit of Mr Zulu, yet another copy...[intervenes]

CHAIRPERSON: I have got ...[intervenes]

ADV PRETORIUS SC: ...but it has all the annexures, the documents that were presented to Mr Zulu as part of the
10 questions placed to him by the Commission.

CHAIRPERSON: Yes, I have got pages 214.1 to 2.1, 4.19.

ADV PRETORIUS SC: Yes, and they are not very legible I am afraid. I tried to get more legible copies because they are all in .doc on the background.

CHAIRPERSON: Well, on the whole I think I am able to... well, maybe those that have got numbers or figures might be... but a lot of them that are somewhere in the first half of the document appear to be legible to me. But as you move further then some are maybe difficult to read.

20 **ADV PRETORIUS SC:** Right. We may be able to help Chair. We have found another copy of that particular document.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: If you would go please Mr Zulu to FS8 page 169.

CHAIRPERSON: Was the page on FS8?

ADV PRETORIUS SC: 169 Chair.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Have you got that document Mr Zulu?

MR ZULU: Yes, I do.

ADV PRETORIUS SC: That is the same document and you can check it if you wish, as Document 8 given to you in the questions by the Commission to which you answered in that document annexed to your affidavit. That document appears at... under 1214.14. It is the same document. Are you
10 happy to accept that?

MR ZULU: Is it the same as the document that I ...[intervenies]

ADV PRETORIUS SC: Give us a moment, please.

MR ZULU: No, it does not look the same.

ADV PRETORIUS SC: I might have been given the wrong document. Let us just pause there, please. In any event, let us deal with the document at 169 of Bundle 8.

And I will just ask the legal team that are behind me to just find the document that was in the bundle given to you.

20 This is a letter addressed to the CEO dated the 19th of June 2014. And it says... it is addressed to the CEO of Blackhead Consulting (Pty) Limited.

It is dated the 19th of June 2014 and it is addressed to the CEO of Blackhead Consulting (Pty) Limited by Mr Mokhesi who we know is the Head of the Department Human

Settlements, Free State at the time.

And he says:

“The above has reference to your proposal submitted to this department...”

And we will get there if necessary.

“...and your appointment by the National Department of Human Settlements...”

So it seems what you say is consistent that the original appointment of Blackhead was a national appointment, not a
10 provincial appointment.

MR ZULU: [No audible reply]

ADV PRETORIUS SC: It is consistent with your evidence.

MR ZULU: Yes, Chair. But I would not know the context of the... of this letter. So if you say it is consistent. I am not sure in which context was this letter been written by ...[intervenes]

ADV PRETORIUS SC: Well, it goes on to say in paragraph 1, Mr Mokhesi says:

“Your department...”

20 And I presume he is referring to his own department:

“...wishes to extent your current contracts secured by the National Department of Human Settlements in line with Treasury Regulations 16A 6.6 of 2005...”

Correct? That is what it says.

MR ZULU: [No audible reply]

ADV PRETORIUS SC: So we know from your evidence that, according to the correspondence at least, and I am not taking it further than what you have read, according to the correspondence in the documentation at least, Blackhead was appointed nationally as part of a panel. So far, we are in agreement?

MR ZULU: Yes, Chair. But let me contextualise it once again. But when Blackhead was being considered by the Free State Department of Human Settlements to do the work
10 for the asbestos, I did not use this appointment that was done by the national department for the panel.

ADV PRETORIUS SC: Forgive me. I have not heard that.

MR ZULU: I want to give that context earlier so that there is no confusion because they have used the Gauteng process.

ADV PRETORIUS SC: Alright.

MR ZULU: So I wanted to be clear. So this would not have been applicable in the usage because the terms of reference for the panel and for asbestos were two different things. I just want to give that clarity so that it is... the information is
20 not misconstrued.

ADV PRETORIUS SC: Alright.

MR ZULU: That is my understanding. I did not write this letter but I am just trying to interpret what I said already.

ADV PRETORIUS SC: H'm?

CHAIRPERSON: Ja. No, we understand Mr Zulu.

ADV PRETORIUS SC: I am happy to do that Mr Zulu and we will go through it at a pace that I have been... we can all understand and it does not impose any pressure on you.

MR ZULU: Ja.

ADV PRETORIUS SC: But as I understand your answer. You say, “Yes, there was a national appointment but that was not the appointment relevant to the procurement process which followed”.

MR ZULU: Yes, as I have explained Chair. The appointment
10 that you are referring you is an appointment of different service providers to a panel not to do any work by the national department, not any work. It is to be appointed ...[intervenes]

CHAIRPERSON: Just to get onto the panel.

MR ZULU: Just to get on... and it ends there.

CHAIRPERSON: And then you might be on the panel for a whole year, you get no work.

MR ZULU: Absolutely.

CHAIRPERSON: Or you might get work.

20 **MR ZULU:** Correct.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: No but had this happen in relation to a later answer Mr Zulu. When the letter at FS8 110 refers to a bid and a bid being accepted, and we are not talking about a contractual arrangement relevant to what happened later

when the contract was transferred or when the Free State participated in the contract.

MR ZULU: So just help me, Mr Pretorius, which letter are you referring to that talks about a bid?

ADV PRETORIUS SC: 8.

MR ZULU: The one that I sent?

ADV PRETORIUS SC: FS8, 110, the one you sent, you said it referred to a national procurement process.

MR ZULU: The one for the panel?

10 **ADV PRETORIUS SC:** Yes.

MR ZULU: Yes, it refers to a panel appointed by the national department.

ADV PRETORIUS SC: Correct, yes.

MR ZULU: Yes.

ADV PRETORIUS SC: And anything that is said in this letter about bids would apply to that national appointment.

MR ZULU: That is why I am saying, Chair, it depends on the writer, what was the contents of raising this in this fashion. I would not be able to give context to that
20 because I did not write that letter.

ADV PRETORIUS SC: No, that is fine, but you did say ...[intervenes]

MR ZULU: But I am just ...[intervenes]

ADV PRETORIUS SC: You did say very clearly – sorry, I interrupted you and perhaps I should not have. Do you

want to finish your answer?

MR ZULU: Yes. I was saying the bid that I referred to and the letters, not just one letter, that were written to different service providers to become the members of the panel, that was done by national department but they were not appointed to do any specific work for the national department until such time that there is a need for their services, a normal procurement process will follow.

So, as far as I am concerned, that is where it ended
10 with my responsibility at national level. Obviously, accounting when they do their work they check certain things, they do certain things, I am not aware of that because that is outside my scope. I am talking about something that has fallen within my scope in terms of the letter that you are referring to.

ADV PRETORIUS SC: Yes, but you did answer further to say that the contract in which Free State participated was a Gauteng contract and not a national contract.

MR ZULU: That was my understanding. My
20 understanding was ...[intervenes]

ADV PRETORIUS SC: Yes, okay, that is fine, we are on the same page so far, perhaps.

MR ZULU: But the point I am trying to clarify, Chair, so that we are not lost, the application of 16.A it has nothing to do with the national department, I just want to make that

point clear.

ADV PRETORIUS SC: So anything that is said in this letter in relation to bids and procurement processes does not apply to the 16A process that we will talk about later.

MR ZULU: Which letter are you talking about now?

ADV PRETORIUS SC: I am sorry?

MR ZULU: There are two letters, which one are you talking about?

ADV PRETORIUS SC: The one on page 110 of FS8.

10 **MR ZULU:** The one that I personally did?

ADV PRETORIUS SC: Yes.

MR ZULU: That one was only for the panel, it has nothing to do with appointing a service provider to do the work on this project.

ADV PRETORIUS SC: Now when you appoint a panel do you go through a competitive bidding process?

MR ZULU: Correct but you are in a panel, you are not appointed to do any specific work.

20 **ADV PRETORIUS SC:** So the appointment to the panel referred to in 110 is not the contractual arrangement in which Free State participated, that was another Gauteng appointment.

MR ZULU: The panel, the letter that I have written to service providers was to appoint them to a panel at national level it has nothing to do with any work that the

province is doing, any province [inaudible – speaking simultaneously]

ADV PRETORIUS SC: That would include Gauteng and would include the Free State.

MR ZULU: It includes all departments.

ADV PRETORIUS SC: And they are unrelated.

MR ZULU: Excuse me?

ADV PRETORIUS SC: They are unrelated.

MR ZULU: Which project is unrelated?

10 **CHAIRPERSON:** In other words, are you saying it includes all departments even those that have got nothing to do with human settlements?

MR ZULU: No, the panel that we appointed, Chairperson, had to do with national department of human settlements.

CHAIRPERSON: Yes.

MR ZULU: To have service providers within the panel.

CHAIRPERSON: Yes.

MR ZULU: That is outside the scope.

CHAIRPERSON: Of the provinces.

20 **MR ZULU:** Of the provincial departments.

CHAIRPERSON: Yes.

MR ZULU: They can even have their own panels [indistinct – dropping voice]

CHAIRPERSON: Yes.

MR ZULU: This one that I did was specifically for the

national department of Human Settlements.

CHAIRPERSON: They would be service providers from which you would pick those to give work from time to time.

MR ZULU: Through a procurement process.

CHAIRPERSON: Through a proper procurement process.

MR ZULU: As and when [inaudible – speaking simultaneously]

CHAIRPERSON: Even within the panel.

MR ZULU: Correct.

10 **CHAIRPERSON:** In other words, when you want to create a panel you have a bidding process.

MR ZULU: Correct.

CHAIRPERSON: And then when there is actual work to be done you are generally restricted to this panel.

MR ZULU: Correct.

CHAIRPERSON: But even with this panel there would be ...[intervenes]\

MR ZULU: A process to be ...[intervenes]

CHAIRPERSON: A bidding process.

20 **MR ZULU:** Correct.

CHAIRPERSON: Okay and once there is work to be done that must be allocated where there must be a bidding process someone who is not on this panel would not be eligible to put in a bid.

MR ZULU: If you are outside this panel, yes.

CHAIRPERSON: Okay, only on the panel.

MR ZULU: Because you would have not qualified to be on the panel.

CHAIRPERSON: Yes.

MR ZULU: Yes, correct, Chair.

CHAIRPERSON: Okay, because if you wanted to come onto the panel there was a time earlier.

MR ZULU: Correct.

CHAIRPERSON: When it was open and if you were
10 interested you would have tried and then you did not
succeed.

MR ZULU: Correct, Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Well, before we get to the next
letter let me just understand one of the answers you gave
previously. You were aware of the fact that in the Free
State that Department of Human Settlements participated
in a contract that had been entered into, correct?

MR ZULU: I was aware of the fact that?

20 **ADV PRETORIUS SC:** You are aware from your last
answer, because you have made it very clear in your
answer, that the Department of Human Settlements in the
Free State participated – you know what that means – in a
contract entered into elsewhere.

MR ZULU: For a [indistinct – dropping voice] submission

[inaudible – speaking simultaneously]

ADV PRETORIUS SC: And as I understood your answer
...[intervenes]

MR ZULU: Yes, as per the submission that made and
giving the affidavit of Mr Mokhesi, yes.

ADV PRETORIUS SC: Yes. And as I understood your
answer you said that the contract, the participation
contract was the Gauteng contract, not the national one.

MR ZULU: No, that is my understanding, Chair, that it
10 has got nothing to do with the national department as far
as I am concerned.

ADV PRETORIUS SC: It had to do with the Gauteng.

MR ZULU: Correct because of the specifications, that is
how I have learnt or understood the ...[intervenes]

ADV PRETORIUS SC: So when Mr Mokhesi says in the
letter at 8.169, if you would just look at it please?

MR ZULU: Yes.

CHAIRPERSON: I think the 8 will cause confusion, you
said ...[intervenes]

20 **ADV PRETORIUS SC:** FS8.

CHAIRPERSON: On 169.

ADV PRETORIUS SC: Bundle FS8, page 169.

CHAIRPERSON: Oh, FS8, okay. No, that is fine. FS8.

ADV PRETORIUS SC: Page 169.

CHAIRPERSON: Page 169, okay, alright.

ADV PRETORIUS SC: Paragraph 1. Well, let us go to the title first. Mokhesi says to Blackhead:

“Appointment of professional resource team to a departmental panel and municipal planning and implementation support to Human Settlements departments and municipalities within specific regional areas.”

He says:

10 “The above has reference to your proposal submitted to this department and your appointment by the National Department of Human Settlements.”

Then paragraph 1 says:

“That the department wishes to extent your current contract secured by the National Department of Human Settlements in line with Treasury regulations 16A 6.6 of 2005.”

Is that a correct statement?

CHAIRPERSON: One second, Mr Pretorius, just to make clear what the letter says. I think one has got to read it on
20 the basis of bold line above it. He says:

“Note has been taken of the above and we wish to request your approval as for...”

So one of the – the approval that he is asking for includes approval that the department wishes to extend. So I just wanted to say it is important to tie it to that.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Well, just by way of background, I not sure everybody will follow as far as the public watching my excuse, but Mr Zulu will know that when you extend a contract from let us say for example Gauteng to Free State you need the approval of the service provider as well, is that correct?

MR ZULU: Yes.

10 **ADV PRETORIUS SC:** So basically, Mr Mokhesi seems to be ...[intervenes]

CHAIRPERSON: I am sorry, I am sorry, I am sorry.

MR ZULU: That is correct, Chair.

CHAIRPERSON: The answer was correct?

MR ZULU: It is correct.

CHAIRPERSON: Okay.

MR ZULU: If you are using this provision, there are certain parties that must give consent.

CHAIRPERSON: Yes.

20 **MR ZULU:** Amongst those parties it is your service provider.

CHAIRPERSON: Ja, okay.

ADV PRETORIUS SC: But the point I want to make is in paragraph 1 that Mr Mokhesi is saying to Blackhead Consulting (Pty) Ltd, in seeking that approval that you

have referred to, the department - Free State department,

“...wishes to extent your current contract secured by the National Department of Human Settlements in like with Treasury regulations 16(a)(6)(6) of 2005.”

Now, as I understand it, quite simply that cannot be consistent with what you have said, Mr Mokhesi must be wrong or you must be wrong.

MR ZULU: Chair, I will prefer that at least the actually can give context to the letter because ...[intervenes]

10 **CHAIRPERSON:** Yes but we do want to ...[intervenes]

MR ZULU: As I have been explaining ...[intervenes]

CHAIRPERSON: We do want to benefit from your knowledge as well.

MR ZULU: Yes, as I have been explaining, Chair, ...[intervenes]

CHAIRPERSON: Hang on, hang on, would you want to benefit from your knowledge and experience, you are the Director General of the Human Settlements department.

MR ZULU: Right.

20 **CHAIRPERSON:** We are dealing with a project in the Provisional Human Settlements Department.

MR ZULU: Correct, Chair.

CHAIRPERSON: You, as an accounting officer, you understand the workings of government and its departments in regard to certain matters. So now here we

get the HOD of the Free State Human Settlements Department writing to Blackhead Consulting (Pty) Ltd on the subject indicated there and he says he is seeking the approval of the CEO Blackhead Consulting (Pty) Ltd that his department extend Blackhead Consulting (Pty) Ltd's current contract secured by National Department of Human Settlements in line with Treasury regulation number that, that, that.

Now we know that – or rather, I think when he
10 refers to a current contract secured by National Department of Human Settlements, I take it he is referring to the subject of your letter that we have dealt with.

MR ZULU: I would think so, Chair.

CHAIRPERSON: Yes. Now on the understanding that that is what he is talking about, could he be correct to want to use that contract in this way?

MR ZULU: That is why I was saying, Chair, it depends in which context was the HOD referring to, to make reference into that.

20 **CHAIRPERSON:** Yes.

MR ZULU: How would he know that.

CHAIRPERSON: Yes. To your knowledge ...[intervenes]

MR ZULU: He may have done some research to check the validity.

CHAIRPERSON: Yes.

MR ZULU: Of the existence of this company.

CHAIRPERSON: Yes.

MR ZULU: And which service centres exist, whether National Treasury or in the department where this particular company is a vendor. I am not sure of the contents.

CHAIRPERSON: Yes.

MR ZULU: But under normal circumstances.

CHAIRPERSON: Yes.

10 **MR ZULU:** Because this is not a contract that exists between National Department ...[intervenes]

CHAIRPERSON: To give work, h'm.

MR ZULU: And the Blackhead doing any work.

CHAIRPERSON: H'm.

MR ZULU: Then you would not piggyback on that.

CHAIRPERSON: Yes, yes.

MR ZULU: Because this company is only on a panel.

CHAIRPERSON: Yes.

MR ZULU: It is not having an existing contract.

20 **CHAIRPERSON:** Yes.

MR ZULU: That contract, my understanding after reading all the documents that were sent to me, was that it existed.

CHAIRPERSON: Yes.

MR ZULU: Between the Gauteng Department of Human Settlements and the service provider.

CHAIRPERSON: Yes.

MR ZULU: But not with the national department.

CHAIRPERSON: No, no, no, that is fine. You see, most of the time what Mr Pretorius is asking for is just your own understanding of the position and somebody else might come and say no, no, Mr Zulu was wrong, he did not understand but what he was looking for is your own understanding.

MR ZULU: Thank you, Chair, I always avoid interpreting
10 other people's letters.

CHAIRPERSON: Ja. No, but ...[intervenes]

MR ZULU: Because you never know the context within which a particular letter is written.

CHAIRPERSON: No, no, no, that ...[intervenes]

MR ZULU: And then you start making allegations of saying somebody is wrong as an accounting officer whereas there could have been a reason to contextualise it in this fashion.

CHAIRPERSON: No, no, no.

20 **MR ZULU:** Which I am not privy to, so it is in that context, Chair.

CHAIRPERSON: That is a fair point but as long as everybody understands you are giving your own understanding.

MR ZULU: Correct.

CHAIRPERSON: That that should not be a problem.

MR ZULU: Yes.

CHAIRPERSON: Mr Pretorius?

ADV PRETORIUS SC: So all we are doing as the Chair says, Mr Zulu, is asking for – how you understand the words of a particular document and if those words are clear then they are clear. If they are not clear they are not clear but I do not think that I put anything to you where the words are not clear but if they are not clear you can
10 certainly answer as you feel you should and I am going to come to another letter.

But two things arise out of your recent answers, as I understand it. The first is, the contract that was extended – or, to put it another way more correctly, the contract in which the Free State Human Settlements Department participated originated in Gauteng and not nationally, is that correct?

MR ZULU: Having read the documents that were forwarded to me, that would be my understanding, Chair.

20 **ADV PRETORIUS SC:** Yes, okay, so far so good.

MR ZULU: And also, having understood the request that was put to me as the accounting officer at the time to revise the plan, it was in that context.

ADV PRETORIUS SC: Okay, the second ...[intervenes]

MR ZULU: Not at national.

ADV PRETORIUS SC: The second point is that it seems from your answers, which appear to coincide with persons we have consulted in Treasury that you cannot participate in a panel appointment, you have got to participate in a particular contract. Is that fair?

MR ZULU: I think in terms of PFMA that would be correct.

ADV PRETORIUS SC: Yes. In any event, let us just put aside then the document at 8.169 but summarise the
10 position to say that where state organ B wishes to participate in a contract entered into between a service provider and state organ A, the Regulation 16A requires the consent of both the service provider and the state organ which accepts the contract, am I correct?

MR ZULU: I will say basically all affected parties, Chair.

ADV PRETORIUS SC: But at least two of the affected parties and we can go to the regulation if necessary but what Mr Mokhesi appears to be doing here is precisely that. He is asking the CEO for his consent.

20 **MR ZULU:** I see so, Chair.

ADV PRETORIUS SC: Yes. But let us put that aside because the document says what it says and you are not a party to that communication but if you would look please at page 214.9.

MR ZULU: In the same pack?

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Just repeat the page?

ADV PRETORIUS SC: Bundle 1, FS1, 214.9. It is one of those unfortunately almost legible documents against the dark background.

CHAIRPERSON: Oh.

ADV PRETORIUS SC: You have 214.9?

MR ZULU: I am getting there.

ADV PRETORIUS SC: This is another letter written by
10 Mokhesi to yourself on the same day. The heading – it is dated the – it appears to have been signed on the 19 June 2014 and it is addressed to the Director General Department of Human Settlements, attention Mr P W Zulu, yourself. Its heading reads:

“Appointment of professional resource team to a departmental panel and municipal planning and implementation support to the Human Settlements Departments and municipalities with specific regional areas.”

20 And you nod your head. I am afraid you have to say yes because ...[intervenes]

MR ZULU: No, I was just waiting before you finish your statements, I was not nodding because ...[intervenes]

ADV PRETORIUS SC: Alright, we have not got anywhere yet but the first paragraph reads:

“The above has reference to your letter of notification dated 7 April 2014.”

Do you remember that letter?

MR ZULU: Yes, it is the letter we spoke about earlier.

ADV PRETORIUS SC: Yes, we spoke about it earlier.

MR ZULU: Yes.

ADV PRETORIUS SC: With the reference number and it gives a reference number. The second paragraph is the one I would like you please to comment on if you would.

10 “The Free State Department of Human Settlements hereby request your department to extent...”

Should read extend.

“...the services of Blackhead Consulting (Pty) Ltd in line with Treasury regulation 16A 6.6 of March 2005.”

Do you see what Mr Mokhesi is asking you?

MR ZULU: Yes.

ADV PRETORIUS SC: He is saying please extend the national contract, correct?

20 **MR ZULU:** Yes, that is what it is saying here, Chair, ...[intervenes]

ADV PRETORIUS SC: I know that that does not accord with your recollection of events firstly, and secondly, you cannot extend a panel appointment.

MR ZULU: Again, sir, it depends what is it that a

particular accounting officer is looking for.

CHAIRPERSON: Yes, but ...[intervenes]

MR ZULU: So it all depends. If he was looking for my confirmation that this particular service provider is part of the national panel resource team that I have in a particular context and I have asked for that. But if he was asking for an existing ...[intervenes]

CHAIRPERSON: But we know what he is asking, it is in a letter.

10 **MR ZULU:** But he is asking for a contract ...[intervenes]

CHAIRPERSON: For your approval.

MR ZULU: [inaudible – speaking simultaneously]

ADV PRETORIUS SC: But you see, Mr Mokhesi - I am sorry, if I may just explain what the Chair is saying and what we are asking from this side of the room, is the words are clear, the words do not require a context to assist their interpretation and we are simply asking you for your comment on those words. The words are clear, they say:

20 The Free State Department of Human Settlement
 hereby request your department to extend the
 services of Blackhead Consulting (Pty) Ltd in line
 with Treasury regulation 16A 6.6.”

Now no context can change those words.

MR ZULU: Yes.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Simply he is asking you to extend the national contract.

CHAIRPERSON: Actually, he is not even asking for approval, he is asking you to extend ...[intervenes]

MR ZULU: This is what I am trying to ...[intervenes]

CHAIRPERSON: Obviously you cannot extend if you do not approve the extension.

MR ZULU: But this is what I am saying, Chair, I do not have a contract with Blackhead at national level with my
10 accounting officer at the time.

CHAIRPERSON: Yes but let us go step by step.

MR ZULU: yes.

CHAIRPERSON: You accept that he was asking you to extend the services of Blackhead Consulting (Pty) Ltd in line with this Treasury regulation. You accept that is what he is asking?

MR ZULU: That could be what he is asking, Chair, depending on what he meant.

CHAIRPERSON: What else could it be?

20 **MR ZULU:** It could be wanting to confirm if there is a contract.

CHAIRPERSON: But he does not say that. He writes on the basis that he knows that there is a contract and he is asking you to extend it, whether he is right or wrong is another matter but he says in effect please extend the

services of Blackhead Consulting in line with Treasury regulation, blah, blah, blah, blah.

MR ZULU: Yes, Chair.

CHAIRPERSON: That is what he is asking. Whether he is right or justified in making that request, that is another matter but factually that is what he is asking you to do.

MR ZULU: Yes, Chair.

CHAIRPERSON: Okay, Mr Pretorius, take it from there.

ADV PRETORIUS SC: Well, lest there be any doubt, Mr
10 Zulu, let us look at the next paragraph. He says:

“It is therefore in this regard that approval is hereby sought that you provide written confirmation to extend same in line with your approved terms and conditions as contained in your instruction to perform. Kindly take notice that the concurrent approval has also been sought from the service provider, see attached request.”

And that is the concurrent document also dated 19 June 2014. Is there any doubt as to what Mr Mokhesi is saying?
20 Whether it is correct or not, as the Chair says, is another question and he can explain but what he is saying to you is your approval is hereby sought, you provide written confirmation to extend the same in line with your approved terms and conditions.

MR ZULU: Chair, I can only assume against this, I can

only assume that the reference being made here is in reference to the panel because there was no existing contract at the time between the company and the national department in a contractual arrangement. So I will have no powers to [inaudible – speaking simultaneously] contract.

CHAIRPERSON: Well ...[intervenes]

MR ZULU: Again, I am assuming, Chair.

CHAIRPERSON: Let us leave out assuming.

10 **MR ZULU:** Yes.

CHAIRPERSON: A letter is written to you and you are being asked to provide approval, obviously you must understand what the request is about.

MR ZULU: Yes, Chair.

CHAIRPERSON: You must understand – you must interrogate the document to see whether this is the situation where your approval can be given or is necessary.

MR ZULU: Correct.

20 **CHAIRPERSON:** Okay. Now is there any other way in which you understand this request other than that he was asking you to extend the only contract or the only basis or connection your department had with Blackhead namely Blackhead is on the panel?

MR ZULU: Correct, Chair.

CHAIRPERSON: That that is the only way you could understand it?

MR ZULU: Correct, Chair.

CHAIRPERSON: Okay, alright.

ADV PRETORIUS SC: Then, Mr Zulu, quite frankly it seems from the documentation at least that your observation given to the Chair is entirely correct, you cannot ask national department to extend mere appointment to a panel because there are no terms and
10 conditions of contract to do work.

MR ZULU: Correct.

ADV PRETORIUS SC: That is correct. Let us then go on please to the same bundle, FS8, at page 181.

CHAIRPERSON: Page 181? Mr Pretorius?

ADV PRETORIUS SC: FS8, 181.

CHAIRPERSON: 181?

ADV PRETORIUS SC: Yes, Chair.

MR ZULU: 8181.

CHAIRPERSON: No, 181, I think he says.

20 **MR ZULU:** Which one?

ADV PRETORIUS SC: FS8, 181.

CHAIRPERSON: Just check whether you have got the right bundle, Mr Zulu.

ADV PRETORIUS SC: So that is a letter addressed to Mr Mokhesi, Department of Human Settlements dated 13

August 2014, apparently signed by yourself, and you say under the heading appointment, same heading coincidentally, the appointment of a professional resource team to a departmental panel and municipal planning and implementation support to the Human Settlements Departments and Municipalities with specific [interference on audio] refers.

10 “Please be informed that in terms of Treasury Regulation 16[a] 6.6 it is allowed for the Free State Department of Human Settlements to participate in the contract arranged by the process from the database of the Gauteng Department of Human Settlements for Professional Resource Teams Consulting Pty Limited was appointed from.”

Do you have any comment?

MR ZULU: Yes, Chair I was writing to the SOD advising him on this letter and I’m sure I would have been responding to one of the correspondences that has made enquiries with my Department, I’ll assume.

20 **ADV PRETORIUS SC:** It seems that prior correspondence, including correspondence from Mr Mokhesi has referred to a National appointment but this letter that you send on the 13th of August relates to an appointment in the Gauteng Department, am I correct?

MR ZULU: That’s why I’m saying, most probably Chair, I

was responding to an enquiry that has been made with my office and I was providing the necessary advice, based on that enquiry which I'm not sure, it could even have been a telephone conversation or it could have been any other form of communication but surely when I was putting this, clearly I was responding to something.

ADV PRETORIUS SC: So, do I understand it correctly, Mr Zulu, you would have made enquiries, you would have responded to some form of communication, but here, quite
10 differently to the correspondence that preceded it, as far as you're concerned, you clarified that this was a Gauteng appointment that was being dealt with, correct?

MR ZULU: Yes, and I will assume Chair, that the enquiry was in line with the intended purpose of what the Accounting Officers wanted to do and obviously you cannot use the National Department because there was no contractual obligation exist between National Department and Blackhead which is the issue, maybe, I was trying to clarify but as I'm saying I was probably responding to a
20 particular enquiry, which form it took, I may not be sure of.

ADV PRETORIUS SC: Well in fairness, and as you've said, they can come and explain why they were seeking to extend the provisions of a National panel appointment and not what you've pointed out here, a Gauteng one. They may have changed their minds, there may have been other

communications, they can explain but I'd like to ask you, from your knowledge then, what Gauteng was being extended?

MR ZULU: Gauteng contract?

ADV PRETORIUS SC: Yes, what was being participated in, and I want, just to explain for those who might find it difficult to follow us. A contract is entered into with State organ A.

MR ZULU: Yes.

10 **ADV PRETORIUS SC:** Gauteng Province, correct?

MR ZULU: Yes.

ADV PRETORIUS SC: The law allows another organ of State, Free State Department to participate in that contract, quite what that means we can talk about in due course if we have time or we will make submissions to the Chair in that regard.

MR ZULU: Alright.

ADV PRETORIUS SC: But to put it in another way, loosely and incorrectly as it turns out, you transfer the provisions of one contract from – with one State organ to another contract or the same contract to another State organ, do I have it, more or less correct?

20 **MR ZULU:** Yes, I think in the context of this situation because I don't think you want me to give a lecture, how this works, I think we all know how it works but in the

context of this letter, Chair, I think the advice being given here is the fact that the State organ, that has a contractual, existing obligation, is Gauteng Province, it's not the National Department, it's got a panel and that's the only State organ that you can apply this provision that is being sought here but not the National Department and therefore if you need this to be processed correctly and procedurally you'll have to deal with the Gauteng Department of Human Settlements which is a State organ
10 that has similar terms of reference for the intended assignment, in this context.

ADV PRETORIUS SC: Understood Mr Zulu, thank you for that explanation. The point I want to make, however, is what I'd like you to clarify for us, is something different but before we get there, let's just confirm that one of the reasons you couldn't extend the National Contract is because it was merely appointment to a panel with no terms and conditions for work attached?

MR ZULU: Absolutely, Chair, there was no existing
20 contractual arrangement between...[intervenes].

ADV PRETORIUS SC: Correct.

MR ZULU: Except for being a panellist.

ADV PRETORIUS SC: And of course, if you want to extend or participate in a contract, it's obvious that contract must say what work must be done, what price, how

it must be done by when, that sort of thing, correct?

MR ZULU: Correct.

ADV PRETORIUS SC: But let's get back to this letter at 181 please. Do you know – you signed this letter, do you know what contract, which is a subject matter of a participation process in terms of Treasury Regulations 16(A) 66 has been referred to, you know what they're talking about here?

MR ZULU: Which letter are you referring to, is it not this
10 one?

ADV PRETORIUS SC: 1-8-1 your letter.

MR ZULU: Oh 181 yes.

ADV PRETORIUS SC: Yes, something is going to move...[intervenens].

MR ZULU: I missed your question, sorry.

ADV PRETORIUS SC: Alright, let me put it again please, as fairly as I can. There is an arrangement or contract in the Gauteng Department, correct?

MR ZULU: Yes.

20 **ADV PRETORIUS SC:** Free State want to participate in it and that's the purpose of all this correspondence we're dealing with, correct?

MR ZULU: Correct.

ADV PRETORIUS SC: What is it that exists in Gauteng in which the Free State wants to participate, what is it? In

other words, look at your language, Mr Zulu, if you will,

“Please be informed in terms of Treasury Regulation 16(A) 66 it is allowed for the Free State Department of Human Settlements to participate in the contract, What contract?

MR ZULU: Well this is the point – and Chair, I hate to make assumptions and I’ve noticed that you don’t appreciate it and I apologise for that because I could have been trying to clarify a point here and again – because this
10 is as far back as 2014 so I could have been clarifying the point that if you have an intention to participate on an existing contract, clearly there isn’t one that exists between the Department of National Human Settlement and Blackhead. The only Department that, will only have an existing contract will be the Gauteng and clearly, therefore, I could not be the Accounting Officer that will have the powers vested with him to actually approve even the participation of Blackhead in a contract because there isn’t a contract that exists between National Department. So, I
20 think I was trying to provide clarity to a point of, even indicating that financial obligations for this will still be squarely with the Free State Department which want to participate in that. So that’s a contract that exist with Gauteng that does not exist with National Department of...[intervenes].

CHAIRPERSON: Do you know what that contract was for, the Gauteng contract...[intervenes]?

MR ZULU: Chair I would, Chair, assume that the HOD would have shared that with me.

CHAIRPERSON: Okay.

MR ZULU: Yes Chair.

CHAIRPERSON: Alright.

MR ZULU: Because this was a communication that was happening between the HOD and myself. So, probably he
10 would have shared that with me and I would have then been expected to provide clarity in terms of Treasury Regulations.

CHAIRPERSON: Okay, Mr Pretorius?

ADV PRETORIUS SC: But you could help us, to a certain extent as a matter of general principle, Mr Zulu, as I understand your evidence you can't extend membership of a panel or an arrangement to be a member of a panel because there are no contractual terms and conditions, you can only extend a particular contract between a service
20 provider and the department which includes duties and price and the rest.

MR ZULU: Correct.

ADV PRETORIUS SC: Correct, well at least we know what can be participated and made subject to 16(A)66 and what can't, thank you for that. We can move on...[intervenes].

MR ZULU: Again, I must indicate Chair, that, again this is also on interpretation basis, some people interpret statutes differently.

CHAIRPERSON: Yes.

MR ZULU: I'm only providing what...[intervenes].

CHAIRPERSON: Your own understanding?

MR ZULU: Yes.

CHAIRPERSON: No, that's fine.

ADV PRETORIUS SC: Well in fairness, Mr Zulu, we are
10 asking you to interpret your words.

MR ZULU: Absolutely and I am informed by the statutes.

ADV PRETORIUS SC: Bear with me a moment Chair. If
you would go, please, to page 88 of FS8. This is a
memorandum addressed to the acting Head of Department,
Ms Margaret-Ann Diedericks dated 13 March 2014 by the
Directorate Special Projects in Gauteng Province, Human
Settlements Department. It's a memorandum that results
in the appointment of eight PRT's, Professional Resource
Teams for assessment of asbestos identification and
20 removal. Now we will ask the relevant people about this
document but if I can just ask you, to assume for the
moment that this is the source document, as it appears to
be, for the appointment of eight PRT's in Gauteng and take
you please to page 90 of this memorandum. It's headed,
Asbestos Roof Eradication, terms of reference and

implementation plan, it says, in the second last paragraph, on page 90,

“The assessment phase is envisaged to be carried out in March and April 2014. The expiration of the PRT’s contracts at the end of March should not have an effect on the assessment and is to be viewed as work in progress”.

This seems to be an indication that, whatever PRT contracts existed in Gauteng were to expire at the end of
10 March but I presume you wouldn’t have any knowledge of that?

MR ZULU: Correct.

ADV PRETORIUS SC: But if – let us just go then to the next page, page 91 of FS8, the third last paragraph reads,

“Professional rates for assessment will be applied in line with the Departments IPW fee structure at R650 per house. This will be a fixed rate and the Department will not accept any deviations from this”.

20 Right, and then the recommendations, over the page are that the memo should be taken account of, 2) that the attached terms of reference should be proved and the appointment of eight PRT’s for the assessment of asbestos in Gauteng should be approved. If these recommendations and the terms of reference which resulted, and I’ll go to

them in a moment, constituted the basis of the Gauteng appointment of the service providers for asbestos removal, including the appointment of Blackhead, then those terms and conditions would be reflected in the contractual arrangement with the service provider, is that a fair assumption to make?

MR ZULU: I guess.

ADV PRETORIUS SC: Yes, it does seem obvious, thank you but if one needs any further confirmation, the terms of reference for the eradication of asbestos roofs on houses in Gauteng appears at page 94, a few pages on.

CHAIRPERSON: Just repeat the page please?

ADV PRETORIUS SC: Page 94, FS8.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: And if you go through please to the scope of works. Now, you very fairly said, Mr Zulu, that you can't extend or participate in something that has no substance, you've got to have terms and conditions. We see here, terms and conditions, under scope of works, 5.1, the scope of assessments is as follows – as follows:

“5.1a The identification and quantification of affected houses...[intervenes].

MR ZULU: Sorry Mr Pretorius, which page is that?

ADV PRETORIUS SC: Are you at page 98 of FS8?

MR ZULU: Sorry about that, please proceed.

ADV PRETORIUS SC: 5.1 are you there?

“5.1a the scope of the assessments is as follows:

a) the identification a quantification of affected houses. b) assessment of structural integrity of load bearing walls in each house by a competent person for possible added loads with new roof cover. c) measurement of the size of affected houses by a competent person for new roof designs”,

10 That is what is required by the scope of works in terms of the Gauteng contract, correct?

MR ZULU: Correct.

ADV PRETORIUS SC: It goes on an deals with an implementation planning stage at 5.2, it seems there are three phases here, 1) an assessment phase, 2) implementation planning phase, which involves priorities and phasing and appointment of competent persons for detailed designs and builds a quantity compilation, I don't want to get too complex here, this is really just what is set
20 out in this document, as being what is required as the scope of works and then 5.3 is the construction phase. So, to the extent that the terms and conditions in these documents, Mr Zulu, were the terms and conditions which bound the Gauteng service providers. If this contract was to be participated in, in the Free State it would be bound

by the same terms and conditions. If you're going to extend a contract it must be the same contract, correct?

MR ZULU: Yes, Chair, under normal circumstances that's how it's done, that's why you participate on an existing contract, so the terms and conditions and financials are normally expected to be seen. If there's a deviation for that, surely there should be a reason for that.

ADV PRETORIUS SC: Right.

MR ZULU: Chair, may I please request a comfort break?

10 **CHAIRPERSON:** Sorry – a comfort break.

MR ZULU: Please may I request a comfort break for two minutes?

CHAIRPERSON: Yes okay. Mr Pretorius let's take a comfort break, ten minutes?

MR ZULU: Two minutes, it's fine.

CHAIRPERSON: Two minutes, well let's not make it two minutes because by the time you've reached the door, two minutes might be over, we'll make it ten minutes, we'll return at half past. Or maybe before you go, Mr Pretorius,
20 in terms of planning the afternoon, what's your suggestion?

ADV PRETORIUS SC: Well, Chair, there is a witness who, perhaps should be excused, the question is whether the – Mr Manyeke of Ori, the second sub-contractor should give evidence tomorrow or Mr Sodi who's been summoned for tomorrow. From the legal team's point of view, we would

prefer Mr Sodi to give evidence because his evidence is more substantial for this project. Chair, it may be, that we can cut the questions to Mr Manyeke to the minimum but then I'd need time to pay attention to that task. So, if possible, I wouldn't like to sit too late tonight, I'll try get through as much as possible before 4 o'clock.

CHAIRPERSON: Ja, well from my point of view, I can sit till late it's just that I have a planned zoom conference at six which I can move to seven and so on. So, I'm just
10 wanting to check whether – what your own thinking is then of course we'll check with Mr Zulu as well.

ADV PRETORIUS SC: Yes, I was to participate in that zoom conference Chair for a short time at least.

CHAIRPERSON: Oh yes.

ADV PRETORIUS SC: With your leave.

CHAIRPERSON: Oh, no, no I may be double booked, the one I'm thinking about doesn't involve you and it's not Commission work.

ADV PRETORIUS SC: Well, if that's the case I'm very
20 happy Chair, we can cancel the other one or postpone it at least.

CHAIRPERSON: Ja, okay – okay, maybe let's take the adjournment so that Mr Zulu can have some comfort then when we come back, we can finalise in terms of how long we can sit this afternoon. Let's take the adjournment, I'd

say let's return at twenty-five to four, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Let us talk about our planning for the rest of the afternoon and if need be into the evening. I have been given some information that makes me understand what Zoom Conference you were talking about Mr Pretorius. I think my understanding was that the member of the legal team was organising that was to come back to me and
10 confirm whether all the people that were supposed to be involved in it had confirmed their availability. That had not happened that is why I did not remember.

But I have given a message to my Registrar to communicate with him with a view that if everybody is available, we could look at seven or half past seven but when we come out of here there would be communication. If they are not available then we can fix another time.

ADV PRETORIUS SC: Perhaps I will address you about that separately.

20 **CHAIRPERSON:** Ja. No, no that is fine. I just wanted to – it is just that I want to know how far we can go this afternoon. I can make adjustments and I am quite prepared to sit beyond four o'clock, beyond five o'clock if.

ADV PRETORIUS SC: Yes. Chair it is not...

CHAIRPERSON: If everybody is fine with that.

ADV PRETORIUS SC: There is not much time that is necessary now in relation to Mr Zulu. Mr Zulu has expressed the – the desire to complete today so if we may complete today, I do not think we will go much beyond four.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: And then what we can do is call Mr Manyike early tomorrow he will be very brief.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: And then complete Mr Sodi.

10 **CHAIRPERSON:** Ja. Okay then that is fine. I just wanted to have an idea.

ADV PRETORIUS SC: Yes thank you Chair.

CHAIRPERSON: Then – then – then in that event even if – we will talk separately about this Zoom Conference in which you – you would be involved if you are available.

ADV PRETORIUS SC: Yes Chair. I – I will be available for a short time.

CHAIRPERSON: Ja okay.

ADV PRETORIUS SC: By your leave Chair.

20 **CHAIRPERSON:** Okay. And it should not take long it is a very practical issue that is to be discussed.

ADV PRETORIUS SC: Okay.

CHAIRPERSON: Ja. Okay thank you.

ADV PRETORIUS SC: Thank you. Mr Zulu then the question now involves certain benefits received by you and

let us not debate for the moment whether they were legitimate or not. We can come to that at a later stage. Let us simply try and establish the facts. Because I think the facts are largely common cause including your explanation for what occurred. Chair the references here the evidence has been summarised. And if I may refer you to Bundle FS8 at page 39 and following. What the investigators have done is they have examined the bank accounts of Mr Sodi and arising out of Mr Sodi's bank accounts they have traced
10 certain payments which involve a motor dealer and I must apologise to the owner of the institution it is in Ballito not Pietermaritzburg. So there can be no passing off as a result of the re-advertisements in this session. The evidence involves two transactions. One involving the payment of R1 million and the other involving the payment of R600 000.00. But if we may go to FS8 39 please.

CHAIRPERSON: What page on F – on Bundle FS?

ADV PRETORIUS SC: FS8 page 39.

CHAIRPERSON: Oh. I have been given FS9. There must
20 have been a misunderstanding.

MR ZULU: FS8.

CHAIRPERSON: FS8 page 39.

ADV PRETORIUS SC: Yes please.

CHAIRPERSON: Ja that is where I was before I was given that one. I thought you might have changed your mind. Yes.

ADV PRETORIUS SC: The product of the investigations Mr Zulu for the present appears at page 39 at paragraph 9.3.1. And what the investigators have established is that the amount of R1 million was transferred on the 26 May 2015 from Blackhead and the ABSA account number is given to SMD Trading Group and the ABSA account number is given. SMD Trading Group is a car dealership in Ballito. As I understand it there is no dispute from you in that regard. You do not have any information to contradict those things.

10 **MR ZULU:** Contradict what?

ADV PRETORIUS SC: Let me go through it again. R1 million was transferred on 26 May 2015 from Blackhead to SMD Trading Group a car dealership in Ballito.

MR ZULU: Chair that I have no clue of that and it has got nothing to do with me.

CHAIRPERSON: Ja.

MR ZULU: The R1 million one I have no clue about that.

CHAIRPERSON: Yes.

MR ZULU: But the R600 000.00 yes.

20 **ADV PRETORIUS SC:** Yes. No I understand but I need to put it to you anyway.

MR ZULU: Okay that is why I wanted to make sure that I do not agree on something that combines both yes.

ADV PRETORIUS SC: Well it is not that you do not agree with it it is just that you have no comment in relation to it.

MR ZULU: Oh okay especially to R1 million. But to R600.000.00 yes I do.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: Yes the R600 000.00 we will come to. What is interesting about it though in Sodi's records the transaction was marked TZ. He explains it later but he marks it TZ. And perhaps I better put the full sequence to you to make it easier. In SMD records the transaction is referred to as Thabani Zulu right. But according to Mr
10 Duminy he says that although Thabani Zulu is referenced in the bank statement this payment went toward the sale of a Maserati to Mr Mabheleni Ntuli and he has not been interviewed by the investigators. So it seems to me that Sodi makes a payment of R1 million to SMD. In his records he marks it TZ. In the recipient's records SMD records he references Thabani Zulu. But that payment is used to buy a Maserati for Mr Ntuli. Now do you know of those facts? Is there anything in those facts that you can contest?

MR ZULU: No.

20 **ADV PRETORIUS SC:** What is interesting however is Mr Sodi's explanation for this which we will ask him about. He says oh he just associated you with Mr Ntuli and that is why he put the TZ reference. Have you any comment to make in regard to that? Is there any reason why Mr Sodi would associate you with Mr Ntuli to put the incorrect reference in

his payment according to him?

MR ZULU: If I may Chair?

CHAIRPERSON: Hm.

MR ZULU: I can only speculate that it could be that Mr Ntuli was introduced to Sodi by myself.

CHAIRPERSON: Hm.

MR ZULU: In my business that I do in Pietermaritzburg.

CHAIRPERSON: Hm.

MR ZULU: So that could be the reason but other than that I
10 would not know but I have no benefit whatsoever that was associated with that payment personally.

CHAIRPERSON: Do you know it is written here Maklene I suspect that there must be a misspelling. It might be Mabheleni Ntuli.

MR ZULU: Yes.

CHAIRPERSON: Do you know anybody that might be called Mabheleni Ntuli?

MR ZULU: That is the person that I am referring to Chair.

ADV PRETORIUS SC: Mabheleni.

20 **MR ZULU**: Mabheleni yes.

CHAIRPERSON: Yes and that would be spelt M-a-b-h-e-l-e-n-i that would be Mabheleni, is that correct? That would be the correct spelling.

MR ZULU: I presume so in terms of the spelling yes indeed.

CHAIRPERSON: In terms of spelling that would be correct

ja.

MR ZULU: I think that would be correct Chair.

ADV PRETORIUS SC: Mabheleni.

MR ZULU: Yes. Point that the Chair is making that the way the name is spelt might be incorrect that is the point he is trying to make.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Oh I see.

CHAIRPERSON: Yes so what I am saying is when I look at it
10 here it is spelt in a way that seems to me to be unlikely to be correct. Because he say it is an Isi-Zulu word/name so it is likely to be Mabheleni and Mr Zulu does say he does know a Mr Mabheleni Ntuli.

ADV PRETORIUS SC: And do you know the spelling of the first name?

MR ZULU: No I would not know the spelling but I think the Chair.

ADV PRETORIUS SC: Well let us call him Mr Ntuli I think that [loud laughter].

20 **CHAIRPERSON**: Well I have said that in Isi-Zulu if you say Mabheleni it would be M-a-b-h-e-l-e-n-l but you could have other people writing it as M-a-b-e-l-e-n-i.

ADV PRETORIUS SC: In any event Mr Ntuli you say your introduced him to Mr Sodi?

MR ZULU: I am saying that could be the reason.

ADV PRETORIUS SC: That could be the explanation.

MR ZULU: Mr Sodi yes.

ADV PRETORIUS SC: And Mr Sodi says well he just knew you were associated so therefore he put his head on the pavement – payment reference. But let us leave that aside for the moment. Mr Ntuli is a businessman in KwaZulu Natal if I am not mistaken.

MR ZULU: Correct.

ADV PRETORIUS SC: And Mr Sodi expressed the desire to
10 get involved...

CHAIRPERSON: I am sorry – I am sorry that answer might not have been captured just repeat it. The question was...

MR ZULU: The question was...

CHAIRPERSON: Whether Mr Mabheleni Ntuli is a businessman in KwaZulu Natal?

MR ZULU: Yes I think that is how I have – that is how I have known him.

CHAIRPERSON: Yes. Ja.

ADV PRETORIUS SC: And Mr Sodi apparently expressed
20 the desire to extend his businesses into KwaZulu Natal?

MR ZULU: I would not know that.

ADV PRETORIUS SC: You would not know that.

MR ZULU: No.

ADV PRETORIUS SC: In any event that sequence of events that I have just described to you is admitted by Mr Sodi in

paragraph 65.6 of his new affidavit dated the 26 May 2015. He says he used TZ because he associated TZ with Mr Ntuli. It appears that on the recipient side SMD knew who TZ was because they recorded it as Thabani Zulu. You cannot comment on that?

MR ZULU: No.

ADV PRETORIUS SC: That would be a question for...

MR ZULU: It is because those transactions I do not get involved with. When people used references Chair especially for this particular thing, I have no comment to
10 make on those transactions.

CHAIRPERSON: Ja. So are you saying to the extent that Mr Sodi may have paid R1 million into the account of SMD Trading Group and wrote TZ.

MR ZULU: For his own ...

CHAIRPERSON: But that was in regard to a car that went to Mr Ntuli you say you do not know anything about the transaction of the car.

MR ZULU: No.

20 **CHAIRPERSON**: But you do know that there is a Mr Ntuli.

MR ZULU: Yes.

CHAIRPERSON: That you introduced to Mr Sodi?

MR ZULU: Yes correct Chair.

CHAIRPERSON: To Mr Sodi.

MR ZULU: Yes.

CHAIRPERSON: And that is Mr Mabheleni Ntuli.

MR ZULU: Yes Chair.

CHAIRPERSON: Okay thank you.

MR ZULU: And I was not a beneficiary of that transaction.

CHAIRPERSON: Ja you were not a beneficiary of anything.

MR ZULU: No.

CHAIRPERSON: In their transactions.

MR ZULU: Correct Chair.

CHAIRPERSON: Okay.

10 **ADV PRETORIUS SC**: And in fairness to Mr Zulu that is as far as the investigators can take it.

CHAIRPERSON: Yes okay.

ADV PRETORIUS SC: Let us deal then with the R600 000.00 payment which is on a different footing. It seems that on the 22 December 2015 an amount of R6...

CHAIRPERSON: Maybe I am sorry Mr Pretorius. Maybe you can share with me Mr Zulu the context in which you introduced Mr Ntuli to Mr Sodi?

20 **MR ZULU**: Well Chair I come from KwaZulu Natal born and bred in Pietermaritzburg so I also run businesses myself in Pietermaritzburg which at the time I have declared. And one of the businesses is the hospitality industry.

CHAIRPERSON: Just raise your voice.

MR ZULU: One of the businesses in hospitality industry which is called Teza Lounge which I have declared. So this

is where I have met Mr Ntuli visiting my place but also Mr Sodi was also a customer of my place as well.

CHAIRPERSON: Hm.

MR ZULU: So I have known them in the business social circles.

CHAIRPERSON: Hm.

MR ZULU: And I could confirm that I actually introduced Ntuli to Mr Sodi.

CHAIRPERSON: You actually?

10 **MR ZULU:** Introduced Mduli to Sodi.

CHAIRPERSON: Yes, yes.

MR ZULU: So I wanted to show this from Gauteng.

CHAIRPERSON: Yes.

MR ZULU: But he has got... his homestead is well in KZN.

CHAIRPERSON: Yes. The introduction happened at your business in Pietermaritzburg or did it happen in Gauteng?

MR ZULU: It happened in Gauteng.

CHAIRPERSON: In Gauteng?

MR ZULU: Yes, I would think so.

20 **CHAIRPERSON:** Yes. How long had you known Mr Mduli at the time ...[intervenues]

MR ZULU: Shu, Chair it was ...[intervenues]

CHAIRPERSON: ...you have introduced him to Mr Sodi if you are able to remember? For many years or for a short time?

MR ZULU: I cannot remember but I have known him for quite some time.

CHAIRPERSON: Yes.

MR ZULU: But I cannot remember exactly.

CHAIRPERSON: Are you able to remember when it was in terms of year when you introduced Mr Mduli to Mr Sodi?

MR ZULU: I would not remember Chair.

CHAIRPERSON: You would not remember?

MR ZULU: No.

10 **CHAIRPERSON**: Okay. And the context was because of business or just because you happen to be ...[intervenes]

MR ZULU: Social contact.

CHAIRPERSON: ...in the company of one of them and the other one came?

MR ZULU: Social contacts Chair.

CHAIRPERSON: Ja.

MR ZULU: Yes.

CHAIRPERSON: Okay. Alright.

20 **ADV PRETORIUS SC**: It seems that in respect of the payment of R 600 000,00, apart from one aspect that may arise later, there is also not much in dispute, that on the 22nd of December 2015, an amount of R 600 000,00 was paid to SMD?

MR ZULU: Correct Chair. Correct Chair.

ADV PRETORIUS SC: That was paid by Mr Sodi under the

reference SMD.

MR ZULU: I would think so Chair.

ADV PRETORIUS SC: Alright.

CHAIRPERSON: You do not know but you ...[intervenes]

MR ZULU: I do not know ...[intervenes]

CHAIRPERSON: If he says that is what happened you would accept that?

MR ZULU: Yes, but I can assure that it was in relation to...

CHAIRPERSON: Yes.

10 **MR ZULU**: Yes.

ADV PRETORIUS SC: So according to the documentation... you can go through it if you wish.

MR ZULU: No, I am...

ADV PRETORIUS SC: According to the documentation, SMD received this amount of R 600 000,00 and placed the reference TZ next to that receipt. That is what... or was SMD's reference TZ.

MR ZULU: Okay.

20 **ADV PRETORIUS SC**: And you do not take issue of that, I presume, because of what follows.

MR ZULU: I am called by a different name. So. Otherwise, they call me TZ. Otherwise, they called me Tamari. Or as they called me Digi. So people used different names that relate to me in their own rights. I do not really choose how to do it Chair.

CHAIRPERSON: But TZ is one of them?

MR ZULU: It is one of them. Correct.

CHAIRPERSON: Okay.

MR ZULU: That is even my Lounge.

ADV PRETORIUS SC: Yes, okay.

MR ZULU: Yes. They even called me Lounge, my business, TZ.

CHAIRPERSON: Your lounge is called TZ Lounge?

MR ZULU: Correct. Correct.

10 **CHAIRPERSON:** Okay.

ADV PRETORIUS SC: Yes. And then Mr Zulu, according to Mr Duminy that amount of R 600 000,00 went towards the purchase of a Range Rover for yourself.

MR ZULU: Correct.

ADV PRETORIUS SC: And that is correct?

MR ZULU: Correct.

ADV PRETORIUS SC: Right.

20 **MR ZULU:** So much correct so Chair, if I may add, at the balance of eight... I have to go to the bank to ask for a loan but also to confirm that at the time I was an accounting officer. I had an obligation to declare the vehicle which I did.

ADV PRETORIUS SC: What is curious Mr Zulu is that on the 23rd of March 2016, that is some three months later, SMD sent an invoice to you for R 690 000,00 reflecting a cash

deposit of R 690 000,00. Do you know anything about that?

MR ZULU: Yes, that was for the deposit of the car that is under questioning.

ADV PRETORIUS SC: And who paid that?

MR ZULU: That R 600 000,00?

ADV PRETORIUS SC: No. The SMD invoice to Mr Zulu for R 690 000,00 also reflected a cash deposit of R 690 000,00. Who paid that cash deposit?

MR ZULU: I do not want to discuss cash deposits. My
10 understanding, if I may explain, was that a deposit for the car was R 690 000,00. R 600 000,00 is the amount that was paid on the 21st.

CHAIRPERSON: That was paid by Sodi?

MR ZULU: By Sodi, yes.

CHAIRPERSON: H'm.

MR ZULU: And then the R 90 000,00 was for the wheels which I did not change later. So I never paid R 90 000,00.

CHAIRPERSON: Okay maybe it is the mask. I am not hearing the part about R 90 000,00. Just repeat that.

20 **MR ZULU**: The total deposit for the car was R 690 000,00 but R 90 000,00 was to cover the wheels which I did not change which I intended to do on the car. So the R 600 000,00 was paid to Sodi.

CHAIRPERSON: Yes.

MR ZULU: So the cash deposits, I do not know how their

bookings are done.

CHAIRPERSON: Yes.

MR ZULU: The cash deposits that he is referring to, Mr Pretorius, is the same deposit that was paid.

CHAIRPERSON: The R 600 000,00?

MR ZULU: The R 690 000,00.

CHAIRPERSON: Yes.

MR ZULU: That is how I understood it Chair.

CHAIRPERSON: Okay I think he is ...[intervenes]

10 **MR ZULU:** I do wish that Duminy can explain that how...[intervenes]

CHAIRPERSON: Ja, he is just asking... I think he knows that the R 600 000,00 was paid by Mr Sodi. I think he is asking about whether you paid the R 90 000,00 or not?

MR ZULU: No. Oh, no. I did not pay the R 90 000,00. It fell off because I did not change the wheels.

CHAIRPERSON: H'm.

MR ZULU: I thought he is referring to cash deposits.

CHAIRPERSON: Yes.

20 **MR ZULU:** Like someone went and pay the cash deposits. It is still transferred by Mr Sodi.

CHAIRPERSON: Ja. Okay, okay.

ADV PRETORIUS SC: Alright. So what is common cause, leaving aside the various references and the initials, is that R 600 000,00 was paid to SMD on the

22nd of December 2015 could have been subject to your explanations.

MR ZULU: If one... I am not sure. I would say for my benefit.

ADV PRETORIUS SC: Alright. But maybe ...[intervenes]

MR ZULU: Let us contextualise it because ...[intervenes]

[Parties are intervening each other and cannot be heard clearly.]

CHAIRPERSON: Ja. No, you can say whether you accept
10 for your benefit part or not but he wants you to just confirm.

MR ZULU: It was paid as an amount of money that was owed to me which I directed to the dealership Chair.

CHAIRPERSON: Yes, yes.

MR ZULU: So if that is what you mean by benefit ...[intervenes]

CHAIRPERSON: Okay.

MR ZULU: ...then I can say yes.

CHAIRPERSON: Yes.

MR ZULU: But it was not like as a benefit that...

20 **CHAIRPERSON**: Ja.

MR ZULU: It came all through my businesses.

CHAIRPERSON: Yes, okay.

MR ZULU: Yes, Chair.

ADV PRETORIUS SC: Well, even on your own version, one can debate whether discharge of a debt arising out monies

from whether it arises a benefit or not.

MR ZULU: Yes.

ADV PRETORIUS SC: But I am not going to have that argument with you. That is a legal argument. But for the present, I do need to put to you your explanation for that transaction.

You say, “Yes, Sodi made such payment to SMD on my instructions in discharge of a debt due by him to one of my business, TZ Lounge...”

10 Correct?

MR ZULU: [No audible reply]

ADV PRETORIUS SC:

“...for goods sold and delivered and services rendered during 2015...”

MR ZULU: Correct.

ADV PRETORIUS SC: First question, if I may Mr Zulu. Is there any documentation by way of a letter, an invoice, a record of expenditure that substantiates that statement.

MR ZULU: Thank you, Chair. Yes, there will be documents
20 because... of course, the debt is far back as 2015. So I am sure if the investigators, which I was hoping Chair, they would have done, to consult with me to check any information to that effect.

Unfortunately, that was not done. But if the Commission were to ask for me to... it goes as far back as 2015. If there

is any information that one could find that I could do.

I was hoping, actually, all the questions, that the investigators would come to me and go and dig deep in terms of the question that Mr Pretorius is asking.

CHAIRPERSON: Yes.

MR ZULU: But unfortunately, that did not happen.

CHAIRPERSON: Yes. Okay I certainly would like you today to give me as much information about that R 600 000,00. How it originated? What was the whole thing about? As possible.

And if there are documents that support what you are telling me in regard to that amount, telling me about, then they can be provided in due course but I would like to know as much as possible about it.

ADV PRETORIUS SC: Yes, I was going to... if I may just take it step-by-step?

CHAIRPERSON: Ja. Yes. No, Mr Pretorius will ask question aimed at giving... you giving me that information.

ADV PRETORIUS SC: Let us start Mr Zulu with your statement: "Sodi made such payment to SMD on my instruction". What form did those instruction take?

MR ZULU: It was a verbal instruction.

ADV PRETORIUS SC: A verbal instruction?

MR ZULU: Correct.

ADV PRETORIUS SC: What did you do? Did you telephone

Mr Sodi and say, “Pay me what you owe me”.

MR ZULU: We normally do stocktaking in my business Chair. As you will understand that township business, you normally write down things. And during this period, I was doing the same thing with my team.

And instead of taking the money, I decided to just start and go and deliver the money where I wanted them to deliver it upon my instruction.

CHAIRPERSON: H’m. Okay maybe Mr Pretorius, you must
10 start a little earlier. Tell me about this business that you have talked about, TZ Lounge? What does it do? What is done?

MR ZULU: We do events Chair.

CHAIRPERSON: H’m.

MR ZULU: We sell food.

CHAIRPERSON: You sell...?

MR ZULU: Food. Catering.

CHAIRPERSON: Ja.

MR ZULU: We also sell liquor.

20 **CHAIRPERSON**: Yes.

MR ZULU: We also have a sports bar in it.

CHAIRPERSON: Yes.

MR ZULU: But mainly, we are more strong on events on special days.

CHAIRPERSON: Yes.

MR ZULU: Where we host different people to come and present themselves by singing or doing different events and pay them for those activities.

CHAIRPERSON: Yes.

MR ZULU: And then also sell the stuff that we have.

CHAIRPERSON: Yes.

MR ZULU: So it is... that is how busy it gets in terms of its overall...

CHAIRPERSON: Yes. Is it based in town in
10 Pietermaritzburg or is it in one of the township in Pietermaritzburg?

MR ZULU: It is based in township just before you get out of the township called Sobanto.

CHAIRPERSON: Is that Imbali Township or...?

MR ZULU: No, It is Sobanto.

CHAIRPERSON: Sobanto Township?

MR ZULU: Sobanto Township, yes.

CHAIRPERSON: That is where it is based?

MR ZULU: That is where it has been, yes.

20 **CHAIRPERSON**: Okay. Alright.

MR ZULU: And it is declared... I did declare it as part of the record.

CHAIRPERSON: You did declare it, yes.

MR ZULU: Correct Chair.

CHAIRPERSON: Yes, yes.

ADV PRETORIUS SC: So a customer would come and pour the liquor or participate in an event or the food. Is that correct?

MR ZULU: Correct.

ADV PRETORIUS SC: How would payment be made?

MR ZULU: We had a machine to swipe, which was FNB. And again, Chair. These are the questions ...[intervenes]

ADV PRETORIUS SC: I am sorry. I did not hear that.

MR ZULU: I am saying we had the machine, FNB machine to
10 swipe the card.

ADV PRETORIUS SC: Oh, you had a card machine.

MR ZULU: That was one option.

CHAIRPERSON: Yes.

MR ZULU: The other option was cash.

ADV PRETORIUS SC: Alright. So you would pay... a customer would pay cash or swipe the card?

MR ZULU: Or you write down ...[intervenes]

ADV PRETORIUS SC: Would it be normal for you to allow someone to run up a tap? I think it is the word. Or run up a
20 debt of R 600 000,00?

MR ZULU: A tap?

ADV PRETORIUS SC: Alright. Sorry.

MR ZULU: [laughs] I am very careful about the... [laughs]

ADV PRETORIUS SC: It can be something that is used in different parts. [laughs]

MR ZULU: [laughs] I knew he will get into that questions Mr Pretorius.

CHAIRPERSON: [laughs]

MR ZULU: That is why you be careful. You cannot run a tap of R 600 000,00.

ADV PRETORIUS SC: But Mr Sodi appears, on your version, that you run up a debt to your lounge of R 600 000,00.

MR ZULU: Mr Sodi... it is not a tap. You place an order...
10 we also deliver alcohol to different people you place an order, we deliver it to you.

At times, you do not have to pay on the spot but we put our system in place to make sure that at the right time, you must pay what is required of you to pay for.

If you want to swipe, you also swipe. As I am saying Chair, there is an FNB machine inside the lounge that we are using if you want to swipe. So we use different forms of payments.

CHAIRPERSON: Well ...[intervenes]

20 **ADV PRETORIUS SC:** Over here... ja.

CHAIRPERSON: ...the debt, tell me about it because you said Mr Sodi was paying an amount that he owed you when he paid this R 600 000,00 into SMD's account.

MR ZULU: Chair ...[intervenes]

CHAIRPERSON: What had he done... what was the debt

about?

MR ZULU: At that time Chair, it will be mainly the orders that he will place.

CHAIRPERSON: Of what? Of liquor?

MR ZULU: Of liquor in particular.

CHAIRPERSON: Yes.

MR ZULU: Because he used to be at KZN to host different dignitaries ...[intervenes]

CHAIRPERSON: He used to be...?

10 **MR ZULU**: At KZN.

CHAIRPERSON: He used to be at KZN?

MR ZULU: Yes, to host different dignitaries at his own homestead.

CHAIRPERSON: Yes, yes.

MR ZULU: And he will ask me to buy stuff for him and give it to him on his arrival.

CHAIRPERSON: Yes.

MR ZULU: Such as ...[intervenes]

20 **CHAIRPERSON**: What was he running? What was his business for which he needed... he would have needed liquor or did he have a function?

MR ZULU: I am sure he will explain better on that Chair. But mainly it was for him to host his guests.

CHAIRPERSON: To...?

MR ZULU: At his own house.

CHAIRPERSON: Oh, to entertain his own guests?

MR ZULU: To entertain his own guests. That was my understanding.

CHAIRPERSON: Ja. Would this have been... would this have been liquor that he had got from your business over a certain period or would this have been one order, like for one function?

MR ZULU: Over a certain period Chair.

CHAIRPERSON: It would have been over a certain period?

10 **MR ZULU**: Correct, correct.

CHAIRPERSON: And are you able to remember roundabout when it was that he had ordered liquor?

MR ZULU: It was mainly in 2015.

CHAIRPERSON: H'm?

MR ZULU: It was mainly in 2015.

CHAIRPERSON: Mainly in 2015?

MR ZULU: Yes, yes.

CHAIRPERSON: Yes. By that time, you had known him for a long time?

20 **MR ZULU**: I think almost for about three years or so.

CHAIRPERSON: You had known him for about three years or so?

MR ZULU: If I am not mistaken.

CHAIRPERSON: Yes.

MR ZULU: Ja. I cannot be specific Chair.

CHAIRPERSON: And did he have an arrangement with your business in terms of which you could deliver liquor to... your business could deliver liquor to his... to him and he would pay later?

MR ZULU: Yes, Chair. And at times, he can treat himself.

CHAIRPERSON: Yes, yes.

MR ZULU: Correct, yes.

CHAIRPERSON: And was that a written arrangement or are there documents about the arrangements?

10 **MR ZULU:** Ja, at times there will be written documents.

CHAIRPERSON: There will be, yes.

MR ZULU: There will be diaries where the order is written down and the amounts of money, all are written down.

CHAIRPERSON: Yes, yes.

MR ZULU: There would be those kind of things to make sure that I track down my customers. He was not the only customer with the same arrangement.

CHAIRPERSON: Yes, there were other customers ...[intervenes]

20 **MR ZULU:** There were other customers.

CHAIRPERSON: ...who might have run up big amount of debts?

MR ZULU: Correct Chair.

CHAIRPERSON: Yes, okay. So the whole amount at the time that he made this payment of R 600 000,00, was that

the last amount he owed you or was there still some that he was going to pay?

MR ZULU: There was still some Chair. It was... there was more. I think it was about six hundred and four, if I am not mistaken.

CHAIRPERSON: Six hundred and...?

MR ZULU: Four. If I am not mistaken.

CHAIRPERSON: And four thousand?

MR ZULU: Yes.

10 **CHAIRPERSON**: Okay.

MR ZULU: But this is the amount I needed to do the deposit which I directed.

CHAIRPERSON: Yes, so ...[intervenes]

ADV PRETORIUS SC: Chair, if I may interrupt?

CHAIRPERSON: Yes.

ADV PRETORIUS SC: I have just got a message that the stenographers are struggling to hear Mr Zulu.

CHAIRPERSON: Yes. Ja, I think...

MR ZULU: Chair, I am loud now?

20 **CHAIRPERSON**: Ja, ja, I think that is better. So he owed you R604 000.

MR ZULU: At the time, I think, if I am not mistaken now.

CHAIRPERSON: At the time you gave the instruction.

MR ZULU: Yes.

CHAIRPERSON: That he must pay R600 000 to SMD

account.

MR ZULU: Correct, Chair.

CHAIRPERSON: Just seems strange that he – if he owes you R604 000 you do not ask for him put in R604 000?

MR ZULU: No, I would not have, Chair, because that was my arrangement with the dealership.

CHAIRPERSON: Oh, in terms of the ...[intervenes]

MR ZULU: That was informed by the ...[intervenes]

CHAIRPERSON: Oh, the R4 000 he could pay directly to
10 you?

MR ZULU: Yes, yes, he [inaudible – speaking simultaneously]

CHAIRPERSON: But the R600 000 could go that side.

MR ZULU: Yes, exactly, correct.

CHAIRPERSON: Did he pay you the R4 000 afterwards?

MR ZULU: Yes, Chair.

CHAIRPERSON: Into your account?

MR ZULU: Via cash.

CHAIRPERSON: With cash?

20 **MR ZULU:** Yes, Chair.

CHAIRPERSON: Okay, alright. So you say there were other businesses or there were other people who also would have had a similar arrangement with your business in terms of which they could owe you quite large sums of money for liquor.

MR ZULU: Across the board, some small, I mean ...[intervenes]

CHAIRPERSON: Yes.

MR ZULU: You will understand, Chair, the township business, you have got different clientele.

CHAIRPERSON: Yes, yes.

MR ZULU: So my clientele was of different calibre.

CHAIRPERSON: Yes.

MR ZULU: Because of the provision of service.

10 **CHAIRPERSON:** Yes.

MR ZULU: That I was providing, so I have a special clientele that I have targeted for my business for obvious reasons.

CHAIRPERSON: Yes.

MR ZULU: So there will be different categories of people at different levels of their income level.

CHAIRPERSON: Yes. And the documentation that you say you do have in support of your version that this was a debt or loan, I think said a debt, what documentation do
20 you remember as documentation that you have that you could make available to the Commission.

MR ZULU: Chair, I could check the log books that have been used by myself.

CHAIRPERSON: Ja.

MR ZULU: But I can also check the diaries, if they still

exist, which they used to keep.

CHAIRPERSON: Okay, alright.

MR ZULU: This is what I thought maybe the investigators will be interested upon them having gone into my account.

CHAIRPERSON: Yes.

MR ZULU: But unfortunately they never did.

CHAIRPERSON: Yes. Mr Pretorius?

ADV PRETORIUS SC: Thank you, Chair. If I understand your evidence, Mr Zulu, during 2015 Mr Sodi became
10 indicated to your business, that business is T Z Lounge, correct?

MR ZULU: Correct.

ADV PRETORIUS SC: Please, I was just going to interrupt your voice. The indebtedness of R600 000, did he come into your premises occasionally?

MR ZULU: Occasionally, yes.

ADV PRETORIUS SC: And was it the debt that – or the expenses that he would have incurred on that occasion, did that form part of the R600 000?

20 **MR ZULU:** Correct.

ADV PRETORIUS SC: And you say there were times when you delivered alcohol as well?

MR ZULU: Yes, at times I would deliver alcohol to him at ...[intervenens]

ADV PRETORIUS SC: This was during 2015?

MR ZULU: 2015, yes.

ADV PRETORIUS SC: And you say that when customers come, they can use a credit card?

MR ZULU: At the time, yes.

ADV PRETORIUS SC: Or – and the credit card would be that payment by credit card?

MR ZULU: Yes, by swiping.

ADV PRETORIUS SC: They would not have to draw money elsewhere; they would just swipe the credit card on
10 your credit card machine?

MR ZULU: Yes, as I have said, they will use different payments, those who want to pay via credit cards, they use credits cards, those who want to pay ...[intervenues]

ADV PRETORIUS SC: So there is a credit card facility and there was a credit card facility in 2015?

MR ZULU: Chair, I am not sure, I can double-check that. There was a time when the credit card system that we were using was not functioning but I can assure that there was a point when that facility was fully functional but I can
20 double check that.

ADV PRETORIUS SC: Now this money is owed to your business?

MR ZULU: Correct.

ADV PRETORIUS SC: Is there any reason why you would have said to Sodi pay it for my personal benefit and not

pay it to the business?

MR ZULU: Just repeat the question?

ADV PRETORIUS SC: You see, what you did was you did not say to Sodi pay it to my business.

MR ZULU: Yes?

ADV PRETORIUS SC: You said pay it to the garage dealer for my personal benefit.

MR ZULU: Yes.

ADV PRETORIUS SC: Is that correct?

10 **MR ZULU:** Correct.

CHAIRPERSON: Is your business a company, a CC or when you say T Z Lounge or is it a sole proprietor business, you own it as a person and it is not a legal entity on its own?

MR ZULU: No, it is not a legal entity on its own, I was trading it as T Z Lounge.

CHAIRPERSON: Sorry?

MR ZULU: I was trading it as T Z Lounge.

CHAIRPERSON: T Z Lounge.

20 **MR ZULU:** Correct. That is a trade name.

CHAIRPERSON: So it was you trading as T Z Lounge?

MR ZULU: Correct, correct.

CHAIRPERSON: Yes. And you are the sole owner?

MR ZULU: Correct, at that time together with my wife, ja.

CHAIRPERSON: At that time together with your wife?

MR ZULU: Yes.

CHAIRPERSON: Oh, okay.

ADV PRETORIUS SC: Well, our investigations show that there is an entity with the letters T Z that is owned by someone else in Pietermaritzburg. Do you know of that entity?

MR ZULU: And entity ...[intervenes]

ADV PRETORIUS SC: Do you say – are you the sole owner of T Z Lounge?

10 **MR ZULU:** Yes, at the time, yes, together with my wife.

ADV PRETORIUS SC: Well, then you cannot be the sole owner. Are you and your wife joint owners of T Z Lounge?

MR ZULU: Yes, correct. Alright, let us put it like that, it is the way the ...[intervenes]

CHAIRPERSON: No, no, you did mention earlier together with your wife, ja.

MR ZULU: Yes, yes.

ADV PRETORIUS SC: And the business is registered in the names of both you and our wife?

20 **MR ZULU:** Yes.

ADV PRETORIUS SC: And by what name is your wife registered in that business?

MR ZULU: I think it is Brooding, if I am not mistaken.

ADV PRETORIUS SC: Surname?

MR ZULU: Brooding, if I am not mistaken.

ADV PRETORIUS SC: Spell that please?

MR ZULU: B-r-o-o-d-i-n-g.

ADV PRETORIUS SC: Brooding?

MR ZULU: Yes. I am not sure what your investigators did found though, Chair, that is why will say I would have preferred that such level of detail was being sought rather than...

CHAIRPERSON: Yes.

MR ZULU: If you hear what I am saying.

10 **CHAIRPERSON:** No, no, I understand, ja.

MR ZULU: That is the cry I have always had because I availed myself to give all the information as required and I do not think, Chair, with all due respect, that to make reference to my wife when I have not been given that opportunity as well because ...[intervenes]

ADV PRETORIUS SC: I am just asking who owned the business, there is nothing sinister in that question.

MR ZULU: No, okay, in your view, if that is your view, that is fine.

20 **ADV PRETORIUS SC:** Because what happens is that a debt owed to the business is paid to you in your personal capacity but that may be something that can be debated.

MR ZULU: I am just [inaudible – speaking simultaneously] Chair.

ADV PRETORIUS SC: At a later stage.

CHAIRPERSON: Sorry, sorry, sorry.

MR ZULU: I am saying, Chair, the questions are already provided, all the answers to investigators, anything even when they wanted that information and I have never been given that opportunity to say come and tell us about this detail. Now one of the reason I was asking myself why am I just brought into the Commission, having not answered the questions and I knew at the back of my mind the type of the questions that Mr Pretorius would be asking in a public platform whereas all that information is available and I have no intention whatsoever to hide that information.

CHAIRPERSON: Yes, okay.

ADV PRETORIUS SC: Well, I do have a note from the investigators here that ...[intervenes]

MR ZULU: You were saying something about a certain company, Mr Pretorius, you were saying something about a certain other company under my name in Pietermaritzburg.

ADV PRETORIUS SC: Yes, I am just saying do you know of any other entity with the letters T Z that is a similar business to yours?

MR ZULU: I would not know. How would I know that?

ADV PRETORIUS SC: You do not know, alright, well I would imagine you would know of your competitors in Pietermaritzburg, particularly competitors with the name of

T Z.

MR ZULU: I know all the competitors in my space. I know all of them in my space that is why I am saying I need to get a ...[intervenes]

CHAIRPERSON: Yes.

ADV PRETORIUS SC: But you have no competitors who trade under the initials T Z?

MR ZULU: Not that I know of.

CHAIRPERSON: Yes.

10 **ADV PRETORIUS SC:** And you would know, obviously, if there was another T Z Lounge in Pietermaritzburg not owned by you, but be that as it may, I have a question here as to did you offer the documentation that you now talk about when you were asked to give evidence as to the payment of R600 000? You could have said look, I have got documentation.

MR ZULU: Did I offer?

ADV PRETORIUS SC: Did you offer documentation?

MR ZULU: I was never asked to offer any documentation,
20 Chair. No one has asked me to offer any documentation and no one has ever even called me into a meeting and asked me about this. It is the first time that I am here and answer those questions.,

ADV PRETORIUS SC: One of the other features of the way this money was paid to you is that nothing would

appear in your bank accounts.

MR ZULU: Because nobody has asked me about my bank accounts, people just went into my bank account. Nobody has asked me about my bank account. This is one of the reasons, Chair, that to some extent I did not appreciate the way investigators have dealt with me. I offered to provide all the information in my first affidavit. I offered for my own banking statements to be made available for any transaction. I offered that myself on the affidavit. That
10 never happened. So I am just trying to say, Chair, the information that Mr Pretorius is referring to, no one has even asked me for that documentation.

CHAIRPERSON: But you know, Mr Zulu, I have got to put this to you in order to be fair to you so that you can deal with it. You came last year, was it August, or your lawyers came, you put up an affidavit. Arising out of Mr Dukwana's evidence, as I recall, which had – in which he sought to link you, I think, or maybe I am being unfair to him but ...[intervenes]

20 **MR ZULU:** I think he was just using the book, Chair.

CHAIRPERSON: Ja, he was using a certain ...[intervenes]

MR ZULU: Let us put it like that.

CHAIRPERSON: Ja, a spreadsheet.

MR ZULU: Correct.

CHAIRPERSON: And on his understanding to say at least

there was a possibility that certain initials there were referring to you. There was a possibility on his thinking and in that context – I mean, if that – the amount reflected there in that spreadsheet against the initials that we are talking about, if that amount – if those initials represented you and if that amount was paid to the person represented by those initials would be you, that would be in your account if it was paid into your accounts, okay?

10 So the context in which you were saying the investigators can come and I will cooperate, I will show them my accounts, they can look at my accounts, I was not paid any money. That was the context. But for me here is the point. I would have expected that if you knew that there was money that came from Mr Sodi's business or from my Sodi that was paid, I will say for argument's sake, for your benefit or was paid to you even if via a car dealer, that I would have expected that you would say you people, I can tell you that I never got any X million rand that is written there and those initials do not represent me, my
20 accounts, you can come and have a look but what I can disclose that there is a some money that Sodi paid that I instructed him to pay. He did not pay it into my accounts, this is where he paid it for, this is what it was about. That is all I can tell you. You do not even have to come and investigate; I can tell you there is money that I got from

him but these are the circumstances under which I got them. But you did not say that. You just said you can come and have a look at my accounts, I will cooperate, so somebody can say you are able to say that because you knew that no money went into your account, the money went into SMD's account. Do you understand what I am saying? So I thought I must just put that to you so that you can deal with it.

MR ZULU: No, I hear you, Chair, and I hear the angle
10 that you are coming from. I think, Chair, maybe it is because this transaction, from where I am sitting, was above board transaction. So much so that the product in question, it is a product that I have declared. So it is above board, so much so that the balance of it appears in financial statements. So if you go to the financial institution that provide that loan for it, so it is the product that is above board. So there was no secrecy around it. There was no way I was going to hide it and I have no intention.

20 Maybe it was in that context that I was saying if anybody wants me to cooperate and provide any form of information on anything that is suspicious of, I am available and this particular product in particular, it is a product that I declared. So I have an obligation at that time to declare my business and to declare any property

that I own, which I did. But even if I did not want to declare it, there is a bank that confirms that you get money to buy the product and I am still paying for that loan for that matter.

So maybe it is because of that context that the investigators were going to in any event find the information that I have declared as required, Chair.

CHAIRPERSON: Ja, yes.

MR ZULU: Maybe it is in that context that I never
10 bothered that much because I said I am available to provide the information.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: The proposition that I would want to put to you, Mr Zulu, is not a difficult proposition. The transaction involving the payment of R600 000 for your benefit or in discharge of a debt to SMD Motors would not appear in your personal bank accounts, correct?

MR ZULU: Correct.

ADV PRETORIUS SC: And that would enable Mr Sodi too
20 to say, as he does, FS1 page 519, paragraph 81, it is a straightforward statement, it says ...[intervenes]

CHAIRPERSON: I am sorry what page?

ADV PRETORIUS SC: Page 519 of FS1, paragraph 81.

CHAIRPERSON: I am afraid you will have to repeat the page number now that I have got the bundle.

ADV PRETORIUS SC: Page 519.

CHAIRPERSON: Page 519?

ADV PRETORIUS SC: Yes.

MR ZULU: Page 159?

ADV PRETORIUS SC: yes.

CHAIRPERSON: 519 towards the end, right towards the end.

ADV PRETORIUS SC: Do you have it there, Mr Zulu?

MR ZULU: Yes, yes, I do, 519.

10 **ADV PRETORIUS SC:** Do you have it, Chair?

CHAIRPERSON: Yes, I have got it.

ADV PRETORIUS SC: Paragraph 81 he says:

“I have not in my personal capacity nor has Blackhead made any payments to the personal accounts of any government officials.”

That may be correct.

MR ZULU: Well, it is general, so ...[intervenes]

ADV PRETORIUS SC: Because he says he has not made ...[intervenes]

20 **MR ZULU:** He says government officials, but I am talking about ...[intervenes]

ADV PRETORIUS SC: Well, insofar as you are a government official, he is correct, he has not made any payment into your personal account, correct?

MR ZULU: Correct.

ADV PRETORIUS SC: But he has made a payment of R600 000 to you through a payment to SMD Motors. He has discharged the debt to you and paid that to SMD Motors. The point I am making ...[intervenes]

MR ZULU: I heard you.

ADV PRETORIUS SC: ...is the construction of the transaction to SMD Motors ensures that it does not appear in your personal account to enable Mr Sodi to say:

10 “I have not in my personal capacity nor has Blackhead made any payments to the personal accounts of any government officials.”

MR ZULU: Okay.

ADV PRETORIUS SC: And there is no but after. But anyway, let me just go, if I may, by way of summary to your own statements. Your first affidavit appears in bundle FS1 at page 152.

CHAIRPERSON: 152 you said, hey? Well, there is an affidavit of Mr Zulu’s that starts at page 150.

20 **ADV PRETORIUS SC:** If you would bear with me a moment, Chair, if I could just get it? Your affidavit appears – your first affidavit, EXHIBIT TT5.1 appears in bundle FS1 at 150. I do not want - to take you, if I may, briefly to page 152.

MR ZULU: Yes, Chair, I am there.

ADV PRETORIUS SC: You say at paragraph 7.2 in the

last sentence:

“I unequivocally tender to the Commission with the necessity for any sums to provide my banking details and those of my wife or any other information that the Commission may require of me to substantiate the fact that I received no money whatsoever from the aforesaid project, or at all.”

That’s a very wide statement.

MR ZULU: Correct.

10 **ADV PRETORIUS SC:** We know that you knew and you do know that you did receive money subject to an explanation in relation to the legitimacy of the payment, correct?

MR ZULU: No, Chair, that’s not correct, the statement here says, and I’ll read it myself, and I won’t read the last paragraph because the last paragraph is preceded by the statement, that appears to be – or let me just read the whole paragraph, Chair, so that the context is not lost.

CHAIRPERSON: Okay.

20 **MR ZULU:** “I deny emphatically that insofar as the Annexure, which includes the initials TZ, if the Annexure is real, I will deal with this later, however, the abovementioned minute appears to be that I received R10million, part of the Free State asbestos eradication project for no justifiable reason whatsoever and apparently there’s a corrupt

reason.”

That I still deny, as I’m sitting here in this Commission, I still deny Chair, I did not get any money of R10million as was appearing on the spreadsheet of Mr Dukwana as a beneficiary. So, I will put it to Mr Pretorius that I still remain with the statement that I did not get any money as it appears on this spreadsheet, as a beneficiary. So, as you are putting it to me, I’m not sure from which context Mr Pretorius is saying he’s putting it to me that I did get the
10 money, I find that to be quite offensive...[intervenes].

CHAIRPERSON: I think you may be misunderstanding what he’s saying.

MR ZULU: Please let him explain to me...[intervenes].

CHAIRPERSON: I think he’s talking about the R600 000.

MR ZULU: But I’ve already explained, Chair how that money...[intervenes].

CHAIRPERSON: Ja, hang on, hang on, he’s saying – he refers to this paragraph and in particular he refers to that last sentence which says,

20 “I unequivocally tendered to the Commission without the necessity for any summons to provide my banking details and those of my wife or any other information that the Commission may require of Mr – to substantiate the fact that I received no money whatsoever from the aforesaid project at all”.

I think what he wants to say, and maybe I'm wrong but let me put this to you...[intervenes].

MR ZULU: It is in that context, Chair.

CHAIRPERSON: Ja, hang on let me finish, I'll give you a chance, I'll give you a chance.

MR ZULU: Okay.

CHAIRPERSON: The R600 000 that you instructed Mr Sodi to pay to SMD, do you relate it to the asbestos project or not?

10 **MR ZULU:** Not at all.

CHAIRPERSON: You don't?

MR ZULU: Not at all Chair.

CHAIRPERSON: Okay, but do you accept that the payment of that amount was to your benefit. Now I'm raising that deliberately because earlier on Mr Pretorius said, we can discuss later because maybe you'll say, no it's not a benefit, but I want to put this to you. If somebody pays back money that they owe you, is that not a good thing for you, that your money is back?

20 **MR ZULU:** Chair, when you run a business, for your monies to be paid to you that are owed to you, you use different methodologies.

CHAIRPERSON: Yes, but when people don't pay...[intervenes].

MR ZULU: Amongst of those is to use the banking

systems which I have also alluded to. We have used with a machine inside the business.

CHAIRPERSON: Ja, no I'm not sure, we might be talking at cross-purposes. I'm just testing our understanding of benefit in this context. So, I would be inclined to think that the R600 000 that was paid by Mr Sodi, to you was to your benefit, simply because when somebody who owes you doesn't pay back what they owe you, that's prejudicial to you but when they pay back that must be good for you and
10 therefore I'm thinking, to say that it's for your benefit it's fine, leave out the question about whether it was from the project or from what but just say, somebody pays back money that they owe you, it's to your benefit, you agree?

MR ZULU: Yes, I agree Chair.

CHAIRPERSON: Okay, alright, Mr Pretorius?

MR ZULU: But the point I was making, Chair, which is the reference that is being made to my affidavit.

CHAIRPERSON: Yes.

MR ZULU: It's in relation to the
20 spreadsheet...[intervenes].

CHAIRPERSON: The spreadsheet, no, no it's fine.

MR ZULU: Which is the issue, Chair, that I think, earlier on you deliberated on with the Senior Counsel.

CHAIRPERSON: Yes, yes.

MR ZULU: Because that's a – that's is where we are

today because of that spreadsheet.

CHAIRPERSON: Ja.

MR ZULU: And I'd like to say to this Commission, Chair, I'm not a beneficiary of that spreadsheet.

CHAIRPERSON: Okay, yes.

MR ZULU: I'd like to state it, as I did it on my affidavit I am not that's why I had an interest to talk to Mr Dukwana myself to get a sense, why did he concluded on that but I was, further, hoping that when investigations are
10 happening, this point will come out clear.

CHAIRPERSON: Yes okay.

ADV PRETORIUS SC: Let me make it clear, and this is why your issue with Mr Dukwana isn't directly relevant to today's proceedings, Mr Zulu, is that we are not putting to you that you are the recipient of R10million from the asbestos project, it's not being put. What is being put to you is something entirely different. I'd like to make one more point which is a point...[intervenes].

MR ZULU: But with all due respect, Chair, with all due
20 respect, Chair, it cannot be that today I'm sitting here because of that allegation made by Mr Dukwana and when I'm here today, I'm told that's why – I wouldn't be here today if it was not for the statement made by Mr Dukwana in that affidavit.

CHAIRPERSON: Well you'd be here for the R600 000.

ADV PRETORIUS SC: Mr Zulu you are here because of the investigations that have been done by the Commission which have been put to you today, that is why you are here. You are not here to answer to an allegation made by Mr Dukwana.

MR ZULU: I'll respect your position, I wouldn't like to argue further, I'll respect your position.

CHAIRPERSON: Yes, no, no that's fine but you are not being suppressed from expressing what you feel but as you
10 say, between counsel in the morning, myself and your counsel and Mr Pretorius, Mr Pretorius made certain undertakings which he, I think seeks to hear but I think you have made it clear that, to the extent that Mr Dukwana may have linked you to any benefit in the spreadsheet that you are not – you are denying any such link, that you have made clear.

MR ZULU: Thank you Chair.

CHAIRPERSON: Yes okay, thank you.

ADV PRETORIUS SC: The further point that I want to put
20 to you, is had you given all your bank accounts, your bank accounts and those of the – your wife to the investigators they would not have picked up this payment to SMD.

MR ZULU: Chair I don't want to sound repetitive, I offered, I was not asked.

CHAIRPERSON: Ja I think you make a legitimate point Mr

Zulu about the fact that you offered to cooperate and if the investigators did not ask you, that must be noted.

ADV PRETORIUS SC: In paragraph 8 of your statement or your first affidavit at page 154 of FS1 you say,

“I would have expected the Commission to have investigated my bank accounts by virtue of the subpoena powers or summons powers that they have at their disposal. Had they done that, they wouldn't have picked up the payment to SMD Motors”,

10

Correct?

MR ZULU: Correct.

ADV PRETORIUS SC: So, what, by summary we have established then is that you played some role as an official in the establishment of the asbestos scheme, whether...[intervenes].

MR ZULU: Sorry just repeat the first sentence, I played what?

20 **ADV PRETORIUS SC:** You played some role in your official capacity in the establishment of the scheme...[intervenes].

MR ZULU: Accounting role.

ADV PRETORIUS SC: Accounting role yes.

MR ZULU: Yes, let's qualify it.

ADV PRETORIUS SC: Official role, in your official

capacity, let's stress that, I'm happy to stress that.

MR ZULU: Okay.

ADV PRETORIUS SC: In the – what became, ultimately, the asbestos scheme. You did receive money from Mr Sodi, you've explained it as to why you've received it, correct?

MR ZULU: Correct.

ADV PRETORIUS SC: The initials TZ appear frequently in these transactions, correct?

10 **MR ZULU:** Correct, I'm not sure about frequently, though Chair.

ADV PRETORIUS SC: Don't worry we'll deal with that in due course with other witnesses you certainly haven't shied away, at least in these proceedings from your initials Mr Zulu. We don't have further questions.

CHAIRPERSON: I've said to Mr Zulu that a note must be taken of the fact that you did offer your cooperation.

MR ZULU: Thank you Chair.

20 **CHAIRPERSON:** And I said just a few minutes ago, if the investigators did not come to you and ask you questions, a note must be taken of that.

MR ZULU: Thank you Chair.

CHAIRPERSON: But isn't the fact that they did ask you about this R600 000?

MR ZULU: Correct Chair.

CHAIRPERSON: Is that not a fact?

MR ZULU: It's a fact Chair and I responded.

CHAIRPERSON: Is it not a fact that you did respond to that question.

MR ZULU: I did Chair.

CHAIRPERSON: Yes, you had an opportunity to tell them more about this transaction if you wanted to but you didn't and they didn't ask you further questions, is that right?

MR ZULU: Chair, I think, if I may comment on that.

10 **CHAIRPERSON:** Yes, yes.

MR ZULU: I think there has been a communication gap I picked up.

CHAIRPERSON: I think you may be right about that.

MR ZULU: Between the investigators and my legal team.

CHAIRPERSON: Yes.

MR ZULU: Which affected negatively.

CHAIRPERSON: Yes.

MR ZULU: The work of the investigators together with myself.

20 **CHAIRPERSON:** Yes.

MR ZULU: As a result of that, I cannot say I had that opportunity.

CHAIRPERSON: Yes.

MR ZULU: Up until I had to respond in writing.

CHAIRPERSON: Okay.

MR ZULU: If you read all the documents, you'll see the gaps that have been happening in communication and then there are breaks, at times of almost five months.

CHAIRPERSON: Ja.

MR ZULU: And then I'm caught between my legal team and the investigators.

CHAIRPERSON: Yes.

MR ZULU: And I couldn't go directly to investigators when there are protocols that have been established.

10 **CHAIRPERSON:** Yes.

MR ZULU: Within which one wanted to respect them. I think, Chair, when you read those communications, you'll see that has also contributed to some extent, negatively in making sure that opportunities used and that's a comment I will make sure but you'll see it in all correspondence. That has been the mishap.

CHAIRPERSON: I think you may be right that the communication may not have been the best at all times and maybe partly because of that, certain things might not have
20 happened the way they should have, I'm not sure. I just wanted to make the point to acknowledge that, certainly, they did put the question to you and you answered, maybe they should have followed up but it may be that from your side too, you should have said, here is more to clarify this or whatever but it may be that, as you put it, there was a

challenge with the communication and that resulted in the situation.

MR ZULU: Chair, I want to assure you, in my personal capacity, that I've never had an option of not working with the Commission.

CHAIRPERSON: Yes, okay.

MR ZULU: I've always made it a point, in all my affidavits, both of them, that at any given moment I'm here to work and cooperate at the Commission and I'd like to
10 state it on record, that commitment remain.

CHAIRPERSON: That remains yes, no thank you very much.

ADV PRETORIUS SC: Well I've just been passed a note, which perhaps contains a question I should ask but I think it's clear already but before we go there, any further information that you had in relation to the R600 000, you could have volunteered, correct, you could have, had you wanted to.

MR ZULU: This is the point, Chair, again we are going
20 back to the protocols...[intervenes].

CHAIRPERSON: About the gap in communication.

MR ZULU: This is the protocols I'm talking about Mr Pretorius, that we had different lines of communication and each time investigators would come to me, I'll speak to them and then I'll ask them, do we start a new process,

should I deal with you directly or you want to go through via my legal team and then they will agree, they'll go via my legal team, then there will be breakdown of communication. Then I will continue with life, so, honestly speaking, Mr Pretorius, the information that investigators may have wanted, exactly the same way that you have requested it, it would have been provided to them. You can talk to Ettienne, I will speak to him, I will commit myself, I will respond to him via email, myself, I won't even
10 refer him to my lawyers, I will do it myself. So, it's unfortunate, Chair, that those protocols for me – at some point I even asked him, how does this work because I can't break protocol with my legal team. At the same time, he is coming to me directly and I'll commit myself. So, there was that challenge but that was not a sense of no cooperation from my side.

ADV PRETORIUS SC: We'll be very quick, if you would just hear the question, maybe I could put it again, to be clear.

20 **MR ZULU:** Yes.

ADV PRETORIUS SC: Regardless of what the investigators did or didn't do, it was within your power and capacity to volunteer the information in regard to the R600 000, correct?

MR ZULU: Correct, via the legal team.

ADV PRETORIUS SC: Yes, alright what is...[intervenes].

MR ZULU: Via the legal team.

ADV PRETORIUS SC: What is interesting is that, it was only after the investigators had discovered these transactions with SMD Motors that all this came out. It could have come out before as the Chair points out.

MR ZULU: But Chair, that's what I was saying, Chairperson, the information about R600 000 it's an open secret, there was no way I was going to be able to hide
10 that payment. It forms part of – the current car that I have I've declared. So, there was no intention, whatsoever, Chair, if they had come to me to say, we want the following, even my legal team, I would have volunteered the information because it's in the public domain. I don't know if you hear what I'm saying, Chair, the financial situation, one gets there...[intervenes].

ADV PRETORIUS SC: It's not in the public domain not is it in your bank accounts, nor is it in your record.

MR ZULU: Chair, it is in the financial statement of my
20 car, an amount of R600 000 was paid, it is available, it is there.

CHAIRPERSON: It was paid by Sodi.

MR ZULU: Exactly Chair.

CHAIRPERSON: Yes.

MR ZULU: So, you can't hide it.

CHAIRPERSON: Yes.

MR ZULU: That's the point I'm trying to make Chair.

CHAIRPERSON: Hmm, okay.

ADV PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Is that its Mr Pretorius? Mr Zulu, thank you very much for coming to give evidence and thank you very much for re-committing yourself to assisting the Commission and even personally dealing with the investigators for any further information that they – that
10 relates to this amount or any other thing that, you know, you may think is relevant or they may pick up, thank you very much.

ADV PRETORIUS SC: Sorry Chair, I did receive a note and it's not worth my while to ignore it, from the team. When did your relationship and friendship with Mr Sodi begin, what year can you remember?

MR ZULU: I can't remember exactly but...[intervenes].

ADV PRETORIUS SC: Was it before 2014?

MR ZULU: Yes, correct.

20 **CHAIRPERSON:** Yes, okay, no – and maybe I can ask this, I know I was also – I had started to thank you so that you can be excused. Your relationship with him, that Mr Sodi, is it on the basis of him being a friend or not really?

MR ZULU: He's been a customer for my business.

CHAIRPERSON: Yes, okay.

MR ZULU: Obviously in the process with a customer like that we developed a friendship yes.

CHAIRPERSON: And Mr Mthuli also, is not a friend, he was just a customer.

MR ZULU: Just an associate that visited.

CHAIRPERSON: An association?

MR ZULU: Correct.

CHAIRPERSON: Okay, alright. Thank you very much Mr Zulu for coming to assist the Commission, we appreciate it.

10 **MR ZULU:** Thank you Chair.

CHAIRPERSON: The investigators will communicate in order – so that we can get whatever documentation is relevant, thank you very much you are excused.

MR ZULU: Thank you Chair, thank you Mr Pretorius.

CHAIRPERSON: Thank you. Mr Pretorius, you talked about the other witness being excused or what is the position?

20 **ADV PRETORIUS SC:** Chair it would be best if we began tomorrow if we may, we will attempt to finish two witnesses tomorrow.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: I don't envisage – well who can say, I don't envisage any interlocutory rule.

CHAIRPERSON: Yes, do we need to start a little earlier than normal or not really?

ADV PRETORIUS SC: No, no Chair.

CHAIRPERSON: Okay, alright. Okay we are going to adjourn them until tomorrow morning at ten, we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 7 AUGUST 2020